

**Laws and Resolutions**  
**OF THE**  
**STATE OF MONTANA**



**ENACTED BY THE**

**Fiftieth Legislature**

**In Regular**

**Session**

**Held at Helena, the Seat of Government**

**January 5, 1987 to April 23, 1987**



**Room 138  
State Capitol  
Helena, Montana 59620**

**Robert B. Person  
Acting Executive Director**

**SESSION LAWS**  
**ENACTED BY THE**  
**Fiftieth Legislature**  
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**SESSION**  
**STATE OF MONTANA**  
**1987**

**EXPLANATORY NOTE:**

Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics.



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# OFFICERS AND MEMBERS OF THE MONTANA SENATE 1987

50 Members

25 Democrats  
25 Republicans

44 Men  
6 Women

President . . . . . Bill Norman  
President Pro Tempore . . . . . George McCallum

| NAME                           | RESIDENCE OR MAILING ADDRESS                      | DIST NO.                          | COUNTY OF RESIDENCE | PARTY      |
|--------------------------------|---------------------------------------------------|-----------------------------------|---------------------|------------|
| Abrams, Hubert J.              | South Route, Wibaux 59353                         | 12                                | Wibaux              | Democrat   |
| Aklestad, Gary C.              | P.O. Box 32, Galata 59444                         | 6                                 | Toole               | Republican |
| * Anderson, John H., Jr.       | Box 86, Alder 59710                               | 37                                | Madison             | Republican |
| Beck, Tom                      | 651 Greenhouse Road, Deer Lodge 59722             | 24                                | Powell              | Republican |
| * Bengtson, Esther G.          | 8124 Clark Road, Shepherd 59079                   | 49                                | Yellowstone         | Democrat   |
| Bishop, Al                     | 2713 Downer Lane, Billings 59102                  | 46                                | Yellowstone         | Republican |
| Blaylock, Chet                 | 502 3rd Ave., Laurel 59044                        | 43                                | Yellowstone         | Democrat   |
| Boylan, Paul F.                | 3747 So. 19th Rd., Bozeman 59715                  | 39                                | Gallatin            | Democrat   |
| * Brown, Bob                   | 333 Cougar Trail, Whitefish 59937                 | 2                                 | Flathead            | Republican |
| * Crippen, Bruce D.            | 2110 Overland Ave. #106, Billings 59102           | 45                                | Yellowstone         | Republican |
| * Eck, Dorothy                 | 10 W. Garfield, Bozeman 59715                     | 40                                | Gallatin            | Democrat   |
| * Farrell, William E.          | 12255 Flora Dr., Missoula 59801                   | 31                                | Missoula            | Republican |
| Gage, Delwyn                   | Box 787, Cut Bank 59427                           | 5                                 | Glacier             | Republican |
| Galt, Jack E.                  | Martinsdale 59053                                 | 16                                | Meagher             | Republican |
| * Haffey, Jack                 | 709 W. 4th St., Anaconda 59711                    | 33                                | Deer Lodge          | Democrat   |
| * Hager, Torn                  | 150 Norris Court, Billings 59105                  | 48                                | Yellowstone         | Republican |
| Halligan, Mike                 | P.O. Box 9121, Missoula 59807                     | 29                                | Missoula            | Democrat   |
| * Hammond, H.W. "Swede"        | Box 1366, Malta 59538                             | 9                                 | Phillips            | Republican |
| * Harding, Ethel M.            | Box 251, Polson 59860                             | 25                                | Lake                | Republican |
| Himsel, Matt                   | 305 4th Ave. E., Kalispell 59901                  | 3                                 | Flathead            | Republican |
| * Hirsch, Les J.               | Broadus Stage, Miles City 59301                   | 13                                | Custer              | Democrat   |
| Hofman, Sam                    | 6210 Camp Creek Road, Manhattan 59741             | 38                                | Gallatin            | Republican |
| * Jacobson, Judy H.            | 330 Blacktail Canyon Rd., Butte 59701             | 36                                | Silver Bow          | Democrat   |
| Jergeson, Greg                 | Rt. 71 Box 8, Chinook 59523                       | 8                                 | Blaine              | Democrat   |
| * Keating, Thomas F.           | Box 20522, Billings 59104                         | 44                                | Yellowstone         | Republican |
| Kolstad, Allen C.              | Box 648, Chester 59522                            | 7                                 | Liberty             | Republican |
| * Lybeck, Ray                  | 500 E. Reserve Dr., Kalispell 59901               | 4                                 | Flathead            | Democrat   |
| Lynch, John "J.D."             | 532 W. Mercury, Butte 59701                       | 34                                | Silver Bow          | Democrat   |
| Manning, Richard E.            | 810 7th Ave. No., Great Falls 59401               | 18                                | Cascade             | Democrat   |
| * Mazurek, Joseph P.           | 516 Hayes, Helena 59601                           | 23                                | Lewis & Clark       | Democrat   |
| * McCallum, George             | Box 262, Plains 59859                             | 26                                | Sanders             | Republican |
| McLane, Harry H. "Doc"         | Box 312, Laurel 59044                             | 42                                | Yellowstone         | Republican |
| Meyer, Carryl                  | 5306 4th Ave. So., Great Falls 59405              | 17                                | Cascade             | Republican |
| * Neuman, Ted                  | 639 US Hwy. 89, Vaughn 59487                      | 21                                | Cascade             | Democrat   |
| Norman, Bill                   | 440 Connell Ave., Missoula 59801                  | 28                                | Missoula            | Democrat   |
| * Pineseault, R.J. "Dick"      | Box 250, St. Ignatius 59865                       | 27                                | Lake                | Democrat   |
| Rasmussen, Tom                 | 550 No. Montana, Helena 59601                     | 22                                | Lewis & Clark       | Republican |
| Regan, Pat                     | 204 Mountain View, Billings 59101                 | 47                                | Yellowstone         | Democrat   |
| Severson, Elmer D.             | 480 Middle Burnt Fork Road,<br>Stevensville 59870 | 32                                | Ravalli             | Republican |
| * Smith, Ed B.                 | Box 11, Dagmar 59219                              | 10                                | Sheridan            | Republican |
| * Stimatz, Lawrence G. (Larry) | 1615 C Street, Butte 59701                        | 35                                | Silver Bow          | Democrat   |
| Story, Pete                    | Box 355, Emigrant 59027                           | 41                                | Park                | Republican |
| * Thayer, Gene                 | 2612 4th Ave. So., Great Falls 59405              | 19                                | Cascade             | Republican |
| * Tveit, Larry J.              | Rt. 1 Box 1475, Fairview 59221                    | 11                                | Richland            | Republican |
| * Van Valkenburg, Fred         | 219 University, Missoula 59801                    | 30                                | Missoula            | Democrat   |
| Vaughn, Eleanor L.             | P.O. Box 45, Libby 59923                          | 1                                 | Lincoln             | Democrat   |
| Walker, Mike                   | 965 Ave. 'E' N.W., Great Falls 59404              | 20                                | Cascade             | Democrat   |
| Weeding, Cecil                 | P.O. Box 78, Jordan 59337                         | 14                                | Garfield            | Democrat   |
| * Williams, Bob                | Box 338, Hobson 59452                             | 15                                | Judith Basin        | Democrat   |
| * Yellowtail, William P., Jr.  | Box 308, Wyola 59089                              | 50                                | Big Horn            | Democrat   |
| *Term Expires Jan., 1989       |                                                   | All Other Terms Expire Jan., 1991 |                     |            |

# OFFICERS AND MEMBERS OF THE MONTANA HOUSE OF REPRESENTATIVES 1987

100 Members

51 Republicans

49 Democrats

Speaker

Speaker Pro Tempore

83 Men

17 Women

Robert L. Marks

Dennis Iverson

| NAME                      | RESIDENCE OR<br>MAILING ADDRESS       | DIST<br>NO. | COUNTY OF<br>RESIDENCE | PARTY      |
|---------------------------|---------------------------------------|-------------|------------------------|------------|
| Addy, Kelly               | 237 Ave. C, Billings 59101            | 94          | Yellowstone            | Democrat   |
| Asay, Tom                 | Box 914, Forsyth 59327                | 27          | Rosebud                | Republican |
| Bachini, Bob              | 409 19th St., Havre 59501             | 14          | Hill                   | Democrat   |
| Bardanoue, Francis        | Box 367, Harlem 59526                 | 16          | Blaine                 | Democrat   |
| Bradley, Dorothy          | 919 W. Lamme, Bozeman 59715           | 79          | Gallatin               | Democrat   |
| Brandewie, Raymond J.     | East Shore, Bigfork 59911             | 49          | Lake                   | Republican |
| Brown, Dave               | 3040 Ottawa, Butte 59701              | 72          | Silver Bow             | Democrat   |
| Brown, Jan                | 906 Madison, Helena 59601             | 46          | Lewis & Clark          | Democrat   |
| Bulger, Tom               | 600 5th Ave. No., Great Falls 59401   | 37          | Cascade                | Democrat   |
| Campbell, Bud             | 471 Lake Hill Road, Deer Lodge 59722  | 48          | Powell                 | Republican |
| Cobb, John                | Box 388, Augusta 59410                | 42          | Lewis & Clark          | Republican |
| Cody, Dorothy A.          | Box 973, Wolf Point 59201             | 20          | Roosevelt              | Democrat   |
| Cohen, Ben                | Box 1657, Whitefish 59937             | 3           | Flathead               | Democrat   |
| Compton, Duane W.         | Box 1061, Malta 59538                 | 17          | Phillips               | Republican |
| Connelly, Mary Ellen      | 3315 Whitefish Stage, Kalispell 59901 | 8           | Flathead               | Democrat   |
| Corné, Dick               | 28 Border Lane, Bozeman 59715         | 77          | Gallatin               | Democrat   |
| Daily, Fred "Fritz"       | 1057 West Steel, Butte 59701          | 69          | Silver Bow             | Democrat   |
| Darko, Paula A.           | P.O. Box 490, Libby 59923             | 2           | Lincoln                | Democrat   |
| DeMars, Gene              | RR1, Box 22, Coffee Creek 59424       | 29          | Fergus                 | Democrat   |
| Devlin, Gerry             | Box 186, Terry 59349                  | 25          | Prairie                | Republican |
| Donaldson, Gene           | 3890 Helberg Dr., Helena 59601        | 43          | Lewis & Clark          | Republican |
| Driscoll, Jerry L.        | 4344 Stone St., Billings 59101        | 92          | Yellowstone            | Democrat   |
| Ellison, Orval S.         | W. Boulder Rt., McLeod 59052          | 81          | Park                   | Republican |
| Eudaily, Ralph S.         | 224 Kensington Ave., Missoula 59801   | 60          | Missoula               | Republican |
| Fritz, Harry              | 675 E. Central, Missoula 59801        | 56          | Missoula               | Democrat   |
| Giacometto, Leo A.        | Box 1, Alzada 59311                   | 24          | Carter                 | Republican |
| Gilbert, Bob              | P.O. Drawer 2117, Sidney 59270        | 22          | Richland               | Republican |
| Glaser, William E. (Bill) | P.O. Box 1801, Billings 59103         | 98          | Yellowstone            | Republican |
| Gould, R. Budd            | 2205 So. Fifth West, Missoula 59801   | 61          | Missoula               | Republican |
| Grady, Edward J. (Ed)     | Canyon Creek 59633                    | 47          | Lewis & Clark          | Republican |
| Grinde, Larry Hal         | Route 3, Lewistown 59457              | 30          | Fergus                 | Republican |
| Hannah, Tom               | 2228 Beloit, Billings 59102           | 86          | Yellowstone            | Republican |
| Hansen, Stella Jean       | 841 Woodford, Missoula 59801          | 57          | Missoula               | Democrat   |
| Hanson, Marian W.         | Box 237, Ashland 59003                | 100         | Powder River           | Republican |
| Harp, John G.             | 134 Park Ave., Kalispell 59901        | 7           | Flathead               | Republican |
| Harper, Hal               | 9 Comstock Rd., Helena 59601          | 44          | Lewis & Clark          | Democrat   |
| Harrington, Dan W.        | 1201 N. Excelsior, Butte 59701        | 68          | Silver Bow             | Democrat   |
| Hayne, Harriet            | P.O. Box 285, Dupuyer 59432           | 10          | Pondera                | Republican |
| Hoffman, Robert E.        | P.O. Box 306, Sheridan 59749          | 74          | Madison                | Republican |
| Holliday, Gay             | Box 316, Roundup 59072                | 31          | Musselshell            | Democrat   |
| Iverson, Dennis           | Whitlash 59545                        | 12          | Liberty                | Republican |
| Jenkins, Loren            | RR 1, Box 689, Big Sandy 59520        | 13          | Chouteau               | Republican |
| Jones, Tom L.             | 171 3 Mile Drive, Kalispell 59901     | 4           | Flathead               | Republican |
| Kadas, Mike               | 825 Cooley, Missoula 59802            | 55          | Missoula               | Democrat   |
| Keenan, Nancy A.          | 1421 W. 3rd St., Anaconda 59711       | 66          | Deer Lodge             | Democrat   |
| Keller, Vernon V.         | HC 55, Box 355, Fishtail 59028        | 83          | Stillwater             | Republican |
| Kennerly, Roland F.       | P.O. Box 1559, Browning 59417         | 9           | Glacier                | Democrat   |
| Kitselman, Les            | 1148 Patriot St., Billings 59105      | 95          | Yellowstone            | Republican |
| Koehnke, Francis          | Box 692, Townsend 59644               | 32          | Broadwater             | Democrat   |

# HOUSE OF REPRESENTATIVES (Continued)

| NAME                        | RESIDENCE OR MAILING ADDRESS                   | DIST NO. | COUNTY OF RESIDENCE | PARTY      |
|-----------------------------|------------------------------------------------|----------|---------------------|------------|
| Lory, Earl C.               | 4795 Miller Creek Rd., Missoula 59803          | 59       | Missoula            | Republican |
| Manuel, Rex                 | RR 1, Box 42, Fairfield 59436                  | 11       | Teton               | Democrat   |
| Marks, Robert L. (Bob)      | 302 Lump Gulch, Clancy 59634                   | 75       | Jefferson           | Republican |
| McCormick, Lloyd J. (Mac)   | 326 14th Ave. So. #2, Great Falls 59405        | 38       | Cascade             | Democrat   |
| Menahan, William (Red)      | 1304 W. 5th St., Anaconda 59711                | 67       | Deer Lodge          | Democrat   |
| Menke, Larry                | 315 Gibson, Glendive 59330                     | 23       | Dawson              | Republican |
| Mercer, John A.             | P.O. Box 450, Polson 59860                     | 50       | Lake                | Republican |
| Meyers, Al                  | Box 2530 Jocko Rd., Arlee 59821                | 53       | Lake                | Republican |
| Miles, Joan                 | 14 So. Howie, Helena 59601                     | 45       | Lewis & Clark       | Democrat   |
| Miller, Ron                 | 513 52nd St. So., Great Falls 59405            | 34       | Cascade             | Republican |
| Moore, Janet                | Box 1017, Condon 59826                         | 65       | Missoula            | Democrat   |
| Nathe, Dennis G.            | P.O. Box 4, Redstone 59257                     | 19       | Sheridan            | Republican |
| Nelson, Richard M.          | 94 Northern Lights Blvd., Kalispell 59901      | 6        | Flathead            | Republican |
| Nisbet, Gerald D. (Jerry)   | 420 25th Ave. N.E., Great Falls 59404          | 35       | Cascade             | Democrat   |
| O'Connell, Helen G.         | 703 4th Ave. S.W., Great Falls 59404           | 40       | Cascade             | Democrat   |
| Patterson, John W.          | Box 150, Custer 59024                          | 97       | Yellowstone         | Republican |
| Pavlovich, Robert J. (Bob)  | 1375 Harrison Ave., Butte 59701                | 70       | Silver Bow          | Democrat   |
| Peck, Ray                   | 620 4th Ave., Havre 59501                      | 15       | Hill                | Democrat   |
| Peterson, Mary Lou          | Rt. 1, Box 117, Eureka 59917                   | 1        | Lincoln             | Republican |
| Phillips, John E.           | 1200 32nd St. So. #61, Great Falls 59405       | 33       | Cascade             | Republican |
| Pistoria, Paul G.           | 2421 Central Ave., Great Falls 59401           | 36       | Cascade             | Democrat   |
| Poff, Bing C.               | Rt. 2, Box 54, Culbertson 59218                | 21       | Richland            | Democrat   |
| Poulsen, Harold L.          | 1537 Meadowlark Dr., Great Falls 59404         | 39       | Cascade             | Democrat   |
| Quilici, Joe                | 3040 Kossuth, Butte 59701                      | 71       | Silver Bow          | Democrat   |
| Ramirez, Jack               | 4042 Pine Cove Rd., Billings 59106             | 87       | Yellowstone         | Republican |
| Raney, Bob                  | 212 So. 6th St., Livingston 59047              | 82       | Park                | Democrat   |
| Rapp-Svrcek, Paul           | Box 1392, Thompson Falls 59873                 | 51       | Sanders             | Democrat   |
| Ream, Bob                   | 5950 Wildcat Rd., Missoula 59802               | 54       | Missoula            | Democrat   |
| Rehberg, Dennis R.          | 1737 Ave. D, Billings 59102                    | 88       | Yellowstone         | Republican |
| Roth, Rande K.              | 726 Oasis Dr., Billings 59105                  | 96       | Yellowstone         | Republican |
| Russell, Angela             | Box 333, Lodge Grass 59050                     | 99       | Big Horn            | Democrat   |
| Sales, Walter R.            | 3900 Stagecoach Tr., Manhattan 59741           | 76       | Gallatin            | Republican |
| Sands, Jack                 | 3115 Poly Dr., Billings 59102                  | 90       | Yellowstone         | Republican |
| Schye, Ted                  | North Star Route, Glasgow 59230                | 18       | Valley              | Democrat   |
| Simon, Bruce T.             | 217 Clark Ave., Billings 59101                 | 91       | Yellowstone         | Republican |
| Smith, Clyde B.             | 1033 Mile Dr., Kalispell 59901                 | 5        | Flathead            | Republican |
| Spaeth, Gary                | Silesia 59080                                  | 84       | Carbon              | Democrat   |
| Squires, Carolyn            | 2111 So. 10th St. W., Missoula 59801           | 58       | Missoula            | Democrat   |
| Stang, Barry                | 142 Mt. Hwy. 135 So., St. Regis 59866          | 52       | Mineral             | Democrat   |
| Stratford, Tonia            | 406 So. Center, Miles City 59301               | 26       | Custer              | Republican |
| Strizich, William S. (Bill) | 736 27th Ave. N.E., Great Falls 59404          | 41       | Cascade             | Democrat   |
| Swift, Bernie               | SE 206 Rose Lane, Hamilton 59840               | 64       | Ravalli             | Republican |
| Switzer, L. Dean            | HCR 87, Box 540, Richey 59259                  | 28       | Dawson              | Republican |
| Swysgood, Charles "Chuck"   | 206 Legget Ave., Dillon 59725                  | 73       | Beaverhead          | Republican |
| Thoft, Bob                  | 1520 S. Burnt Fork Road,<br>Stevensville 59870 | 63       | Ravalli             | Republican |
| Thomas, Fred                | 144 Brook Lane, Stevensville 59870             | 62       | Ravalli             | Republican |
| Vincent, John               | 1020 So. 3rd, Bozeman 59715                    | 80       | Gallatin            | Democrat   |
| Wallin, Norm                | 2422 Springcreek Dr., Bozeman 59715            | 78       | Gallatin            | Republican |
| Whalen, Timothy J.          | 101 Avenue C, Billings 59101                   | 93       | Yellowstone         | Democrat   |
| Williams, J. Melvin (Mel)   | 511 8th Ave., Box 245, Laurel 59044            | 85       | Yellowstone         | Democrat   |
| Winslow, Cal                | 1240 Crawford Dr., Billings 59102              | 89       | Yellowstone         | Republican |

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## HOUSE AND SENATE BILLS

| Ch.<br>No. | Senate<br>Bill | House<br>Bill | Sponsor    | Title                                                                                                                                                                                                                                                                                                                                |
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| 1          |                | 11            | Manuel     | AN ACT AUTHORIZING THE LEGISLATIVE COUNCIL TO ASSIGN TO APPROPRIATE STATUTORILY CREATED COMMITTEES STUDIES OF ISSUES OF STATEWIDE IMPORTANCE ARISING WHEN THE LEGISLATURE IS NOT IN SESSION; AND AMENDING SECTION 5-11-105, MCA. ....Page 1                                                                                          |
| 2          |                | 12            | Nathe      | AN ACT CORRECTING REFERENCES TO ALLOCATIONS OF PORTIONS OF THE PROCEEDS OF THE COAL SEVERANCE TAX; AND AMENDING SECTIONS 20-9-343, 85-1-603, AND 90-2-124, MCA. ....Page 1                                                                                                                                                           |
| 3          |                | 22            | Harper     | AN ACT TO CLARIFY NOTICE REQUIREMENTS RELATING TO SALE, RETENTION, OR OTHER DISPOSITION OF COLLATERAL AFTER DEFAULT; AMENDING SECTIONS 30-9-504 AND 30-9-505, MCA. ....Page 3                                                                                                                                                        |
| 4          |                | 34            | Spaeth     | AN ACT REQUIRING THAT APPLICANTS FOR BARBER INSTRUCTOR'S CERTIFICATES BE HOLDERS OF CERTIFICATES TO PRACTICE BARBERING; AND AMENDING SECTION 37-30-311, MCA. ....Page 6                                                                                                                                                              |
| 5          |                | 48            | Harrington | AN ACT TO REDUCE THE HOLDING PERIOD OF UNCLAIMED PROPERTY FROM 7 YEARS TO 5 YEARS; TO REQUIRE A REPORT OF ABANDONED PROPERTY EACH YEAR; AND AMENDING SECTIONS 70-9-106, 70-9-201 THROUGH 70-9-204, 70-9-206 THROUGH 70-9-209, AND 70-9-301, MCA. ....Page 7                                                                          |
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| 8          |                | 27            | Spaeth     | AN ACT REQUIRING EACH DEPARTMENT HEAD TO APPOINT A QUALIFIED PERSON WITHIN THE DEPARTMENT TO REVIEW EACH DEPARTMENTAL ADMINISTRATIVE RULE NOTICE FOR COMPLIANCE WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT BEFORE IT IS FILED WITH THE SECRETARY OF STATE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. ....Page 13 |
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| Ch.<br>No. | Senate<br>Bill | House<br>Bill | Sponsor    | Title                                                                                                                                                                                                                                                                                                                                                                                                   |
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| 12         |                | 140           | Bardanouve | AN ACT TO REMOVE THE MANDATORY RETIREMENT AGE FROM THE JUDGES' RETIREMENT SYSTEM TO COMPLY WITH FEDERAL LAW; REPEALING SECTION 19-5-504, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE. ....Page 18                                                                                                                                                                          |
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| 14         |                | 176           | Bardanouve | AN ACT PROVIDING THAT THE MAXIMUM BENEFIT PAID TO A RETIREE UNDER THE PUBLIC EMPLOYEES', TEACHERS', JUDGES', HIGHWAY PATROLMEN'S, SHERIFFS', GAME WARDENS', MUNICIPAL POLICE OFFICERS', OR FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS MAY NOT EXCEED THE LIMITATIONS ON SUCH BENEFITS IMPOSED BY SECTION 415 OF THE INTERNAL REVENUE CODE OF 1986; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. ....Page 19 |
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# SESSION LAWS

## CHAPTER NO. 1

[HB 11]

AN ACT AUTHORIZING THE LEGISLATIVE COUNCIL TO ASSIGN TO APPROPRIATE STATUTORILY CREATED COMMITTEES STUDIES OF ISSUES OF STATEWIDE IMPORTANCE ARISING WHEN THE LEGISLATURE IS NOT IN SESSION; AND AMENDING SECTION 5-11-105, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 5-11-105, MCA, is amended to read:

**"5-11-105. Powers and duties of council.** (1) If a question of statewide importance arises when the legislature is not in session and a subcommittee has not been appointed to consider the question, the legislative council shall assign the question to an appropriate subcommittee *as provided in Title 5, chapter 5, part 2, or to the appropriate statutorily created committee.*

(2) The legislative council shall supervise the activities of the council staff.

(3) The legislative council shall assist in the preparation and submission of all standing and select committee and subcommittee reports and recommendations to the legislature.

(4) This section shall not be construed to permit the council to approve or disapprove of any substantive portions or recommendations of a standing or select committee or subcommittee report."

Approved February 5, 1987.

## CHAPTER NO. 2

[HB 12]

AN ACT CORRECTING REFERENCES TO ALLOCATIONS OF PORTIONS OF THE PROCEEDS OF THE COAL SEVERANCE TAX; AND AMENDING SECTIONS 20-9-343, 85-1-603, AND 90-2-124, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-9-343, MCA, is amended to read:

**"20-9-343. Definition of and revenue for state equalization aid.** (1) As used in this title, the term "state equalization aid" means those

moneys deposited in the state special revenue fund as required in this section plus any legislative appropriation of moneys from other sources for distribution to the public schools for the purpose of equalization of the foundation program.

(2) The legislative appropriation for state equalization aid shall be made in a single sum for the biennium. The superintendent of public instruction has authority to spend such appropriation, together with the earmarked revenues provided in subsection (3), as required for foundation program purposes throughout the biennium.

(3) The following shall be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) 25% of all moneys received from the collection of income taxes under chapter 30 of Title 15;

(b) 25% of all moneys, except as provided in 15-31-702, received from the collection of corporation license taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) 10% of the moneys received from the collection of the severance tax on coal under chapter 35 of Title 15 *and remaining after allocation of such tax under 15-35-108(1) and (2)*;

(d) 100% of the moneys received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income moneys described in 20-9-341 and 20-9-342;

(f) income from the local impact and education trust fund account; and

(g) in addition to these revenues, the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333 shall be paid into the same state special revenue fund.

(4) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce the appropriation required for the next succeeding biennium [or may be transferred to the state permissive account if revenues in that fund are insufficient to meet the state's permissive amount obligation]."

Section 2. Section 85-1-603, MCA, is amended to read:

**"85-1-603. Water development debt service fund created — coal severance tax allocated.** (1) There is created a water development debt service fund within the debt service fund type established in 17-2-102.

(2) The state pledges and allocates and directs to be credited to the water development debt service fund, as received:

(a) 1 ¼% of all money from time to time received from the coal severance tax collected under Title 15, chapter 35, and remaining after allocation of such tax under 15-35-108(1) and (2);

(b) any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under 85-1-617;

(c) all interest income earned on proceeds of water development bonds; and

(d) revenue or money otherwise required to be paid into the water development state special revenue account pursuant to 85-1-604, as determined by the board of examiners in connection with the issuance of bonds pursuant to 85-1-617."

Section 3. Section 90-2-124, MCA, is amended to read:

**"90-2-124. Appropriation of coal severance tax.** The state pledges and appropriates and directs to be credited to the debt service fund, as received, 1 ¼% of all money from time to time received from the collection of the severance tax and remaining after allocation of such tax under 15-35-108(1) and (2) and such additional amount thereof, if any, as may be required from time to time to provide sufficient funds for the purposes stated in 90-2-123(2), provided that no more than 1 ¼% of such tax collections shall be deemed to be pledged for the purpose of 90-2-121(3)."

Approved February 5, 1987.

## CHAPTER NO. 3

[HB 22]

AN ACT TO CLARIFY NOTICE REQUIREMENTS RELATING TO SALE, RETENTION, OR OTHER DISPOSITION OF COLLATERAL AFTER DEFAULT; AMENDING SECTIONS 30-9-504 AND 30-9-505, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 30-9-504, MCA, is amended to read:

**"30-9-504. Secured party's right to dispose of collateral after default — effect of disposition.** (1) A secured party after default may sell, lease, or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the chapter on sales (chapter 2). The proceeds of disposition shall be applied in the order following to:

(a) the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing, and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must

seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of account or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) (a) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the disposition including the method, manner, time, place, and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor if he has not signed after default a statement renouncing or modifying his right to notification of sale. In the case of consumer goods no other notification need be sent. In other cases notification shall be sent to any other secured party from whom the secured party has received (before sending his notification to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. The secured party may buy at any public sale, and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, he may buy at private sale.

*(b) Notification by the secured party is reasonable under subsection (3)(a) and constitutes steps reasonably required to inform another in the ordinary course under 30-1-201(26) if it is sent by certified mail to the most recent address provided by the debtor or another secured party as follows:*

*(i) the address stated on the security agreement or other applicable loan document in the case of a debtor or on the written notice of claim in the case of another secured party; or*

*(ii) such other address of which the secured party receives notice in writing from the debtor or other secured party prior to the time notification is sent to the most recent address previously given under subsection (3)(b)(i) or this subsection (3)(b)(ii).*

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this part or of any judicial proceedings:

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders, or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, endorsement, repurchase agreement, or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this chapter."

Section 2. Section 30-9-505, MCA, is amended to read:

**"30-9-505. Compulsory disposition of collateral — acceptance of the collateral as discharge of obligation.** (1) If the debtor has paid 60% of the cash price in the case of a purchase money security interest in consumer goods or 60% of the loan in the case of another security interest in consumer goods and has not signed after default a statement renouncing or modifying his rights under this part, a secured party who has taken possession of collateral must dispose of it under 30-9-504, and if he fails to do so within 90 days after he takes possession the debtor at his option may recover in conversion or under 30-9-507(1) on secured party's liability.

(2) (a) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed after default a statement renouncing or modifying his rights under this subsection (2). In the case of consumer goods, no other notice need be given. In other cases notice shall be sent to any other secured party from whom the secured party has received (before sending his notice to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral.

(b) *Notice by the secured party is sufficient under subsection (2)(a) and constitutes steps reasonably required to inform another in the ordinary course under 30-1-201(26) if it is sent by certified mail to the most recent address provided by the debtor or another secured party as follows:*

(i) *the address stated on the security agreement or other applicable loan document in the case of a debtor or on the written notice of claim in the case of another secured party; or*

(ii) *such other address of which the secured party receives notice in writing from the debtor or other secured party prior to the time notification is sent to the most recent address previously given under subsection (2)(b)(i) or this subsection (2)(b)(ii).*

(c) If the secured party receives objection in writing from a person entitled to receive notification within 21 days after the notice was sent, the secured party must dispose of the collateral under 30-9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation."

Approved February 5, 1987.

**CHAPTER NO. 4**

[HB 34]

AN ACT REQUIRING THAT APPLICANTS FOR BARBER INSTRUCTOR'S CERTIFICATES BE HOLDERS OF CERTIFICATES TO PRACTICE BARBERING; AND AMENDING SECTION 37-30-311, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-30-311, MCA, is amended to read:

**"37-30-311. Instructor's certification examination.** (1) An instructor's examination may be administered only to those persons who are high school graduates or possess the equivalent of a high school diploma and who:

(a) have been actively and continuously engaged in the practice of barbering in this state or in any other state requiring a barber's certificate or license, under laws substantially equivalent to this chapter, for at least 3 years immediately prior to application to take the instructor's certification examination; or

(b) have a barber's license or certificate of registration and have completed a course in barber instructor training of at least 500 hours of instruction at a barber school or college licensed by the board under this chapter.

(2) Instructor's examinations must be held at the time and place specified by the board, but must be held at least once a year.

(3) Anyone failing twice to pass an examination may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until he has taken 200 hours of additional instructor training at a barber school or college licensed by the board."

**Section 2. Extension of authority.** Any existing authority of the board of barbers to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved February 5, 1987.

**CHAPTER NO. 5**

[HB 48]

AN ACT TO REDUCE THE HOLDING PERIOD OF UNCLAIMED PROPERTY FROM 7 YEARS TO 5 YEARS; TO REQUIRE A REPORT OF ABANDONED PROPERTY EACH YEAR; AND AMENDING SECTIONS 70-9-106, 70-9-201 THROUGH 70-9-204, 70-9-206 THROUGH 70-9-209, AND 70-9-301, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 70-9-106, MCA, is amended to read:

**"70-9-106. Uniform Unclaimed Property Act superseded.** The provisions of Title 22, chapter 3, part 5, supersede the provisions of parts 1 through 3 of this chapter, except that at its option a museum, as defined in 22-3-503, may report property, as defined in 22-3-503, that has been on loan, as defined in 22-3-503, unclaimed by its owner for more than 5 years to the department of revenue for disposition as provided in part 3 of this chapter."

Section 2. Section 70-9-201, MCA, is amended to read:

**"70-9-201. Property held by banking or financial organization or business association.** The following property held or owing by a banking or financial organization or by a business association is presumed abandoned:

(1) any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has within 5 years:

(a) increased or decreased the amount of the deposit or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(b) corresponded in writing with the banking organization concerning the deposit; or

(c) otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization;

(2) any funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit made therewith in this state and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within 5 years:

(a) increased or decreased the amount of the funds or deposit or presented an appropriate record for the crediting of interest or dividends;

(b) corresponded in writing with the financial organization concerning the funds or deposit; or

(c) otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization;

(3) any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, money orders, and travelers' checks that, with the exception of travelers' checks, has been outstanding for more than 5 years from the date it was payable or from the date of its issuance if payable on demand or, in the case of travelers' checks, that has been outstanding for more than 15 years from the date of its issuance unless the owner has within 5 years or within 15 years in the case of travelers' checks corresponded in writing with the banking or financial organization or business association concerning it or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization or business association;

(4) any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason or any surplus amounts arising from the sale thereof pursuant to law that have been unclaimed by the owner for more than 5 years from the date on which the lease or rental period expired."

Section 3. Section 70-9-202, MCA, is amended to read:

**"70-9-202. Unclaimed funds held by life insurance corporation.**

(1) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(2) "Unclaimed funds", as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than 5 years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based unless the person appearing entitled thereto has within the preceding 5 years assigned, readjusted, or paid premiums on the policy or subjected the policy to loan or corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required."



Section 4. Section 70-9-203, MCA, is amended to read:

**"70-9-203. Deposits and refunds held by utility.** The following funds held or owing by any utility are presumed abandoned:

(1) any deposit made by a subscriber with a utility to secure payment for or any sum paid in advance for utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than 5 years after the termination of the services for which the deposit or advance payment was made;

(2) any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than 5 years after the date it became payable in accordance with the final determination or order providing for the refund."

Section 5. Section 70-9-204, MCA, is amended to read:

**"70-9-204. Stock, dividends, and distributions of business association.** (1) Any stock or other certificate of ownership or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder or a participating patron of a cooperative, who has not claimed it or corresponded in writing with the business association concerning it within 5 years after the date prescribed for payment or delivery is presumed abandoned if it is held or owing by a business association:

(a) organized under the laws of or created in this state; or

(b) doing business in this state but not organized under the laws of or created in this state and the records of the business association indicate that the last-known address of the person entitled thereto is in this state.

(2) Any intangible interest in a business association as evidenced by the stock or membership records of the association is presumed abandoned and the association deemed the holder thereof when:

(a) the interest in the association is owned by a person who for more than 5 years has not claimed a dividend or other sum referred to in subsection (1);

(b) the records of the association indicate that the last-known address of the person entitled to the dividend is in this state; and

(c) the association is:

(i) organized under the laws of or created in this state; or

(ii) doing business in this state but not organized under the laws of or created in this state.

(3) Any dividends or other distributions held for or owing to a person at the time an intangible interest in a business association is presumed abandoned pursuant to subsection (2) are presumed abandoned."

Section 6. Section 70-9-206, MCA, is amended to read:

**"70-9-206. Property held by fiduciary.** All intangible personal property and any income or increment thereon held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within 5 years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(1) if the property is held by a business association, banking organization, or financial organization organized under the laws of or created in this state;

(2) if it is held by a business association, banking organization, or financial organization doing business in this state but not organized under the laws of or created in this state and the records of the business association, banking organization, or financial organization indicate that the last known address of the person entitled thereto is in this state; or

(3) if it is held in this state by another person."

Section 7. Section 70-9-207, MCA, is amended to read:

**"70-9-207. Property held by court or public officer or agency.**

(1) All intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this state or a political subdivision thereof that has remained unclaimed by the owner for more than 5 years is presumed abandoned.

(2) All intangible personal property held for the owner by any court, department, agency, or officer of the United States, that has remained unclaimed by the owner for more than 5 years is presumed abandoned when the records of the holder indicate that the last-known address of the owner is in this state."

Section 8. Section 70-9-208, MCA, is amended to read:

**"70-9-208. Miscellaneous property held for another person.** All intangible personal property not otherwise covered by parts 1 through 3, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than 5 years after it became payable or distributable is presumed abandoned."

Section 9. Section 70-9-209, MCA, is amended to read:

**"70-9-209. Gift certificates and credit memos.** (1) A gift certificate or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than 5 years after becoming payable or distributable is presumed abandoned.

(2) In the case of a gift certificate, the amount presumed abandoned is the price paid by the purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo."

Section 10. Section 70-9-301, MCA, is amended to read:

**"70-9-301. Report of abandoned property — duty to prevent abandonment prior to filing.** (1) Every person holding moneys or other property, tangible or intangible, presumed abandoned under parts 1 through 3 shall report the property to the department as hereinafter provided.

(2) The report shall be verified and shall include:

(a) except with respect to travelers' checks and money orders, the name, if known, and last-known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of \$10 or more presumed abandoned under parts 1 through 3;

(b) in case of unclaimed moneys of life insurance corporations, the full name of the insured or annuitant and his last-known address according to the life insurance corporation's records;

(c) the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due. Items of value under \$10 each may be reported in aggregate.

(d) the date when the property became payable, demandable, or returnable and the date of the last transaction with the owner with respect to the property; and

(e) other information which the department prescribes by rule as necessary for the administration of parts 1 through 3.

(3) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(4) The report shall be filed before November 1 every *year* as of June 30 next preceding, but the reports of life insurance corporations, banking and financial organizations, and cooperatives shall be filed before May 1 of each year as of December 31 next preceding. The department may postpone the reporting date upon written request by any person required to file a report. The department shall furnish forms for this report.

(5) Not more than 120 days before filing the report required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under parts 1 through 3 shall send written notice to the apparent owner at his last-known address informing him that the holder is in possession of property subject to this chapter if:

(a) the holder has in his records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(b) the claim of the apparent owner is not barred by the statute of limitations; and

(c) the property has a value of \$100 or more.

(6) Verification if made by a partnership shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer."

Section 11. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved February 5, 1987.

## CHAPTER NO. 6

[HB 50]

AN ACT REVISING THE LAW GOVERNING THE FIRE SERVICES TRAINING SCHOOL BY CHANGING THE MAKEUP OF THE FIRE SERVICES TRAINING ADVISORY COUNCIL; PROVIDING THAT MEMBERS MAY BE REMOVED FOR CAUSE; REDEFINING THE PURPOSE OF THE SCHOOL; AND AMENDING SECTIONS 2-15-1519 AND 20-31-103, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-1519, MCA, is amended to read:

**"2-15-1519. Fire services training advisory council.** (1) The board of public education shall appoint a fire services training advisory council to work with the director of the fire services training school. The membership of the council shall include the following:

- (a) a fire chief;
- (b) a volunteer firefighter;
- (c) a paid firefighter;
- (d) a fire service instructor;
- (e) a person involved in fire prevention;
- (f) a representative of the insurance industry; and
- (g) a professional educator.

(2) The board shall solicit and consider the recommendations of appropriate organizations and associations of fire service personnel in making appointments under subsection (1) of this section.

(3) Members appointed shall serve for a 4-year term *and may be removed for cause*. If a vacancy occurs, a member shall be appointed to fill the unexpired term. A member may be reappointed.

(4) The state fire marshal, *a fire control officer designated by the commissioner of state lands*, and the director of the fire services training school are ex officio members of the council."

Section 2. Section 20-31-103, MCA, is amended to read:

**"20-31-103. Purpose of school.** The purpose of the fire services training school is to:

- (1) *provide fire service personnel with professional training;*
- (2) *identify new methods of fire prevention and suppression and disseminate information about them;*
- (3) *provide a resource center for use by local fire services;*
- (4) *provide testing and certification for personnel and apparatus; and*
- (5) *coordinate fire services training in the state."*

Approved February 5, 1987.

## CHAPTER NO. 7

[HB 63]

AN ACT REMOVING THE 3-DAY WAITING PERIOD FOR MARRIAGE LICENSES; AND AMENDING SECTION 40-1-212, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-1-212, MCA, is amended to read:

**"40-1-212. Effective period of license.** A license to marry is effective upon issuance and expires after 180 days."

Approved February 5, 1987.

## CHAPTER NO. 8

[HB 27]

AN ACT REQUIRING EACH DEPARTMENT HEAD TO APPOINT A QUALIFIED PERSON WITHIN THE DEPARTMENT TO REVIEW EACH DEPARTMENTAL ADMINISTRATIVE RULE NOTICE FOR COMPLIANCE WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT BEFORE IT IS FILED WITH THE SECRETARY OF STATE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Departmental review of rule notices.** (1) The head of each department of the executive branch shall appoint an existing attorney, paralegal, or other qualified person from that department to review each

departmental rule proposal notice, adoption notice, or other notice relating to administrative rulemaking.

(2) The person appointed under subsection (1) shall review each notice by any division, bureau, or other unit of the department, including units attached to the department for administrative purposes only under 2-15-121, for compliance with this chapter before the notice is filed with the secretary of state. The reviewer shall pay particular attention to 2-4-302 and 2-4-305. The review must include but is not limited to consideration of:

(a) the adequacy of the rationale for the intended action and whether the intended action is reasonably necessary to effectuate the purpose of the code section or sections implemented;

(b) whether the proper statutory authority for the rule is cited;

(c) whether the citation of the code section or sections implemented is correct; and

(d) whether the intended action is contrary to the code section or sections implemented or to other law.

**Section 2. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 2, chapter 4, and the provisions of Title 2, chapter 4, apply to section 1.

**Section 3. Effective date — applicability.** This act is effective July 1, 1987, and applies to rulemaking notices filed with the secretary of state on or after August 1, 1987.

Approved February 9, 1987.

## CHAPTER NO. 9

[HB 122]

AN ACT TO CHANGE THE MEETING DATES OF THE STATE BANKING BOARD AND TO REQUIRE AT LEAST ONE BANK EXAMINATION EVERY 30 MONTHS; AND AMENDING SECTIONS 32-1-201 AND 32-1-211, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 32-1-201, MCA, is amended to read:

**“32-1-201. State banking board — secretary — meetings — per diem.** (1) The state banking board, created in 2-15-1803, shall elect a secretary from its members to serve at the pleasure of the board.

(2) In performing its functions, the board shall have use of the offices, equipment, and personnel of the department as it requires.

(3) The board shall hold meetings at the office of the department *at dates and times set by the department*. Special meetings may be called by the chairman at any time upon 3 days' notice to the members.

(4) A quorum for all meetings shall be a majority of the board members, and a majority of the quorum present at any meeting may take action.

(5) The chairman shall have a voice but no vote in all meetings except to break a tie.

(6) Any board member except the chairman may be removed by the governor without cause in any case.

(7) The board members shall receive compensation and travel expenses in the same manner and amount as provided for in 37-1-133 for boards allocated to the department of commerce. The costs and expenses of the board shall be legitimate charges of the department."

Section 2. Section 32-1-211, MCA, is amended to read:

**"32-1-211. Examination and supervision by department.** (1) The department shall exercise constant supervision over the books and affairs of all banks doing business in this state.

(2) It shall examine, at least once *every 30 months*, each of those banks and verify the assets and liabilities of each and so far investigate the character and value of the assets of each as to ascertain with reasonable certainty that the values are correctly carried on the books.

(3) It shall further investigate the methods of operation and conduct of business of the banks and their systems of accounting to ascertain whether the methods and systems are in accordance with law and sound banking principles.

(4) It may examine under oath any of the officers, directors, agents, clerks, customers, or depositors of a bank regarding the affairs and business thereof.

(5) It may, in the performance of its official duties, issue subpoenas and administer oaths. In case of a refusal to obey a subpoena issued by it, the refusal may at once be reported to the district court of the district in which the bank is located, and the court shall enforce obedience to the subpoena in the manner provided by law for enforcing obedience to the process of the court.

(6) In all matters relating to its official duties, the department has the same power possessed by courts of law to issue subpoenas and have them served and enforced.

(7) All officers, directors, agents, and employees of banks doing business under this chapter and all persons having dealings with or knowledge of the affairs or methods of a bank shall at all times afford reasonable facilities for the examinations and make returns and reports to the department as it may require. They shall also attend hearings and answer under oath the department's inquiries, produce and exhibit any books, accounts, documents, and property it desires to inspect, and in all things aid it in the performance of its duty."

Section 3. **Extension of authority.** Any existing authority of the department of commerce and the state banking board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved February 9, 1987.

## CHAPTER NO. 10

[HB 106]

AN ACT TO AUTHORIZE SCHOOL DISTRICTS TO CONDUCT MAIL BALLOT ELECTIONS; AND AMENDING SECTIONS 13-19-102 AND 13-19-104, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 13-19-102, MCA, is amended to read:

**"13-19-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Election day" is the date established by law on which a particular election would be held if that election were being conducted by means other than a mail ballot election.

(2) "Mail ballot election" means any election that involves either candidates or ballot issues and is conducted in compliance with the procedure specified in 13-19-106.

(3) "*Political subdivision*" means a political subdivision of the state, including a school district.

(4) "Return/verification envelope" means an envelope that contains a secrecy envelope and ballot and which is designed to:

(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

(b) allow it to be used in the United States mail.

(5) "Secrecy envelope" means an envelope used to contain the elector's ballot and that is designed to conceal the elector's vote and to prevent that elector's ballot from being distinguished from the ballots of other electors."

Section 2. Section 13-19-104, MCA, is amended to read:

**"13-19-104. Mail ballot elections not mandatory — when authorized — when prohibited.** (1) Conducting elections by mail ballot is only one option available to local officials and nothing in this chapter mandates that the procedure be used.

(2) The following elections may be conducted by mail ballot:



(a) an election in a political subdivision required to hold annual elections under 13-1-104(3);

(b) an election in a city of the third class, as defined in 7-1-4111(3), if all of the candidates whose names will appear on the ballot are candidates for offices to be elected without party designation;

(c) an election in a town as defined in 7-1-4111(4);

(d) an election conducted under 7-13-2236 in an unincorporated area; and

(e) a special election called by a local government unit for the sole purpose of submitting one or more ballot issues to its qualified electors if such special election is not held in conjunction with a statutorily scheduled election.

(3) The following elections may not be conducted by mail ballot:

(a) an election held for one of the purposes or at the time provided in 13-1-104(1) and 13-1-107(1);

(b) an election held for one of the purposes or at the time provided in 13-1-104(2) and 13-1-107(2), except as specifically allowed by subsections (2)(b) and (2)(c) of this section;

(c) an election being held under the provisions of the Montana Recall Act, in Title 2, chapter 16, part 6;

(d) an election involving candidates for public office, except as specifically allowed by subsections (2)(a) through (2)(c) of this section; and

(e) a special election being held in conjunction with a statutorily scheduled election."

Approved February 13, 1987.

## CHAPTER NO. 11

[HB 132]

**AN ACT PERMITTING A VESTED MEMBER TO QUALIFY CERTAIN PUBLIC SERVICE EMPLOYMENT AS CREDITABLE SERVICE UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AND PROVIDING AN EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Qualification of service from other public retirement systems.** (1) A member with 5 or more years of creditable service in the public employees' retirement system may qualify up to 5 years of public service employment covered under a public retirement system other than a system provided for in Title 19 for which he received a refund of his membership contribution before becoming a member of the public employees' retirement system. To qualify this service, a member shall:

(a) at any time before his retirement make a written election with the board to qualify the service; and

(b) contribute to the retirement fund the actuarial cost of granting the service in the public employees' retirement system, as determined by the board, based on:

(i) his compensation in his sixth year of service covered under the public employees' retirement system; and

(ii) the normal contribution rate according to the most recent actuarial valuation.

(2) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the board.

(3) Service qualified under this section may not be:

(a) credited in any other retirement system under Title 19; or

(b) used to qualify a member to purchase military service under 19-3-503.

(4) Service qualified under this section may not be used in calculating a member's retirement allowance unless his last 5 years of creditable service were earned under the public employees' retirement system. If a member's qualified service may not be used in calculating his retirement allowance, he may choose to:

(a) receive a refund of the contributions made to qualify the service; or

(b) apply the contributions made to qualify the service under the provisions of 19-3-702.

**Section 2. Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective July 1, 1987.

Approved February 13, 1987.

## CHAPTER NO. 12

[HB 140]

**AN ACT TO REMOVE THE MANDATORY RETIREMENT AGE FROM THE JUDGES' RETIREMENT SYSTEM TO COMPLY WITH FEDERAL LAW; REPEALING SECTION 19-5-504, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Repealer.** Section 19-5-504, MCA, is repealed.

**Section 2. Applicability.** This act applies retroactively, within the meaning of 1-2-109, to membership in the judges' retirement system on or after January 1, 1987.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved February 13, 1987.

**CHAPTER NO. 13**

[HB 0153]

AN ACT TO EXTEND THE VESTING OF RETIREMENT ALLOWANCES UPON TERMINATION OF THE SYSTEMS TO MEMBERS OF THE MUNICIPAL POLICE OFFICERS' AND THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Vesting of retirement allowances upon termination of system.** Upon termination of the retirement system, termination of employment of a substantial number of members that would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

**Section 2. Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 19, chapters 9 and 13, and the provisions of Title 19, chapters 9 and 13, apply to section 1.

**Section 4. Effective date.** This act is effective on passage and approval.

Approved February 13, 1987.

**CHAPTER NO. 14**

[HB 176]

AN ACT PROVIDING THAT THE MAXIMUM BENEFIT PAID TO A RETIREE UNDER THE PUBLIC EMPLOYEES', TEACHERS', JUDGES', HIGHWAY PATROLMEN'S, SHERIFFS', GAME WARDENS', MUNICIPAL POLICE OFFICERS', OR FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS MAY NOT EXCEED THE LIMITATIONS ON SUCH BENEFITS IMPOSED BY SECTION 415 OF THE INTERNAL REVENUE CODE OF 1986; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Maximum benefit limitation.** No monthly benefit paid under the retirement system provided for in this chapter may exceed the annual limits on benefits as specified in section 415 of the Internal Revenue Code of 1986 and adjusted annually by the commissioner of internal revenue for calendar years 1988 and thereafter.

**Section 2. Extension of authority.** Any existing authority of the public employees' retirement board or the teachers' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 19, chapters 3 through 9 and 13, and the provisions of Title 19, chapters 3 through 9 and 13, apply to section 1.

**Section 4. Effective date.** This act is effective on passage and approval.

Approved February 13, 1987.

## CHAPTER NO. 15

[HB 61]

AN ACT TO GENERALLY REVISE THE NOXIOUS WEED MANAGEMENT FUNDING LAW; TO REDEFINE "HERBICIDE"; TO PERMIT EXPENDITURE OF ANNUAL HERBICIDE SURCHARGE PROCEEDS IN SUCCEEDING FISCAL YEARS; AMENDING SECTIONS 80-7-801 AND 80-7-812, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 80-7-801, MCA, is amended to read:

**"80-7-801. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of agriculture established in 2-15-3001.

(2) "Herbicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any weed, *as defined in 80-8-102*. The term does not include herbicides labeled only for home, yard, or garden use and sold in containers of less than 10 pounds or 1 gallon.

(3) "Noxious weed" means any weed defined and designated as a noxious weed by rule of the department.

(4) "Retail value" means the suggested or retail price to the consumer of a given herbicide as established by the registrant, or as determined by a survey of dealers conducted by the department.

(5) "Sale" includes only the sale of a herbicide to an applicator or consumer. Sales between or to distributors, dealers, or retailers are not included."

Section 2. Section 80-7-812, MCA, is amended to read:

**"80-7-812. Surcharge imposed on retail sales of herbicides — disposition of proceeds.** (1) There is imposed a surcharge of 1 cent per

dollar of the retail value of all registered herbicides sold for consumer use in the state. The volume of sales of each registered herbicide must be determined by the department from records required of pesticide dealers and retailers.

(2) The surcharge must be collected by the department on an annual calendar basis from the registrant of the herbicide and is due and payable within 30 days after notice of the amount has been given to the registrant.

(3) No registrant may be allowed to reregister a herbicide if he has failed to pay in full the surcharge on his product.

(4) The department may expend or commit not more than one-half of the annual proceeds of the surcharge as provided in 80-7-814(2) and (3). All remaining annual proceeds of the surcharge and any interest income collected must be deposited into the noxious weed management trust fund."

Section 3. **Extension of authority.** Any existing authority of the department of agriculture to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved February 17, 1987.

## CHAPTER NO. 16

[HB 91]

AN ACT PROVIDING FOR PERMANENT CONTINUATION OF THE INCOME TAX CHECKOFF FOR THE AGRICULTURE IN MONTANA SCHOOLS PROGRAM; REPEALING SECTION 3, CHAPTER 634, LAWS OF 1985; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Repealer.** Section 3, Chapter 634, Laws of 1985, is repealed.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved February 17, 1987.

## CHAPTER NO. 17

[HB 103]

AN ACT TO GOVERN THE PROCEDURE FOR THE CANCELLATION OF MUNICIPAL WARRANTS AND CHECKS THAT HAVE BEEN OUTSTANDING AND UNPAID FOR MORE THAN 1 YEAR.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Cancellation of municipal warrants and checks.** (1) The city or town council may cancel municipal warrants and checks that have remained outstanding and unpaid for a period of 1 year or longer.

(2) The city or town clerk shall:

(a) enter on the record of warrants or checks, opposite the entry of each instrument, the date when it was canceled;

(b) make a list of the canceled instruments, specifying the number, date, and amount and the person to whom it was payable; and

(c) enter the list in the minutes of the city or town council proceedings.

Approved February 17, 1987.

## CHAPTER NO. 18

[HB 108]

AN ACT TO REPEAL THE LAWS RELATING TO THE CONTROL OF DUTCH ELM DISEASE; AND REPEALING SECTIONS 7-22-101 THROUGH 7-22-106 AND 7-22-111 THROUGH 7-22-118, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Repealer.** Sections 7-22-101 through 7-22-106 and 7-22-111 through 7-22-118, MCA, are repealed.

Approved February 12, 1987.

## CHAPTER NO. 19

[HB 109]

AN ACT PERMITTING A BOARD OF COUNTY CANVASSERS TO PETITION FOR A RECOUNT IF THE BOARD FINDS AN ERROR AFFECTING THE ACCURACY OF VOTE TOTALS; AND AMENDING SECTIONS 13-15-403, 13-16-201, AND 13-16-204, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 13-15-403, MCA, is amended to read:

**"13-15-403. Canvass to be public — nonessentials to be disregarded — petition for recount.** (1) The canvass shall be public. It shall proceed by opening the returns, auditing the tally books or other records of votes cast, determining the vote for each individual and for and against each ballot issue from each precinct, compiling totals, and declaring or certifying the results.

(2) The board shall record all write-in votes shown in the returns from each precinct.

(3) The returns may not be rejected because of failure to show who administered the oath to the election judges, failure to complete all the certificates in a pollbook, or because of failure of any other act making up the returns that is not essential to determine for whom the votes were cast.

*(4) If during a canvass the board finds an error in a precinct or precincts affecting the accuracy of vote totals, the board immediately may petition for a recount of the votes cast in the precinct or precincts, as provided in 13-16-201."*

Section 2. Section 13-16-201, MCA, is amended to read:

**"13-16-201. Conditions under which recount to be made.** A recount shall be made under any of the following conditions:

(1) If a candidate for a county, municipal, or district office voted for in only one county, other than a legislator or a judge of the district court, or a precinct office is defeated by a margin not exceeding  $\frac{1}{4}$  of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, he may, within 5 days after the official canvass, file with the election administrator a verified petition stating he believes a recount will change the result and a recount of the votes for the office or nomination should be had.

(2) If a candidate for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court is defeated by a margin not exceeding  $\frac{1}{4}$  of 1% of the total votes cast for all candidates for the same position, he may, within 5 days after the official canvass, file a petition with the secretary of state as set forth in subsection (1). The secretary of state shall immediately notify each election administrator whose county includes any precincts which voted for the same office by certified or registered mail, and a recount shall be conducted in those precincts.

(3) If a question submitted to the vote of the people of a county, municipality, or district within a county is decided by a margin not exceeding  $\frac{1}{4}$  of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the election administrator. This petition must be signed by not less than 10 electors of the jurisdiction and must be filed within 5 days after the official canvass.

(4) If a question submitted to the vote of the people of the state is decided by a margin not exceeding  $\frac{1}{4}$  of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the secretary of state. This petition must be signed by not less than 100 electors of the state, representing at least five counties of the state, and must be filed within 5 days after the official canvass.

(5) If a question submitted to the vote of the people of a multicounty district is decided by a margin not exceeding  $\frac{1}{4}$  of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the secretary of state. This petition must be signed by not less than 25 electors of the district, representing at least two counties, and must be filed within 5 days after the official canvass.

(6) The secretary of state shall immediately notify each election administrator by certified mail of the filing of the petition, and a recount shall be conducted in all precincts in each county.

(7) *If during a canvass of election returns a board of county canvassers finds an error, as provided in 13-15-403, the board immediately may file a petition with the election administrator."*

Section 3. Section 13-16-204, MCA, is amended to read:

**"13-16-204. Meeting of recount board when recount requested.**

(1) Immediately upon receiving a *petition* for a recount or a notice from the secretary of state that a *petition* has been filed with him, *as provided in 13-16-201*, the election administrator shall notify the members of the recount board.

(2) The board shall convene at the usual meeting place of the governing body without undue delay but not later than 5 days after receiving notice from the election administrator."

Approved February 17, 1987.

## CHAPTER NO. 20

[HB 181]

AN ACT ALLOWING THE TEACHERS' RETIREMENT SYSTEM TO WITHHOLD GROUP INSURANCE PREMIUMS FROM A RETIRED MEMBER'S RETIREMENT ALLOWANCE; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Withholding of group insurance premium from retirement allowance.** A retired member who is a participant in an employer-sponsored group insurance plan may elect to have the monthly premium for such group insurance withheld from his retirement allowance by the retirement system and paid directly to the insurance carrier or employer of record at the time of retirement.

Section 2. **Extension of authority.** Any existing authority of the teachers' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 19, chapter 4, and the provisions of Title 19, chapter 4, apply to section 1.

Section 4. **Effective date.** This act is effective July 1, 1987.

Approved February 17, 1987.



**CHAPTER NO. 21**

[HB 190]

AN ACT INCREASING FROM \$20 TO \$25 THE AMOUNT ALLOWED IN A PETTY CASH FUND FOR CERTAIN CANDIDATES AND POLITICAL COMMITTEES; PERMITTING THE FUND TO BE SPENT ON CERTAIN ITEMS IN AN AMOUNT OF LESS THAN \$25; AND AMENDING SECTION 13-37-215, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 13-37-215, MCA, is amended to read:

**"13-37-215. Petty cash funds allowed.** (1) The campaign treasurer for each candidate or political committee is authorized to withdraw the following amount each week from the primary depository for the purpose of providing a petty cash fund for the candidate or political committee:

(a) for all statewide candidates and political committees filing reports pursuant to 13-37-226(1), \$100 per week; and

(b) for all other candidates and political committees, \$25 per week.

(2) The petty cash fund may be spent for office supplies, transportation expenses, *postage stamps*, and other necessities in an amount of less than \$25. Petty cash shall not be used for the purchase of time, space, or services from any communications medium."

Approved February 17, 1987.

**CHAPTER NO. 22**

[HB 215]

AN ACT DEFINING MEMBERSHIP ELIGIBILITY UNDER THE TEACHERS' RETIREMENT SYSTEM FOR SUBSTITUTE TEACHERS; AMENDING SECTION 19-4-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-4-302, MCA, is amended to read:

**"19-4-302. Active membership.** (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system, with the exception that those persons who became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members:

(a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) any person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system;

(c) any person employed in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) any person who has elected not to become a member of the retirement system and is reentering service in a capacity prescribed by (a), (b), or (c) of this subsection (1);

(e) any person who has elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by (a), (b), or (c) of this subsection (1) since the time of such election, and who may thereafter elect to become a member of the retirement system.

(2) In order to be eligible for active membership, any person described in subsection (1) must:

(a) be employed in the capacity prescribed for his eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for his creditable service totally paid by an employer as defined herein.

(3) (a) *A substitute teacher:*

(i) *may elect to become an active member of the retirement system on the first day of employment in any fiscal year; or*

(ii) *shall become an active member of the retirement system on the 31st day of employment in any fiscal year if he has not elected membership under subsection (3)(a)(i).*

(b) *The employer shall give written notification to a substitute teacher on his first day of employment in any fiscal year of his option to elect membership under subsection (3)(a)(i).*

(4) At any time a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine his eligibility for membership. All persons in similar circumstances shall be treated alike."

**Section 2. Extension of authority.** Any existing authority of the teachers' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective July 1, 1987.

Approved February 17, 1987.

## CHAPTER NO. 23

[HB 226]

AN ACT ALLOWING THE PUBLIC EMPLOYEES' RETIREMENT BOARD TO MODIFY CERTAIN DISABILITY RETIREMENTS; AMENDING SECTION 19-3-1103, MCA; AND PROVING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-3-1103, MCA, is amended to read:

**"19-3-1103. Disability allowance reduced by earnings — change in retirement status.** (1) (a) Should the recipient of a retirement allowance because of disability engage in a gainful occupation during any month other than as an employee as defined in 19-3-104, the amount of his retirement allowance for that month shall be reduced to an amount which, when added to the compensation earned by him in that occupation, shall not exceed the amount of his monthly compensation at the time of his retirement.

(b) *For the purpose of calculating a reduction under subsection (1)(a), the board, at the request of a recipient of a disability retirement allowance, may adjust the recipient's monthly compensation at the time of retirement by an inflationary factor if he has been receiving a disability retirement allowance for more than 36 consecutive months.*

(2) *At the request of a recipient of a disability retirement allowance who is age 60 or older, the board may grant service retirement status to the recipient without recalculating his monthly allowance.*

(3) *Benefit adjustments granted by the legislature may not be included in calculations required under this section."*

Section 2. **Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on pas age and approval.

Approved February 17, 1987.

## CHAPTER NO. 24

[HB 227]

AN ACT TO DELETE REFERENCES TO "MEDICAL BOARD" IN THE STATE TEACHERS' RETIREMENT SYSTEM; TO CLARIFY MEDICAL EXAMINATION REQUIREMENTS; AMENDING SECTIONS 19-4-203, 19-4-903, AND 19-4-904, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-4-203, MCA, is amended to read:

**"19-4-203. Officers and employees of retirement board.** It is the duty of the retirement board to:

- (1) elect a chairman from its membership;
- (2) appoint a secretary who may be one of its members;
- (3) employ technical or administrative employees who are necessary for the transaction of the business of the retirement system; *and*
- (4) designate an actuary to assist the retirement board with the technical actuarial aspects of the operation of the retirement system, which includes establishing mortality and service tables and making an actuarial investigation at least once every 5 years into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system."

Section 2. Section 19-4-903, MCA, is amended to read:

**"19-4-903. Medical examination of disability retiree.** (1) Once each year during the first 5 years following the retirement of a member on a disability retirement allowance and once in every 3-year period thereafter, the retirement board may require and, upon the beneficiary's application, shall permit a disability beneficiary who has not yet attained the age of 60 to undergo a medical examination by a physician or physicians designated by the *retirement board*. The examination shall be made at the place of residence of the beneficiary or other place mutually agreed upon.

(2) Should a disability beneficiary who has not yet attained the age of 60 refuse to submit to a medical examination *as required in subsection (1)*, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for 1 year, all his rights in and to his disability pension may be revoked by the retirement board."

Section 3. Section 19-4-904, MCA, is amended to read:

**"19-4-904. Adjustment of allowance.** (1) If any disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation or the difference between the median salary of those members retired during the preceding fiscal year and his retirement allowance, whichever is greater, his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, is equal to his average final compensation or the median salary of those members retired during the preceding fiscal year, whichever is greater.

(2) If his earning capacity is changed later, his pension may be further modified, but the new pension may not exceed the pension originally granted or an amount which, when added to the amount earnable by the beneficiary, together with his annuity equals his average final compensation.

(3) A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired may not become a member of the retirement system while receiving a reduced benefit."

Section 4. **Effective date.** This act is effective on passage and approval.

Approved February 17, 1987.

**CHAPTER NO. 25**

[HB 184]

AN ACT REQUIRING THE DEPARTMENT OF AGRICULTURE TO ESTABLISH FEES FOR THE INSPECTION AND CERTIFICATION OF APPLES; SPECIFYING THAT SUCH FEES MUST BE DEPOSITED IN AN ENTERPRISE FUND TO PAY THE COSTS OF PROVIDING SERVICES; GRANTING RULEMAKING AUTHORITY; AMENDING SECTION 80-3-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Fees to be established by rule.** The department of agriculture shall by rule set fees for services performed under this part. Such fees must be designed to reimburse the department for the costs of inspecting and certifying apples as authorized under 80-3-201.

**Section 2. Apple inspection fund.** (1) There is an enterprise fund in the state treasury known as the apple inspection fund.

(2) The department shall pay into the apple inspection fund all fees provided for in [section 1].

(3) The money in the apple inspection fund is allocated to the department to pay the costs of providing services under this part.

**Section 3.** Section 80-3-201, MCA, is amended to read:

**"80-3-201. Inspection of apples packed for sale.** (1) The department of agriculture shall inspect all apples packed for sale or shipment under this part.

(2) The department may:

(a) certify to the grade and pack of apples packed for sale or shipped under this part and charge the owner, packer, or shipper a fee fixed by the department for these services, *as provided in [section 1]*;

(b) adopt rules regarding inspection and certification of apples under this part."

**Section 4. Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 80, chapter 3, part 2, and the provisions of Title 80, chapter 3, part 2, apply to sections 1 and 2.

**Section 5. Effective date.** This act is effective July 1, 1987.

Approved February 19, 1987.

**CHAPTER NO. 26**

[HB 204]

AN ACT REPEALING SECTION 7-5-4105, MCA, WHICH HOLDS CITIES AND TOWNS RESPONSIBLE FOR PROPERTY DAMAGE BY MOBS OR RIOTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Repealer.** Section 7-5-4105, MCA, is repealed.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved February 19, 1987.

**CHAPTER NO. 27**

[HB 87]

AN ACT EXTENDING THE RESIDENTIAL PROPERTY TAX CREDIT FOR THE ELDERLY TO ELDERLY PERSONS CHANGING RESIDENCE WITHIN MONTANA; AMENDING SECTIONS 15-30-171 AND 15-30-172, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-30-171, MCA, is amended to read:

**"15-30-171. Residential property tax credit for elderly — definitions.** As used in 15-30-171 through 15-30-179, the following definitions apply:

(1) "Income" means federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:

(a) the gross amount of any pension or annuity (including Railroad Retirement Act benefits and veterans' disability benefits);

(b) the amount of capital gains excluded from adjusted gross income;

(c) alimony;

(d) support money;

(e) nontaxable strike benefits;

(f) cash public assistance and relief;

(g) payments and interest on federal, state, county, and municipal bonds; and

(h) all payments under federal social security.

(2) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(3) "Claimant" means an individual natural person who is eligible to file a claim under 15-30-172.

(4) "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(5) "Gross household income" means all income received by all individuals of a household while they are members of the household.

(6) "Household income" means \$0 or the amount obtained by subtracting \$4,000 from gross household income, whichever is greater.

(7) "Homestead" means a single-family dwelling or unit of a multiple-unit dwelling that is subject to ad valorem taxes in Montana and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling.

(8) "Department" means the department of revenue.

(9) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's length transaction with the landlord.

(10) "Property tax paid" means general ad valorem taxes levied against the homestead, exclusive of special assessments, penalties, or interest and paid during the claim period.

(11) "Rent-equivalent tax paid" means 15% of the gross rent."

Section 2. Section 15-30-172, MCA, is amended to read:

**"15-30-172. Residential property tax credit for elderly — eligibility.** (1) In order to be eligible to make a claim under 15-30-171 through 15-30-179, an individual:

(a) must have reached age 62 or older during the claim period for which relief is sought;

(b) must have resided in Montana for at least 9 months of that period; and

(c) must have occupied one or more dwellings in Montana as an owner, renter, or lessee for at least 6 months of the claim period.

(2) A person is not disqualified as a claimant if the person changes residences during the claim period, provided that he occupies one or more dwellings in Montana as an owner, renter, or lessee for at least 6 months during the claim period."

Section 3. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Applicability.** This act is applicable retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1986.

Approved 20, 1987.

## CHAPTER NO. 28

[HB 98]

AN ACT AUTHORIZING A FARM MUTUAL INSURER TO INSURE LIABILITY RISKS; ESTABLISHING LIMITS OF LIABILITY RISKS; AND AMENDING SECTIONS 33-4-312, 33-4-501, AND 33-4-502, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-4-312, MCA, is amended to read:

**"33-4-312. Officers, agents, and employees not licensed — exception for liability insurance.** (1) *Except as provided in subsection (2), no agent of an insurer is required to obtain a license or authority from any public official to transact business for such insurer, nor is the insurer or any of its officers, agents, or employees required to pay any fee or license for the transaction of the business of the insurer, except as provided in this chapter.*

(2) *A farm mutual insurer that offers liability insurance is required to have an agent licensed by the state of Montana to transact liability insurance, and no person may offer, solicit, take applications for, procure, or place for others liability insurance by a farm mutual insurer unless he or she is licensed under Title 33, chapter 17."*

Section 2. Section 33-4-501, MCA, is amended to read:

**"33-4-501. Insuring powers in general.** (1) *In respect to property insurance as defined in 33-1-210, a farm mutual insurer shall insure against loss or damage by fire or other casualty only:*

(a) *farm dwellings and buildings, including the usual contents therein, farm livestock, machinery, vehicles, growing crops, and other forms of farm property owned by a member of such insurer or by his spouse;*

(b) *dwellings designed for occupancy by not over two families, together with the usual contents thereof, situated in an incorporated city or town if such property is owned by a member of the insurer or by his spouse and if such member has other insurance of farm property with the insurer for a substantial amount;*



(c) rural schoolhouses and buildings used in connection therewith, rural community houses or rural churches or other rural public buildings.

(2) *A farm mutual insurer may insure against the liability risks provided in 33-1-206(1)(b) only to the extent of the limit of risks provided in 33-4-502(3) and only if every policy bears on its face in boldface type a statement that each member of the farm mutual insurer is subject to a contingent liability under 33-3-411.*

(3) Except as provided in subsection (1)(c) above, an insurer *may* not insure any property not owned by a member or by his spouse.

(4) An insurer *may* not insure any property situated within the limits of incorporated towns or cities except as provided in subsection (1)(b) above and *may* not so insure unless it has and maintains the surplus funds as required under 33-4-401."

Section 3. Section 33-4-502, MCA, is amended to read:

**"33-4-502. Limit of risk — retention of liability.** (1) *Except as provided in subsection (3), the maximum amount of insurance which an insurer shall retain on a single risk, after deduction of applicable reinsurance, may not exceed 10% of the admitted assets of the insurer or \$50,000, whichever is the larger amount.*

(2) For the purposes of this section, a "single risk" as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophic perils includes all properties insured by the same insurer which are reasonably susceptible to loss or damage from the same fire or the same occurrence of such other hazard insured against.

(3) *A farm mutual insurer:*

(a) *that insures any portion of a liability risk shall maintain a surplus of at least \$50,000;*

(b) *that retains any portion of a liability risk shall obtain reinsurance on that liability insurance with an insurer authorized to do business in this state, and the farm mutual insurer's maximum aggregate liability for incurred losses on liability coverage retained for any calendar year or contract year may not exceed the smaller of \$200,000 or 20% of the farm mutual insurer's surplus as of December 31 of the preceding year; and*

(c) *may not retain liability risk greater than the proportional share of each limit of liability in the following schedule:*

| <i>Surplus as of the<br/>Preceding December 31:</i> | <i>Proportional Share of Each<br/>Limit of Liability Retained:</i> |
|-----------------------------------------------------|--------------------------------------------------------------------|
| <i>\$1,000,000 or greater</i>                       | <i>15%</i>                                                         |
| <i>\$800,000 to \$999,999</i>                       | <i>12%</i>                                                         |
| <i>\$600,000 to \$799,999</i>                       | <i>9%</i>                                                          |
| <i>\$400,000 to \$599,999</i>                       | <i>6%</i>                                                          |
| <i>\$200,000 to \$399,999</i>                       | <i>3%</i>                                                          |
| <i>Under \$200,000</i>                              | <i>0"</i>                                                          |

Section 4. **Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved February 20, 1987.

## CHAPTER NO. 29

[HB 114]

AN ACT LIMITING REPRESENTATION ON A REGIONAL MENTAL HEALTH CORPORATION BOARD OF DIRECTORS TO COUNTIES THAT PARTICIPATE FINANCIALLY; AMENDING SECTION 53-21-204, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-21-204, MCA, is amended to read:

**"53-21-204. Mental health corporations.** (1) Mental health regions shall be established in the state mental health plan and shall conform to the mental health regions as established in the state mental health construction plan promulgated by the board of health and environmental sciences under the federal Community Mental Health Centers Act.

(2) The mental health regions shall establish themselves under Title 35, chapter 2. Upon incorporation, a mental health region may enter into contracts with the department in order to carry out the department's comprehensive plan for mental health. These nonprofit corporations shall not be considered agencies of the department or the state of Montana; however, they may retain and enter into retirement programs as established under Title 19, chapter 3, The Public Employees' Retirement System Act. Upon the establishment of the mental health regions, the county commissioners in each of the *participating* counties in the region, *as defined in subsection (5)*, shall designate a person from their respective county to serve as a representative of the county on the regional mental health corporation board. The board shall be established under guidelines adopted by the bylaws of the corporation. All appointments to the board shall be for terms of 2 years, and the department shall be notified in writing of all appointments.

(3) The duties of an organized regional mental health corporation board include:

(a) annual review and evaluation of mental health needs and services within the region;

(b) preparation and submission to the department and to each of the counties in the region of plans and budget proposals to provide and support mental health services within the region;

(c) establishment of a recommended proportionate level of financial participation of each of the counties within the region in the provision of mental health services within the limits of this section;

(d) receipt and administration of moneys and other support made available for the purposes of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, tax moneys, gifts, donations, and any other type of support or income. All funds received by the board in accordance with this part shall be used to carry out the purposes of this part.

(e) supervision of appropriate administrative staff personnel of the operation of community mental health services within the region;

(f) keeping all records of the board and making reports required by the department.

(4) Regional mental health board members shall be reimbursed from funds of the board for actual and necessary expenses incurred in attending meetings and in the discharge of board duties when assigned by the board.

(5) Prior to June 10 of each year, the board of mental health shall submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recommended proportionate share. If the board of county commissioners includes in the county budget the county's proportionate share of the regional board's budget, it shall be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region shall be derived from the county's general fund. If the general fund is insufficient to meet the approved budget, a levy not to exceed 1 mill may be made on the taxable valuation of the county in addition to all other taxes allowed by law to be levied on such property.

(6) The regional board of mental health with the approval of the department shall establish a schedule of fees for mental health services. The fees may be received by the board and used to implement the budget in accordance with 53-21-204(3)(d)."

Section 2. **Applicability.** This act applies to appointments to a regional mental health corporation board made on or after January 1, 1988.

Approved February 20, 1987.

## CHAPTER NO. 30

[HB 136]

AN ACT TO INCREASE GASOLINE LICENSE AND DIESEL FUEL TAXES FROM 17 TO 20 CENTS A GALLON; AMENDING SECTIONS 15-70-204 AND 15-70-321, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-70-204, MCA, is amended to read:

**"15-70-204. Gasoline license tax — rate.** (1) Every distributor shall pay to the department of revenue a license tax for the privilege of

engaging in and carrying on business in this state in an amount equal to 1 cent for each gallon of aviation gasoline, which shall be allocated to the department of commerce as provided by 67-1-301, as amended, and 20 cents for each gallon of all other gasoline distributed by him within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported or sold for export out of the state shall not be included in the measure of the distributor's license tax.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1)."

Section 2. Section 15-70-321, MCA, is amended to read:

**"15-70-321. Tax on diesel fuel and volatile liquids.** The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax in an amount equal to 20 cents for each gallon of diesel fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to propel motor vehicles upon the public highways or streets within the state or used in motor vehicles, motorized equipment, and the internal combustion of any and all engines, including stationary engines, used in connection with any and all work performed under any and all contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any and all public agencies, including federal, state, county, municipal, or other political subdivisions."

Section 3. **Effective date.** This act is effective July 1, 1987.

Approved February 19, 1987.

## CHAPTER NO. 31

[HB 158]

AN ACT PERMITTING A MEMBER OF THE SHERIFFS' RETIREMENT SYSTEM TO QUALIFY PREVIOUS MILITARY SERVICE FOR THE PURPOSE OF CALCULATING RETIREMENT BENEFITS; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Election to qualify previous military service.** (1) A member with 15 years or more of service may, at any time prior to his retirement, make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if he is not otherwise eligible to receive credit. To qualify military service, he must contribute to the account the actuarial cost of granting the service,

to be determined by the board based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, plus accrued interest. Interest accrues from the date on which the member has completed the number of service years in excess of 15 needed to qualify the military service to the date he contributes. He may not qualify more of his military service than he has service in the sheriffs' retirement system in excess of 15 years. Military service purchased under this section may not be used in determining eligibility for a service retirement.

(2) If a member has retired from active duty in the armed forces of the United States with normal service retirement benefits, he may not qualify his military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify his active military service under subsection (1) if his active duty in the armed forces of the United States is not more than 25% of the total of all his years of military service, including reserve and active duty time.

**Section 2. Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 19, chapter 7, and the provisions of Title 19, chapter 7, apply to section 1.

**Section 4. Applicability.** This act applies retroactively, within the meaning of 1-2-109, to persons retiring after January 1, 1986.

**Section 5. Payments for military service made by retired sheriffs — commencement of allowance increase.** For a retired sheriff who has retired before the effective date of this act:

(1) payments to qualify military service under section 1 must be made within 60 days of the effective date of this act; and

(2) the increase in the retired sheriff's retirement allowance resulting from qualifying service under section 1 must commence on the first day of the month after the total payment for the service is received by the board.

**Section 6. Effective date.** This act is effective on passage and approval.

Approved February 20, 1987.

## CHAPTER NO. 32

[HB 172]

AN ACT TO REPEAL SECTION 53-7-107, MCA, CONCERNING THE POLITICAL ACTIVITIES OF PERSONS ENGAGED IN THE ADMINISTRATION OF THE VOCATIONAL REHABILITATION PROGRAM.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Repealer.** Section 53-7-107, MCA, is repealed.

Approved February 20, 1987.

**CHAPTER NO. 33**

[HB 177]

AN ACT REVISING THE QUALIFICATIONS OF TRUSTEES UNDER THE SMALL TRACT FINANCING ACT OF MONTANA; AMENDING SECTION 71-1-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 71-1-306, MCA, is amended to read:

**"71-1-306. Qualifications of trustee — successor trustee. (1)** The trustee of a trust indenture under this part shall be:

- (a) an attorney who is licensed to practice law in Montana;
- (b) a bank, trust company, or savings and loan association authorized to do business in Montana under the laws of Montana or the United States; or
- (c) a title insurer or title insurance agent or agency authorized to do business in Montana under the laws of Montana.

(2) The beneficiary may appoint a successor trustee at any time by filing for record, in the office of the clerk and recorder of each county in which the trust property or some part thereof is situated, a substitution of trustee. The substitution shall identify the trust indenture by stating the names of the original parties thereto and the date of recordation and the book and page where the same is recorded, shall state the name and mailing address of the new trustee, and shall be executed and acknowledged by all of the beneficiaries designated in the trust indenture or their successors in interest. From the time the substitution is filed for record, the new trustee shall be vested with all the power, duties, authority, and title of the trustee named in the trust indenture and of any successor trustee."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved February 20, 1987.

**CHAPTER NO. 34**

[HB 194]

AN ACT ABOLISHING THE REQUIREMENT FOR APPROVAL BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES OF A CATERING ENDORSEMENT TO AN ALL-BEVERAGES LIQUOR LICENSE AND OF A SPECIAL PERMIT TO SELL BEER AND WINE AT SPECIAL EVENTS; AND AMENDING SECTIONS 16-4-204 AND 16-4-301, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 16-4-204, MCA, is amended to read:

**"16-4-204. Transfer — catering endorsement.** (1) (a) Except as provided in subsection (1)(b), a license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred, exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area's quota in the most recent census prescribed in 16-4-502:

(A) by more than 33%; or

(B) in an incorporated city of more than 10,000 inhabitants and within a distance of 5 miles from its corporate limits by more than 43%; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license within an incorporated quota area may be transferred to a new ownership and to a new unincorporated location within the same county on application to and with consent of the department when the quota of the all-beverages licenses in the original quota area, exclusive of those issued under 16-4-209(1)(a) and (1)(b), exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(c) For 5 years after the transfer of a license between quota areas under subsection (1)(a), the license may not be mortgaged or pledged as security and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee.

(d) Once a license is transferred to a new quota area under subsection (1)(a), it may not be transferred to another quota area or back to the original quota area.

(e) A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

(2) (a) Any all-beverages licensee is, upon the approval and in the discretion of the liquor division, entitled to a catering endorsement to his all-beverages license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages, such beverages to be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of \$250 must be submitted to the department for its approval.

(c) A written application for each event for which the licensee intends to provide catering services, the written approval of the catering application by the sponsor of the special event, and a fee of \$35 must be filed with the department at least 3 days prior to the event and shall describe the location of the premises where the event is to be held, the nature of the event, and the period during which the event is to be held. An all-beverages licensee who holds an endorsement granted under this subsection (2) may not receive approval to cater an event of which he is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business. If obtained, the licensee shall display in a prominent place on those premises, the written approval from the department for each event which is catered pursuant to this subsection.

(d) The licensee shall file with each application for an event to be catered a written statement of approval of the premises where the event is to be held issued by the local law enforcement agency that has jurisdiction over the premises where the event is to be held.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval."

Section 2. Section 16-4-301, MCA, is amended to read:

**"16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine — application and issuance.** (1) (a) Any association or corporation conducting a picnic, convention, fair, civic or community enterprise, or sporting event shall in the discretion of the liquor division be entitled to a special permit to sell beer and table wine to the patrons of such event to be consumed within the enclosure wherein the event is held.

(b) The application of any such association or corporation shall be presented 3 days in advance and shall describe the location of such enclosure where such event is to be held, the nature of the event, and the period when it is contemplated that the event will be held. The application shall be accompanied by the amount of the permit fee and a written statement of approval of the premises where the event is to be held issued by the local law enforcement agency that has jurisdiction over the premises where the event is to be held.

(c) The permit issued to such association or corporation is a special permit but shall not authorize the sale of beer and table wine except starting 1 day in advance of the regular period when events are being held upon



such grounds and during the period described in the application and for 1 day thereafter.

(2) (a) A post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization not otherwise licensed under this code shall, in the discretion of the department, without notice or hearing as provided in 16-4-207, be entitled to a special permit to sell beer and table wine or a special permit to sell all alcoholic beverages at such post or lodge to members and their guests only, to be consumed within the hall or building of such post or lodge.

(b) The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization shall describe the location of the hall or building where the special permit will be used and the date it will be used.

(c) The special permit issued shall be for a 24-hour period only, ending at 2 a.m., and the department may not issue more than 12 such permits to any such post or lodge during a calendar year."

Approved February 20, 1987.

## CHAPTER NO. 35

[HB 218]

AN ACT REQUIRING EVIDENCE OF OWNERSHIP OF CERTAIN FOREST PRODUCTS TO BE SHOWN TO LAW ENFORCEMENT OFFICERS UPON REQUEST; AND AMENDING SECTION 76-13-601, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 76-13-601, MCA, is amended to read:

**"76-13-601. Unlawful transportation of trees and boughs. (1)**

No person may transport on the ways of this state more than five coniferous trees without having in his possession a bill of sale showing his ownership of the trees. The bill of sale shall specify:

- (a) the date of its execution;
- (b) the name and address of the vendor or donor of the trees;
- (c) the name and address of the vendee or donee of the trees;
- (d) the number of trees, by species, sold or transferred by the bill of sale; and
- (e) the shipping yards or the property from which the trees were taken.

(2) Subsection (1) does not apply to:

- (a) the transportation of trees with their roots intact;

(b) the transportation of logs, poles, pilings, or other forest products from which substantially all the limbs and branches have been removed;

(c) the transportation of coniferous trees by the owner of the land from which they were taken or his agent, provided that agent has in his possession a tax receipt or other evidence indicating the section, township, and range from which the trees were harvested;

(d) the transportation of coniferous trees by a common carrier.

(3) No person may transport on the ways of this state more than 200 pounds of boughs from coniferous trees without written authorization of the owner of the boughs.

*(4) The bill of sale required in subsection (1) or the written authorization required in subsection (3) must be exhibited on request of a law enforcement officer, highway patrolman, state fish and game warden, an employee of the department of highways as appointed under 61-12-201, or an agent of the department of state lands.*

(5) A person who violates this section shall be punished by a fine not to exceed \$500 or imprisonment not to exceed 6 months, or both.

(6) For the purposes of this section, "ways of this state" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public vehicle travel that is commonly used by the public with the express or implied consent of the owner."

Approved February 20, 1987.

## CHAPTER NO. 36

[HB 224]

AN ACT REVISING THE CAMPAIGN REPORTING REQUIREMENTS CONCERNING IDENTIFICATION OF PERSONS MAKING CONTRIBUTIONS EXCEEDING A CERTAIN DOLLAR LIMIT TO CANDIDATES OR POLITICAL COMMITTEES; AND AMENDING SECTION 13-37-229, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 13-37-229, MCA, is amended to read:

**"13-37-229. Disclosure of contributions received.** Each report required by this chapter shall disclose the following information:

(1) the amount of cash on hand at the beginning of the reporting period;

(2) the full name and mailing address (occupation and the principal place of business, if any) of each person who has made aggregate contributions *(including the purchase of tickets and other items for events such as dinners, luncheons, rallies, and similar fundraising events)*, other than loans, to the candidate or political committee, of:

(a) *\$75 or more if the candidate has filed for a state office to be filled by a statewide vote of all the electors of Montana or if the political committee was specifically organized to support or oppose a particular statewide candidate or issue; or*

(b) *\$35 or more for any other candidate or political committee;*

(3) *for each person identified under subsection (2), the aggregate amount of contributions made by that person within the reporting period and the total amount of contributions made by that person;*

(4) the total sum of individual contributions made to or for the political committee or candidate and not reported under *subsections (2) and (3)* of this section;

(5) the name and address of each political committee or candidate from which the reporting committee or candidate received any transfer of funds, together with the amount and dates of all transfers;

(6) each loan from any person during the reporting period, together with the full names and mailing addresses (occupation and principal place of business, if any) of the lender and endorsers, if any, and the date and amount of each loan;

(7) the amount and nature of debts and obligations owed to a political committee or candidates, in the form prescribed by the commissioner;

(8) an itemized account of proceeds which total less than \$75 under *subsection (2)(a)*, or \$35 under *subsection (2)(b)*, from a person from mass collections made at fund-raising events;

(9) each contribution, rebate, refund, or other receipt not otherwise listed under subsections (2) through (8) of this section during the reporting period;

(10) the total sum of all receipts received by or for the committee or candidate during the reporting period; *and*

(11) other information that may be required by the commissioner to fully disclose the sources of funds used to support or oppose candidates or issues."

**Section 2. Extension of authority.** Any existing authority of the commissioner of political practices to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved February 20, 1987.

**CHAPTER NO. 37**

[HB 225]

AN ACT REVISING PROVISIONS CONCERNING THE COMPOSITION OF THE BOARD OF SOCIAL AND REHABILITATION APPEALS; PROHIBITING THE GOVERNOR FROM APPOINTING AN EMPLOYEE OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO THE BOARD; AND AMENDING SECTION 2-15-2203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-2203, MCA, is amended to read:

**"2-15-2203. Board of social and rehabilitation appeals — allocation — quasi-judicial.** (1) There is a board of social and rehabilitation appeals.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The board consists of three members appointed by the governor as prescribed in 2-15-124, *except that no employee of the department of social and rehabilitation services may be appointed to the board.*

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124. For purposes of that section, a majority shall be considered as one."

Approved February 20, 1987.

**CHAPTER NO. 38**

[HB 244]

AN ACT TO ALLOW A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM TO PURCHASE CREDITABLE SERVICE FOR TIME LOST DUE TO AN EMPLOYMENT-RELATED INJURY THAT ENTITLED HIM TO WORKERS' COMPENSATION PAYMENTS; AMENDING SECTION 19-4-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Absence due to employment-related injury.** (1) (a) Subject to the limitation in subsection (5), time during which a member is absent because of an injury related to employment covered by the retirement system that entitles him to workers' compensation payments may be qualified under the retirement system. To qualify this service, a member shall contribute to the retirement system, upon his return to contributing membership service, an amount equal to:

(i) the contributions which would have been made by him had he not been absent, based on his compensation at the commencement of his absence;

(ii) interest, which begins to accrue 1 year from the date he returns to covered employment; and

(iii) interest not paid by the employer under subsection (1)(b).

(b) Whenever a member elects to contribute under subsection (1)(a), the employer shall contribute an amount equal to the contributions which would have been made by the employer had the member not been absent, based on the member's compensation at the commencement of his absence. The employer may contribute an amount equal to the interest accruing on the employer's contributions calculated in the same manner as interest on the employee's contributions under subsection (1)(a). If the employer elects not to pay the interest, this amount must be paid by the employee.

(2) A member shall file with the retirement board a written notice of his intent to pay the contributions under subsection (1)(a).

(3) Payment of the employee's contributions due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis before termination of covered employment.

(4) A member absent as provided in subsection (1)(a) loses his right to contribute under this section if all of his accumulated normal contributions are refunded under 19-4-603.

(5) The maximum amount of membership service allowable under this section is 2 years.

Section 2. Section 19-4-401, MCA, is amended to read:

**"19-4-401. Creditable service.** (1) The creditable service of a member begins on the date of his employment in a capacity prescribed for his eligibility in 19-4-302 and accumulates to the member's credit on the basis of the retirement board's policy governing creditable service.

(2) The creditable service of a member includes the following:

(a) each year of service for which contributions to the retirement system were deducted from his compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that no credit may be awarded for those years of service for which the contributions have been withdrawn and not replaced;

(b) any service awarded by a prior service certificate issued under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, and their subsequent amendments or under the provisions of 19-4-406;

(c) any out-of-state employment service awarded by the retirement board under the provisions of 19-4-402;

(d) any service awarded for employment while on leave under 19-4-403;

(e) any service in the military, red cross, or merchant marine awarded by the retirement board under 19-4-404;

(f) any employment service awarded by the retirement board under the provisions of 19-4-408; and

(g) any service awarded for absence due to employment-related injury under [section 1].

(3) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service."

Section 3. **Extension of authority.** Any existing authority of the teachers' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 19, chapter 4, and the provisions of Title 19, chapter 4, apply to section 1.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved February 20, 1987.

## CHAPTER NO. 39

[HB 331]

AN ACT TO EXCLUDE AN APPLICANT'S FINANCIAL STATEMENT FROM THE CONTENTS OF AN APPLICATION ACCOMPANYING A NOTICE FOR A HEARING INVOLVING A REQUEST FOR A CERTIFICATE TO OPERATE A LIVESTOCK MARKET; AND AMENDING SECTION 81-8-252, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 81-8-252, MCA, is amended to read:

**"81-8-252. Hearing on application for certificate — decision.**

(1) Upon the filing of the application, the department shall fix a time and place for a hearing thereon, which may not be less than 10 days after the filing. The department shall have a copy of the application, *excluding the financial statement described in 81-8-251(2)(h)*, and notice of the hearing served by mail upon:

(a) the operators of any other livestock markets that in the opinion of the department might be affected by the granting of any such certificate;

(b) the secretaries of the Montana stockgrowers association and the Montana woolgrowers association;

- (c) the secretary of the district livestock association, if any;
- (d) the secretary of the livestock association or associations, if any, within the vicinity of the proposed livestock market, if known to the department; and
- (e) any railroad company operating into or through the town or city in which the proposed livestock market will be located.

(2) If, after the hearing on the application, the department finds from the evidence that public convenience and necessity require the authorization of the proposed livestock market, a certificate must be issued to the applicant. In determining whether public convenience and necessity require the livestock market, the department shall give reasonable consideration to the service rendered by other existing livestock markets in this state and the effect upon them if the proposed livestock market is authorized and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year."

Section 2. **Extension of authority.** Any existing authority of the department of livestock to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved February 20, 1987.

## CHAPTER NO. 40

[HB 99]

AN ACT AUTHORIZING RESORT COMMUNITIES TO ISSUE BONDS TO FUND CERTAIN PUBLIC FACILITIES; ALLOWING THE PLEDGE OF RESORT COMMUNITY TAX REVENUES AND OTHER REVENUES TO REPAY THE BONDS; AMENDING SECTION 7-6-4466, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-6-4466, MCA, is amended to read:

**"7-6-4466. Use of resort community tax revenues — bond issue — pledge.** (1) Unless otherwise restricted by the voter-approved tax authorization provided for in 7-6-4464, a resort community may appropriate and expend revenues derived from a resort tax for any activity, undertaking, or administrative service that the municipality is authorized by law to perform, including costs resulting from the imposition of the tax.

(2) *A resort community may issue bonds to provide, install, or construct any of the public facilities, improvements, or undertakings authorized under 7-7-4101, 7-7-4404, and 7-12-4102. Bonds issued under this section must be authorized by a resolution of the governing body, stating the terms, conditions, and covenants of the municipality as the governing body considers*

appropriate. The bonds may be sold at a discount at a public or private sale.

(3) A resort community may pledge for repayment of bonds issued under this section the revenues derived from a resort tax, special assessments levied for and revenues collected from the facilities, improvements, or undertakings for which the bonds are issued, and any other source of revenue authorized by the legislature to be imposed or collected by the resort community. Such bonds do not constitute debt for purposes of any statutory debt limitation, provided that in the resolution authorizing the issuance of the bonds the municipality determines that the resort tax revenues, special assessments levied for and revenues from such facilities, improvements or undertakings, or other sources of revenue, if any, pledged to the payment of the bonds will be sufficient in each year to pay the principal thereof and interest thereon when due. Bonds may not be issued pledging proceeds of the resort tax for repayment unless the municipality in the resolution authorizing issuance of the bonds determines that in any fiscal year the annual revenues expected to be derived from the resort tax, less the amount required to reduce property taxes pursuant to 7-6-4467, equals at least 125% of the average amount of the principal and interest payable from the resort tax revenues on the bonds, and any other outstanding bonds payable from the resort tax except any bonds to be refunded upon the issuance of the proposed bonds."

**Section 2. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date — applicability.** (1) This act is effective on passage and approval.

(2) This act applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1986.

Approved February 25, 1987.

## CHAPTER NO. 41

[HB 159]

AN ACT REMOVING THE RESTRICTION THAT LOAN MONEY MAY BE USED ONLY AS A MATCH FOR A FEDERAL AIRPORT IMPROVEMENT PROGRAM GRANT; EXTENDING EXPIRATION FOR 2 YEARS; REQUIRING THAT EXCESS BOND PROCEEDS OF AN AIRPORT IMPROVEMENT PROGRAM BE RETAINED IN THE STATE SPECIAL REVENUE FUND AND REQUIRING USE OF INCOME TO RETIRE DEBT; AMENDING SECTION 67-1-301, MCA, AND SECTION 4, CHAPTER 676, LAWS OF 1985; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 67-1-301, MCA, is amended to read:

**"67-1-301. Money — receipt and disbursement.** (1) All costs and expenses of administering this title, including the salaries of employees of



the department engaged in functions pertaining to aeronautics, the expenses of members of the board, and all other disbursements necessary to carry out the purposes of this title, shall be paid out of the following revenues:

(a) all gifts and all legislative appropriations to the department for aeronautics;

(b) all moneys received from any branch or department of the federal government or from other sources for the purposes mentioned in this title or for the furtherance of aeronautics generally in this state.

(2) All such moneys shall be deposited in the state treasury to the credit of the department.

(3) (a) There shall be deposited in the state special revenue fund to the credit of the department of administration, to be used, upon recommendation of the department of commerce, to provide loans to local and state government agencies for airport improvement projects:

(i) a portion, as provided in section 1, Chapter 676, Laws of 1985, of the proceeds received from the sale of long-range building program bonds upon the authorization and sale of the bonds by the state and notwithstanding the provisions of Title 17, chapter 7, part 2; and

(ii) all repayments of loans, including interest, made pursuant to subsections (3)(a) and (3)(b).

(b) All loans must:

(i) bear an interest rate that fully retires the long-range building bonds issued under the authorization provided by the 49th legislature;

(ii) mature not later than such bonds; and

(iii) include reimbursement of administrative costs as required by subsection (3)(c).

(c) An amount equal to 1% of the loans provided under subsection (3)(a) may be allocated from the state special revenue fund for administrative purposes.

(4) *When the airport loan program is terminated, any balance of the bond proceeds that is not loaned must remain in the state special revenue fund to be invested, and the income must be used to retire the outstanding debt on the remaining bond proceeds.*

(5) There shall be deposited in the state special revenue fund to the credit of the department the proceeds of 1 cent per gallon out of the amount per gallon of gasoline license tax imposed by the laws of this state upon purchases of gasoline used for the operation of aircraft. Moneys so deposited shall be spent by the department for the sole purpose of carrying out its functions pertaining to aeronautics.

(6) No part of the 1 cent per gallon of gasoline license tax imposed by the laws of this state on gasoline purchased and used for the operation of airplanes or aircraft may be refunded.

Section 2. Section 4, Chapter 676, Laws of 1985, is amended to read:

"Section 4. **Effective date — termination date.** This act is effective on passage and approval. This act terminates June 30, 1989, except that a loan made prior to June 30, 1989, is subject to the provisions of this act notwithstanding the duration of the loan."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved February 25, 1987.

## CHAPTER NO. 42

[HB 251]

AN ACT REQUIRING THE DEPARTMENT OF ADMINISTRATION TO PAY FOR AND ALLOCATE TO STATE AGENCIES THE COST OF ANY PERFORMANCE AUDIT OF THE STATE COMMUNICATIONS SYSTEM; REQUIRING ADOPTION OF RULES FOR USE OF COMMUNICATIONS EQUIPMENT BY EXECUTIVE, JUDICIAL, AND LEGISLATIVE BRANCH AGENCIES; AND AMENDING SECTION 2-17-302, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-17-302, MCA, is amended to read:

"**2-17-302. Communication systems.** (1) The department of administration shall:

(a) provide communication services to all agencies of state government. The state communications system shall be capable of passing voice, video, data, written information, and other forms of communication to and from distant points.

(b) exercise general supervision over all existing communications systems for all agencies of state government;

(c) plan, review, and approve any additional installations of communications equipment and systems for all agencies of state government. In approving the installation of additional communications equipment or systems, the department shall first consult with and consider the recommendations and advice of the executive heads of the various state agencies.

(d) approve standards and procedures for selection, acquisition, and operation of communications equipment;

(e) insure that all communications equipment is properly maintained. The department is authorized to establish a centralized maintenance program for all state communications equipment and to contract the equipment maintenance if it is in the state's best interest. The department shall maintain cost records and bill agencies for services rendered.

(f) provide assistance to the legislature, governor, and state agencies relative to state and interstate communication matters;

(g) provide a means whereby political subdivisions of the state may utilize the state communications system, upon such terms and under such conditions as the department may establish;

(h) accept federal funds granted by congress or by executive order for any purposes of this section, as well as gifts and donations from individuals and private organizations or foundations;

(i) foster the development of new and innovative communications systems and techniques within the state, including but not limited to satellite communications and high-speed, high-density data transfer. To carry out the purposes of this section, the department may contract with qualified private organizations, foundations, or individuals if it is in the state's best interest.

(j) *pay for and allocate to state agencies, as part of services rendered, the cost of any performance audit of the state communications system performed by or at the direction of the legislative auditor.*

(2) The department may provide assistance to political subdivisions or nonprofit organizations, upon such terms that the department may establish, relative to state and interstate communications systems and techniques.

(3) *Adequate rules for the use of any communications equipment and facilities now in use or hereafter made available must be adopted by the:*

(a) *department for executive branch agencies;*

(b) *supreme court for judicial branch agencies; and*

(c) *legislature by joint rule for members of the legislature and legislative branch agencies."*

**Section 2. Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved February 25, 1987.

## CHAPTER NO. 43

[HB 265]

### AN ACT TO ADOPT THE FEDERAL WRITE-IN ABSENTEE BALLOT QUALIFICATIONS AND PROCEDURES FOR STATE ELECTIONS.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Federal write-in absentee ballot — qualifications — procedures.** (1) An elector qualified by 13-2-211 who fears his regular absentee ballot might not arrive in time to vote and return to the election

administrator of the county of his residence and registration may also vote a federal write-in absentee ballot.

(2) The federal write-in absentee ballot is available to military personnel and civilians overseas through the same source that provides federal post card application forms and is only valid for federal elections.

(3) The elector shall apply for a regular absentee ballot as provided in 13-13-212(2) not less than 30 days before the general election.

(4) An elector voting a federal write-in ballot may designate a candidate by writing in the name of the candidate or by writing in the name of the political party. A vote may not be voided for reasons of misspellings, abbreviations, or other minor variations of the candidate's name.

(5) If an elector receives his regular absentee ballot after he has voted and mailed a federal write-in absentee ballot, he may vote and return the regular absentee ballot.

(6) A federal write-in absentee ballot must be counted if:

- (a) the condition in subsection (3) has been met;
- (b) the regular absentee ballot has not been received by 8 p.m. election day;
- (c) the ballot has not been submitted from any location within the continental United States, Alaska, Hawaii, or Guam; and
- (d) the ballot is received by 8 p.m. election day.

(7) Federal write-in absentee ballots received before the close of the polls election day will not be counted until the polls have closed.

Section 2. **Extension of authority.** Any existing authority of the secretary of state to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 13, chapter 13, part 2, and the provisions of Title 13, chapter 13, part 2, apply to section 1.

Approved February 25, 1987.

## CHAPTER NO. 44

[HB 280]

AN ACT INCREASING THE TIME ALLOWED FOR A CITY OR TOWN TO FILE A FINANCIAL STATEMENT WITH THE DEPARTMENT OF COMMERCE; AND AMENDING SECTION 7-6-4111, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-6-4111, MCA, is amended to read:

**"7-6-4111. Annual financial statement.** (1) Within 120 days after the close of each fiscal year, the city or town clerk of each city and town

must make out, in duplicate, a complete statement of the financial condition of the city or town for that fiscal year, showing:

(a) the indebtedness of the city or town, funded and floating; the amount of each class of indebtedness; and the amount of money in the treasury subject to the payment of each class of indebtedness;

(b) the amount of money received from taxes upon real and personal property;

(c) the amount of money received from fines, penalties, and forfeitures;

(d) the amount of money received from licenses;

(e) the amount of money received from all other sources, each source and the amount received from it being shown separately;

(f) for each fund, the amount of money, if any, on hand at the beginning of the fiscal year, the amount received, and the amount paid out during the fiscal year;

(g) a concise description of all property owned by the city or town, with an approximate estimate of the value of it;

(h) the rates of taxation and purposes for which taxes were levied during the fiscal year;

(i) other information which may be required by the department of commerce.

(2) The forms on which the statement shall be made shall be prescribed by the department."

Approved February 25, 1987.

## CHAPTER NO. 45

[HB 299]

AN ACT TO SPECIFY THE FACTORS AND ASSUMPTIONS USED TO DETERMINE ACTUARIAL EQUIVALENCIES OF BENEFITS PROVIDED IN THE PUBLIC EMPLOYEES', TEACHERS', JUDGES', HIGHWAY PATROLMEN'S, SHERIFFS', AND GAME WARDENS' RETIREMENT SYSTEMS; AMENDING SECTIONS 19-3-104, 19-4-101, 19-5-101, 19-6-101, 19-7-101, AND 19-8-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-3-104, MCA, is amended to read:

**"19-3-104. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Accumulated contributions" means the sum of all the contributions standing to the credit of a member's individual account, together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the *1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.*

(3) "Actuary" means the actuary retained by the board in accordance with 19-3-305.

(4) "Additional contributions" means contributions by members under the provisions of 19-3-702.

(5) "Annuity" means payments for life derived from contributions made by a member as provided in this chapter.

(6) "Beneficiary" means the person so designated pursuant to part 13 of this chapter.

(7) "Benefit" means the retirement allowance, survivorship allowance, death benefit, or refund of accumulated contributions provided by this chapter.

(8) "Board" means the public employees' retirement board provided for in 2-15-1009.

(9) "Compensation" means remuneration paid out of funds controlled by an employer. The compensation of each member of the legislature of Montana for any year shall be considered to be that portion of the product of the daily compensation for such position multiplied by 360 upon which such member elects to pay normal contributions during the year.

(10) "Contracting employer" means any political subdivision or governmental entity which has contracted to come into the system.

(11) "Creditable service" means the aggregate of membership service and prior service.

(12) "Disability" and "incapacity for performance of duty", referred to herein as a basis of retirement, mean disability of permanent duration or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(13) "Employee" means any person who is employed by an employer in any capacity whatever and whose salary is paid either by warrant of the employer or from the fees or income of any department or agency of the employer. "Employee" means further any person considered such pursuant to 19-3-402.

(14) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units thereof for the purposes of this chapter, or any political subdivision or governmental entity which has contracted to come into the system.

(15) "Employer contributions" means payments to the retirement fund from appropriations of the state of Montana pursuant to 19-3-801 and

from contracting employers pursuant to the contracts between them and the board.

(16) "Final compensation" means a member's highest average annual compensation during any 3 consecutive years of membership service. Lump-sum payments for sick leave and annual leave paid to the employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(17) "Fiscal year" means any year commencing with July 1 and ending June 30 next following.

(18) "Head of department" means the head of any department, institution, or branch of the state service which directly pays salaries out of its income or which prepares, approves, and submits salary statements of its employees to the department of administration, state auditor, and state treasurer for payment.

(19) "Member" means any person included in the membership of the retirement system set forth in 19-3-401 and not excluded in 19-3-402, 19-3-403, or 19-3-406.

(20) "Membership service" means service with respect to which normal contributions and employer contributions are paid. A member of the legislature of Montana shall be credited with membership service for that portion of each year for which he pays normal contributions pursuant to subsection (9) of this section.

(21) "Normal contributions" means contributions required from members under this chapter and any optional contributions made under the provisions of 19-3-502 and 19-3-704.

(22) "Pension" means payments for life derived from contributions made from the state controlled funds or, in the case of members from contracting employers, from the funds of such contracting employers, as provided in this chapter.

(23) "Prior service" means all service rendered as an employee of the state before July 1, 1945, and all service rendered as an employee of a contracting employer before July 1, 1947. Prior service includes all service rendered prior to July 1, 1945, as a member of the legislative assembly or lieutenant governor of Montana.

(24) "Regular interest" means interest at the rate set from time to time by the board.

(25) "Retirement" means withdrawal from active service with a retirement allowance granted under the provisions of this chapter.

(26) "Retirement allowance" means the periodic benefit payable following service, early, or disability retirement.

(27) "Retirement fund" means the public employees' retirement system pension trust fund.

(28) "Retirement system" means the public employees' retirement system created by this chapter.

(29) "Service" means employment of an employee, except as provided in 19-3-501 and 19-3-502.

(30) "Survivorship allowance" means payments for life to the beneficiary of a deceased member as provided in part 12 of this chapter.

(31) "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board considers necessary."

Section 2. Section 19-4-101, MCA, is amended to read:

**"19-4-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed, with regular interest, on the basis of the *1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.*

(3) "Annuity" means the payments made to a beneficiary for life which are derived from a member's accumulated contributions.

(4) "Annuity reserve" means the present value of all payments to be made on account of a member's annuity computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(5) (a) "Average final compensation" means the average of the earned compensation of a member during the 3 consecutive years of full-time service which yield the highest average and on which contributions have been made as required by 19-4-602. If the earned compensation includes any termination pay, the member shall select one of the following options:

(i) use the total termination pay in the calculation of the average final compensation. The member and the employer shall pay such contributions to the retirement system as are determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time the termination pay is received.

(ii) use a yearly amount of termination pay added to each of the 3 consecutive years' salary used in the calculation of the average final compensation, if the member has 4 or more years of service with the employer from which the termination pay was received. The amount of such compensation used in the calculation of average final compensation must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer must pay contributions on the termination pay according to the rates provided for in 19-4-602(1) and 19-4-605(1).



(iii) exclude the termination pay from the average final compensation. No contribution is required of either the employer or member.

(b) For purposes of this subsection, termination pay includes any form of termination pay or any lump-sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other payment for time not worked other than compensation received while on sick leave or authorized leave of absence.

(6) "Beneficiary" means a person in receipt of a pension, annuity, retirement allowance, or other benefit provided by the retirement system.

(7) "Creditable service" is that service defined by 19-4-401.

(8) "Earned compensation" means the full compensation, pay, or salary actually paid to a member and reported to the retirement system, including amounts paid under a salary reduction agreement to a tax sheltered annuity or deferred compensation program and the value of any housing provided by the employer. The employer shall fix the value of any housing provided. The term does not include any other amounts paid in kind or fringe benefits not actually paid to a member. The earned compensation of a member who had less than 3 consecutive years of full-time service during the 5 years preceding his retirement is the compensation, pay, or salary which he would have earned had his part-time service been full-time service. The earned compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary which he would have received had he completed the full year, except that any termination pay, as defined in subsection (5)(b), received by the member is limited to the amount actually paid and is not the amount he would have earned had he completed the full year.

(9) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state which employs a person who is designated a member of the retirement system.

(10) "Full-time service" means service which is full-time and which extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, "full-time service" means service which is full-time and which totals at least 9 months in any one year.

(11) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-4-302. An inactive member is a person included under the provisions of 19-4-303.

(12) "Part-time service" means service which is less than full-time or which totals less than 9 months in any one year. Part-time service shall be credited in the proportion that the actual time worked bears to full-time service.

(13) "Pension" means the payments made to a beneficiary for life which are paid out of the pension accumulation fund.

(14) "Pension reserve" means the present value of all payments to be made on account of a pension computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(15) "Prior service" means employment of the same nature as service defined in subsection (20) of this section but rendered before September 1, 1937.

(16) "Regular interest" means interest at 4% per annum compounded annually or at such other rate as may be set by the retirement board in accordance with 19-4-501(2).

(17) "Retirement allowance" means the annuity plus the pension.

(18) "Retirement board" means the retirement system's governing board provided for in 2-15-1010.

(19) "Retirement system" means the teachers' retirement system of the state of Montana provided for in 19-4-102.

(20) "Service" means the performance of such instructional duties or related activities as would entitle the person to active membership in the retirement system under the provisions of 19-4-302."

Section 3. Section 19-5-101, MCA, is amended to read:

**"19-5-101. Definitions.** Unless a different meaning is plainly implied by the context, the following definitions apply in this chapter:

(1) "Accumulated deductions" means the total of the amounts deducted from the salary of a contributor, paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the *1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.*

(3) "Beneficiary" means the person whom the contributor nominates by written designation, duly acknowledged and filed with the board.

(4) "Board" means the public employees' retirement board.

(5) "Contributor" means any person who has accumulated deductions in the fund standing to his credit.

(6) "Final salary" means the annual current salary for the office retired from.

(7) "Fund" means the Montana judges' retirement system pension trust fund.

(8) "Involuntary retirement" means a retirement not for cause and before retirement age.

(9) "Member's annuity" means payments for life derived from contributions made by the contributor.

(10) "Penalty retirement age" means 70 years of age.

(11) "Retired judge" means any judge or justice in receipt of a retirement allowance under this chapter.

(12) "Retirement allowance" means the state annuity plus the member's annuity.

(13) "State annuity" means payments for life derived from contributions made by the state of Montana."

Section 4. Section 19-6-101, MCA, is amended to read:

**"19-6-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana highway patrolmen's retirement pension trust fund.

(2) "Accumulated deductions" means the total of the amounts deducted from the salary of a member, paid into the account, and standing to his credit in the account, together with the regular interest thereon.

(3) "Actuarial equivalent" means a benefit of equal value when computed on the basis of the *1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.*

(4) "Beneficiary" means a surviving spouse or dependent child or, if there is no surviving spouse or dependent child, a person nominated to receive benefits under 19-6-602.

(5) "Board" means the public employees' retirement board provided for in 2-15-1009.

(6) "Department" means the public employees' retirement division of the department of administration.

(7) "Dependent child" means an unmarried child of a deceased retired patrolman, who is:

(a) under 18 years of age; or

(b) under 24 years of age and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(8) "Final salary" means the average annual compensation received by a member, before any deductions have been made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total compensation earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(9) "Member" means a person who has accumulated deductions in the account standing to his credit.

(10) "Member's annuity" means payments for life derived from contributions made by the member.

(11) "Retired patrolman" means a person in receipt of a retirement allowance under this chapter.

(12) "Retirement age" means the age at which a member retires after 25 years of creditable service with the Montana highway patrol.

(13) "Retirement allowance" means the state annuity plus the member's annuity.

(14) "State annuity" means payments for life derived from contributions made by the state of Montana.

(15) "Surviving spouse" means the spouse married to a retired patrolman at the time of the retired patrolman's death."

Section 5. Section 19-7-101, MCA, is amended to read:

**"19-7-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana sheriffs' retirement pension trust fund administered by the sheriffs' retirement board.

(2) "Accumulated contributions" or "accumulated deductions" means the total amount deducted from the salary of a member during a period of membership service plus the total amount deducted during a period of prior service and transferred from the public employees' retirement system standing to the member's credit in the account, together with the accrued interest.

(3) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the *1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.*

(4) "Beneficiary" means a person who is nominated by the member in an acknowledged document which is filed with the board.

(5) "Board" means the public employees' retirement board.

(6) "Creditable service" means the aggregate of all of a member's current and prior service.

(7) "Death benefit" means a monthly annuity or lump-sum payment made to a beneficiary on behalf of a member who dies before retirement.

(8) "Final salary" means the average annual salary received by a member, before any deductions are made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service from which contributions were deducted or, in the event that a member has not served 3 years, the total salary earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months

included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(9) "Member" means any person who has accumulated deductions in the account to his credit.

(10) "Member's annuity" means payments for life derived from contributions made by the member while employed.

(11) "Membership service" means service for which an amount is deducted from the salary of a member and paid into the account.

(12) "Prior service" means service for which credit was granted by the public employees' retirement system of the state of Montana.

(13) "Retired sheriff" means a person receiving a retirement allowance under this chapter.

(14) "Retirement allowance" means the state annuity plus the member's annuity.

(15) "Service" means employment as a sheriff.

(16) "Sheriff" means any elected or appointed county sheriff, undersheriff, or regularly appointed and acting deputy sheriff.

(17) "State annuity" means payments for life derived from county contributions into the sheriffs' retirement account, together with any supplemental legislative appropriations to the account.

(18) "Vested retirement" means a retirement not for cause and before retirement age."

Section 6. Section 19-8-101, MCA, is amended to read:

**"19-8-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana state game wardens' retirement pension trust fund.

(2) "Accumulated deductions" or "accumulated contributions" means the sum of all contributions standing to the credit of a member's individual account together with the regular interest thereon.

(3) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the *1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.*

(4) "Beneficiary" means a person nominated to receive benefits under this chapter by a member's written designation, duly acknowledged and filed with the board.

(5) "Board" means the public employees' retirement board.

(6) "Contributor" means any person who has accumulated deductions in the account standing to his credit.

(7) "Final salary" means the average annual compensation received by a contributor, before any deductions have been made and exclusive of

maintenance, allowances, and expenses, for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total retirement compensation earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(8) "Member's annuity" means payments for life derived from contributions made by the contributor.

(9) "Retired state game warden" means any person in receipt of a retirement allowance under this chapter.

(10) "Retirement allowance" means the state annuity plus the member's annuity.

(11) "State annuity" means payments for life derived from contributions made by the state from department of fish, wildlife, and parks moneys.

(12) "State game warden" means all state fish and game wardens hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks moneys."

**Section 7. Extension of authority.** Any existing authority of the public employees' retirement board or the teachers' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 8. Effective date.** This act is effective on passage and approval.

Approved February 25, 1987.

## CHAPTER NO. 46

[HB 311]

### AN ACT PROVIDING FOR MODIFICATION OF EXISTING SPECIAL IMPROVEMENT LIGHTING DISTRICTS.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Modification of existing lighting district.** (1) The council of any city or town is authorized to:

(a) modify an existing special improvement lighting district by changing the number and spacing of lights, replacing overhead transmission lines with underground lines, increasing or decreasing the level of illumination, or making other major modifications required by the public interest and convenience;

(b) require that all or any part of the cost of the modification be paid by the owners of the property within the district; and

(c) assess and collect all or any part of the cost of the modification by special assessment against the property within the district.

(2) Before modifying an existing lighting district, the city council shall adopt a resolution of intention to do so, either by motion of the council or upon presentation of a petition signed by the owners or agents of at least 10% of the property within the district.

(3) The provisions in 7-12-4302 through 7-12-4305 for the content of the resolution, public notice, protest, and consideration of protest that apply to the creation of a special improvement lighting district also apply to the modification of an existing special improvement lighting district authorized by this section.

**Section 2. Jurisdiction to modify lighting district.** If no protests have been delivered to the clerk of the city or town council within 15 days of the date of the first publication of the notice of the passage of the resolution of intention required by [section 1] or if a protest has been found to be insufficient or has been overruled, the city or town council is considered to have acquired jurisdiction to order the proposed modification.

**Section 3. Objections to irregular proceedings or manner of making a modification.** (1) At any time within 60 days from the date of the award of a contract by a city or town council to implement the provisions of [section 2] or at any time within 60 days from the date the council instructs an official of the city or town to cause the necessary equipment or appliances to be procured and installed, an owner of property liable to assessment who claims that any of the previous acts or proceedings relating to the modification are irregular, defective, erroneous, or faulty or that his property will be damaged by making the modification in the manner contemplated may file with the city or town clerk a notice specifying in what respect these acts or proceedings are irregular, defective, erroneous, or faulty or in what manner and to what extent his property will be damaged by the modification.

(2) Objections to any act or proceeding or in relation to the making of the modification not made in writing or not made in the manner provided for in subsection (1) and all claims for damage therefor are waived by the property owners, providing the notice of the passage of the resolution has been published and the notices of the modification posted as provided in 7-12-4303.

**Section 4. Minor modifications exempt.** Nothing in [this act] prevents the city or town council from eliminating unnecessary lights, relocating individual lights, upgrading lights and lighting-related facilities in the interest of energy conservation, or making other minor modifications in a special improvement lighting district without following the procedures described in [sections 1 through 3].

**Section 5. Codification instruction.** Sections 1 through 4 are intended to be codified as an integral part of Title 7, chapter 12, part 43, and the provisions of Title 7, chapter 12, apply to sections 1 through 4.

Approved February 25, 1987.

**CHAPTER NO. 47**

[HB 312]

AN ACT TO PROVIDE STAGGERED TERMS FOR MEMBERS OF COUNTY BOARDS OF ADJUSTMENT; AND AMENDING SECTION 76-2-222, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 76-2-222, MCA, is amended to read:

**"76-2-222. Membership and term of board members — vacancies.** (1) *Except as provided in subsection (3), the board of adjustment shall consist of five members, each to be appointed for a term of 2 years and removable for cause by the board of county commissioners upon written charges and after public hearing. The board of county commissioners may designate the same persons to act as members of the board of adjustment for unincorporated portions of the jurisdictional area as may be appointed by the municipality within the jurisdictional area under provisions of 76-2-321 through 76-2-328.*

(2) Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(3) *Within 30 days after January 1, 1988, the board of county commissioners shall designate two members of the board of adjustment whose terms must end in 1988 and three members whose terms must end in 1989. Subsequent appointments must be made for a term of 2 years."*

Approved February 25, 1987.

**CHAPTER NO. 48**

[HB 360]

AN ACT CHANGING THE NAME OF THE MONTANA WHEAT RESEARCH AND MARKETING COMMITTEE TO THE MONTANA WHEAT AND BARLEY COMMITTEE; REDESIGNATING THE NAME OF THE ACCOUNT FOR THE DEPOSIT OF COMMODITY ASSESSMENTS; AMENDING SECTIONS 2-15-3002, 80-11-201, 80-11-203, 80-11-207, 80-11-210, AND 80-11-224; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-3002, MCA, is amended to read:

**"2-15-3002. Montana wheat and barley committee — composition — allocation.** (1) There is a Montana wheat and barley committee.

(2) The committee consists of seven members and three ex officio, non-voting members.



(3) The governor shall appoint one member from each of the following districts:

- (a) District I, consisting of Daniels, Sheridan, and Roosevelt Counties;
- (b) District II, consisting of Valley, Phillips, Blaine, and Hill Counties;
- (c) District III, consisting of Liberty, Toole, Glacier, and Pondera Counties;
- (d) District IV, consisting of Chouteau and Teton Counties;
- (e) District V, consisting of Lewis and Clark, Cascade, Judith Basin, Fergus, Petroleum, Meagher, Broadwater, Wheatland, Golden Valley, and Musselshell Counties;
- (f) District VI, consisting of Big Horn, Yellowstone, Stillwater, Carbon, Sweet Grass, Park, Gallatin, Madison, Jefferson, Silver Bow, Beaverhead, and all counties west of the continental divide;
- (g) District VII, consisting of Garfield, McCone, Rosebud, Richland, Dawson, Wibaux, Prairie, Carter, Custer, Fallon, Powder River, and Treasure Counties.

(4) The ex officio members are:

- (a) the director of the department of agriculture;
- (b) the dean of agriculture of Montana state university;
- (c) a representative of the grain trade in Montana elected by a majority of the appointed members.

(5) Each of the appointed members shall be a citizen of Montana, derive a substantial portion of his income from growing wheat or barley in this state, and be a resident of and have farming operations in the district from which appointed. No more than four of the appointed members may be of the same political party.

(6) A list of nominees for appointment may be submitted to the governor by the Montana farmers union, Montana farm bureau, Montana grange, and the Montana grain growers association. Names of nominees shall be submitted within 91 days before the expiration of a committeeman's term.

(7) The appointed members shall serve staggered terms of 5 years. The ex officio representative of the grain trade shall serve at the pleasure of the committee.

(8) A member may be removed by the governor, after a full public hearing before the governor, for malfeasance, misfeasance, or neglect of duty. Removal proceedings may not be started except upon duly verified written charges. The member shall be given a copy of the written charges at least 10 days in advance of the hearing. At the hearing, the member may be represented by an attorney and may present witnesses in his behalf.

(9) A member who ceases to reside in the state or in the district from which he was appointed or who ceases to grow wheat or barley in the state

or district is disqualified from membership and his office becomes vacant. If the member refuses to recognize his disqualification, the refusal is cause for removal.

(10) The committee is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 80-11-201, MCA, is amended to read:

**"80-11-201. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Commercial channels" means the sale of wheat or barley for any use when sold to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any wheat or barley or product produced from wheat or barley.

(2) "Committee" means the Montana wheat and *barley* committee provided for in 2-15-3002.

(3) "First purchaser" means any person, public or private corporation, association, or partnership buying, accepting for shipment, or otherwise acquiring the property in or to wheat or barley from a grower and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, where the actual or constructive possession of such wheat or barley is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim.

(4) "Grower" means any landowner personally engaged in growing wheat or barley, a tenant of the landowner personally engaged in growing wheat or barley, or both the owner and the tenant jointly; and includes a person, partnership, association, corporation, cooperative, trust, sharecropper, and any and all other business units, devices, and arrangements.

(5) "Sale" includes any pledge or mortgage of wheat or barley after harvest to any person, public or private."

Section 3. Section 80-11-203, MCA, is amended to read:

**"80-11-203. Compensation — per diem.** Members of the committee shall receive no salary but shall be paid from the wheat and *barley* account in the other special revenue funds a per diem of \$25 for each day they are engaged in the transaction of official business, together with their actual and necessary travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while on official business."

Section 4. Section 80-11-207, MCA, is amended to read:

**"80-11-207. Buyer's delivery of invoice to grower — form — filing of sworn statement — payment of assessment — refund.** (1) The purchaser of the wheat or barley at the time of sale or the pledgee, mortgagee, or other lender at the time of the loan or advance shall give separate invoices for each purchase to the grower. The invoices shall be on forms approved by the department and shall show:

(a) the name and address of the grower and seller;

- (b) the name and address of the purchaser or the lender;
- (c) the number of bushels of wheat or hundredweights of barley sold, mortgaged, or pledged;
- (d) the date of the purchase, mortgage, or pledge and the amount of assessment collected and remitted to the department.

(2) The purchaser, mortgagee, or pledgee shall file with the department, on forms prescribed by the department, within 20 days after the end of a month in which he purchases a grower's wheat or barley or in which a lender makes a loan or advance on a grower's wheat or barley, a sworn statement of the number of bushels of wheat or hundredweights of barley purchased in Montana or the number of bushels of wheat or hundredweights of barley mortgaged or pledged or otherwise transferred or lienied as security for a loan during the preceding calendar month. At the time the sworn statement is filed, the purchaser or lender shall pay to the department the assessment provided for in 80-11-206 for deposit in the wheat and *barley* account in the other special revenue funds.

(3) The statement referred to in subsections (1) and (2) of this section shall be legibly written and shall be entirely free of any corrections or erasures. A person may not alter any part of a statement.

(4) After 30 days and before 90 days following the deduction of the assessment by the first purchaser or the first lender, the grower may, upon the submission of a written, verified request to the department, obtain a refund of the assessment. The request shall be accompanied by the original invoices received by the grower at the time of settlement. The department shall keep complete records of all refunds made under the provisions of this section. Records of refunds may be destroyed 2 years after the refund is made. All original invoices shall be returned to the grower with the refund payment."

Section 5. Section 80-11-210, MCA, is amended to read:

**"80-11-210. Wheat and barley account — sources — use — expenditures.** (1) There shall be an account in the other special revenue funds known as the wheat and *barley* account. The following shall be placed in the account:

- (a) the proceeds of all millage levies collected under this part; and
- (b) the proceeds from all gifts, grants, or donations to the department for research authorized under this part.

(2) The account shall be maintained for the purposes of this part and shall be separate from all other accounts of the department.

(3) The department may direct the board of investments to invest funds from the account pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the wheat and *barley* account."

Section 6. Section 80-11-224, MCA, is amended to read:

**"80-11-224. Determination of amount and allocation of assessment.** (1) The committee shall set the amount of the assessment each year in accordance with 80-11-206.

(2) Money deposited in the wheat and *barley* account pursuant to 80-11-210 is appropriated to the committee for purposes of *carrying out* research and marketing under this part.

(3) The committee may be assessed costs by the department for the services it provides upon request or pursuant to 2-15-121. However, the costs charged must have a substantial relationship to the cost of services supplied."

Section 7. **Extension of authority.** Any existing authority of the Montana wheat research and marketing committee to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 8. **Effective date.** Section 7 and this section are effective on passage and approval.

Approved February 25, 1987.

## CHAPTER NO. 49

[HB 41]

AN ACT REQUIRING THAT ANY RATES, RATING SCHEDULES, OR RATING MANUALS FOR LIABILITY, BODILY INJURY, OR COLLISION COVERAGES OF A MOTOR VEHICLE INSURANCE POLICY FILED WITH THE INSURANCE DEPARTMENT MUST PROVIDE FOR AN APPROPRIATE REDUCTION IN PREMIUM RATES AS DETERMINED BY THE INDIVIDUAL INSURER FOR SUCH COVERAGES FOR A 2-YEAR PERIOD AFTER SUCCESSFUL COMPLETION OF AN APPROVED HIGHWAY TRAFFIC SAFETY PROGRAM BY AN INSURED WHO IS 55 YEARS OF AGE OR OLDER; AND AMENDING SECTION 33-16-203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [Sections 1 through 6] may be cited as the "Mature Defensive Driving Act".

Section 2. **Requirement for rate reduction.** (1) Any rates, rating schedules, or rating manuals for liability, bodily injury, or collision coverages of a motor vehicle insurance policy filed with the insurance department must provide for an appropriate premium reduction as determined by the insurer for an insured operator of a covered vehicle who is 55 years of age or older and who has successfully completed a highway traffic safety program as provided by 61-2-102 and 61-2-103.

(2) Any discount used by the insurer is presumed appropriate unless credible data demonstrates otherwise.

**Section 3. Effective period of reduction.** (1) The premium reduction required by [section 2] is effective for an insured for a 2-year period after successful completion of the approved course.

(2) An insurer may require, as a condition of maintaining the discount, any or all of the following:

(a) that the insured not be involved in an accident in which he is at fault;

(b) that the insured not be convicted of or plead guilty or nolo contendere to a moving traffic violation; or

(c) that the insured not have forfeited bail or collateral for a moving traffic violation.

**Section 4. Certificate.** The organization offering the approved course shall issue a certificate to each person who successfully completes the course, which qualifies him for the premium discount required by [section 2].

**Section 5. When discount not applicable.** The provisions of [section 2] do not apply if the approved course is taken as punishment specified by a court or other governmental entity for a moving traffic violation.

**Section 6. Continued eligibility.** Each person shall take an approved course every 2 years in order to continue to be eligible for the reduction in premium required by [section 2].

**Section 7.** Section 33-16-203, MCA, is amended to read:

**"33-16-203. Rates filed.** (1) Every insurer, rating organization, or advisory organization shall file with the commissioner all rates intended for use within this state, together with supporting data sufficient to substantiate such filing. The filing required by this subsection may be made by rating organizations on behalf of their members and subscribers; but this provision does not prohibit a member or subscriber from filing any such rates on its own behalf. Any deviations from a rating organization's rates by a member or subscriber must be filed with the commissioner and must be accompanied by supporting data.

(2) *In accordance with [section 2], rates filed must provide for a premium reduction to qualified insured operators 55 years of age or older."*

**Section 8. Codification instruction.** Sections 1 through 6 are intended to be codified as an integral part of Title 33, chapter 16, part 2, and the provisions of Title 33, chapter 16, part 2, apply to sections 1 through 6.

**Section 9. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved February 25, 1987.

**CHAPTER NO. 50**

[HB 203]

AN ACT TO PROVIDE THE STATE AUDITOR WITH THE DISCRETION TO WAIVE THE BOND OF INDEMNITY REQUIREMENT FOR ISSUANCE OF A DUPLICATE WARRANT WHEN THE ORIGINAL WARRANT HAS BEEN LOST OR DESTROYED; PROVIDING LIABILITY PROTECTION UPON WAIVER; AND AMENDING SECTION 17-8-306, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-8-306, MCA, is amended to read:

**"17-8-306. Issuance of duplicate warrant.** (1) The state auditor may issue a duplicate warrant whenever any warrant drawn by him upon the treasurer of the state is lost or destroyed. This duplicate warrant must be in the same form as the original, except that it must have plainly printed across its face the word "duplicate", and except as herein provided, no such warrant may be issued or delivered unless the person entitled to receive the same deposits with the state auditor a bond in double the amount for which the duplicate warrant is issued, conditioned to save Montana and its officers harmless on account of the issuance of the duplicate warrant.

(2) No bond of indemnity is required when:

(a) the payee is the United States government, a state of the United States, any agency, instrumentality, or officer of the United States government or of a state, county, city, city and county, town, district, or other political subdivision of a state or any officer thereof;

(b) the owner or custodian is the state of Montana or any agency or officer thereof;

(c) the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the United States government or by the state of Montana;

(d) *the state auditor has chosen to waive the requirement upon receipt of evidence that the original warrant has been lost or destroyed as a result of a disaster or other major occurrence;*

(e) the amount of the lost or destroyed warrant is less than \$100;

(f) it can be established that a crime has been committed and as a result of such crime that a Montana warrant has been stolen or destroyed;

(g) it can be established that a Montana warrant has been mailed to an incorrect payee;

(h) the payee is a vendor or contractor doing business with the state of Montana; or

(i) the payee is a recipient of public assistance under Title 53.

(3) Whenever the owner or custodian applies under the provisions of subsection (2)(d), (2)(f), (2)(g), (2)(h), or (2)(i), a stop-payment order shall be placed on the original warrant by the state auditor.

(4) Whenever the owner or custodian applies under the provisions of subsection (2)(c), (2)(d), (2)(e), (2)(f), (2)(g), (2)(h), or (2)(i), the application shall include an agreement to indemnify and hold harmless the state or its officers and employees from any loss resulting from the issuance of a duplicate warrant. Any loss incurred in connection with the issuance of a duplicate warrant shall be charged against the account from which the payment was derived."

Approved February 25, 1987.

## CHAPTER NO. 51

[HB 310]

AN ACT TO ESTABLISH A PUBLIC POLICY FOR SELECTION OF QUALIFIED APPLICANTS TO PROVIDE ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING SERVICES UNDER PUBLIC CONTRACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Statement of policy.** The legislature hereby establishes a state policy that governmental agencies publicly announce requirements for architectural, engineering, and land surveying services and negotiate contracts for such professional services on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable prices.

**Section 2. Definitions.** Unless the context clearly indicates otherwise, the following definitions apply to [this act]:

(1) "Agency" means a state agency as defined in subsection (7), local agency as defined in subsection (4), or special district as defined in subsection (6).

(2) "Architectural, engineering, and land surveying" means services rendered by a person, other than as an employee of an agency, contracting to perform activities within the scope of the general definition of professional practice and licensed for the respective practice as an architect pursuant to Title 37, chapter 65, or an engineer or land surveyor pursuant to Title 37, chapter 67.

(3) "Licensed professional" or "licensed architect, professional engineer, professional land surveyor" means a person providing professional services who is not an employee of the agency for which the services are provided and who is exempt under 18-8-103.

(4) **"Local agency"** means a city, town, county, special district, municipal corporation, agency, port district or authority, airport authority, political subdivision of any type, or any other entity or authority of local government, in corporate form or otherwise.

(5) **"Person"** means an individual, organization, group, association, partnership, firm, joint venture, or corporation.

(6) **"Special district"** means a unit of local government, other than a city, town, or county, authorized by law to perform a single function or a limited number of functions, including but not limited to water districts, irrigation districts, fire districts, school districts, community college districts, hospital districts, sewer districts, and transportation districts.

(7) **"State agency"** means a department, agency, commission, bureau, office, or other entity or authority of state government.

**Section 3. Public notice of agency requirements.** Each agency shall publish in advance its requirement for professional services. The announcement must state concisely the general scope and nature of the project or work for which the services are required and the address of a representative of the agency who can provide further details. An agency may comply with this section by:

- (1) publishing an announcement on each occasion when professional services provided by a licensed professional are required by the agency; or
- (2) announcing generally to the public its projected requirement for any category or type of professional services.

**Section 4. Procedures for selection.** (1) In the procurement of architectural, engineering, and land surveying services, the agency may encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(2) The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project. The agency procedures and guidelines must be available to the public and include at a minimum the following criteria as they relate to each firm:

- (a) the qualifications of professional personnel to be assigned to the project;
- (b) capability to meet time and project budget requirements;
- (c) location;
- (d) present and projected workloads;
- (e) related experience on similar projects; and



(f) recent and current work for the agency. The agency shall follow the minimum criteria of [this act] if no other agency procedures are specifically adopted.

**Section 5. Negotiation of contract for services.** (1) The agency shall negotiate a contract with the most qualified firm for architectural, engineering, and land surveying services at a price which the agency determines to be fair and reasonable. In making its determination, the agency shall take into account the estimated value of the services to be rendered, as well as the scope, complexity, and professional nature thereof.

(2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm must be formally terminated and the agency shall select other firms in accordance with [section 4] and continue as directed in this section until an agreement is reached or the process is terminated.

**Section 6. Coordination with other statutes.** (1) [This act] need not be complied with by an agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved. Nothing in [this act] relieves the contracting authority from complying with applicable law limiting emergency expenditures.

(2) The limitation on the preparation of working drawings contained in 18-2-111 applies to [this act].

(3) The procedure for appointment of architects and consulting engineers pursuant to 18-2-112 applies to [this act], except that agency shall select its proposed list of three architects or consulting engineers in accordance with [this act] prior to submission to the department of administration.

(4) The exception for services estimated to cost less than \$5,000 in 18-8-105 applies to [this act].

**Section 7. Exception.** (1) All agencies securing architectural, engineering, and land surveying services for projects for which the fees are estimated not to exceed \$5,000 may contract for those professional services by direct negotiation.

(2) No agency may separate service contracts or split or break projects for the purpose of circumventing the provisions of [this act].

**Section 8. Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 9. Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

**Section 10. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this

act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. **Effective date.** This act is effective on passage and approval.

Approved February 25, 1987.

## CHAPTER NO. 52

[HB 391]

AN ACT TO EXEMPT CERTAIN OPERATIONS OF THE MONTANA HISTORICAL SOCIETY FROM THE STATUTORY LIMITATION ON THE EXPENDITURE OF DEFERRED REVENUE; AMENDING SECTION 17-8-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-8-107, MCA, is amended to read:

**"17-8-107. Limitations on spending deferred revenue — exception.** (1) *Except as provided in subsection (2), no agency, including any unit of the university system, may expend deferred revenue for current fiscal year operations. For purposes of this section, "deferred revenue" means funds received in one fiscal year but properly allocable and recorded as revenue in the subsequent fiscal year.*

(2) *The Montana historical society is exempt from the provisions of subsection (1) to the extent that the expenditure of deferred revenue received from magazine subscription fees is necessary to finance current fiscal year operations for the publication of its magazine of western history."*

Section 2. **Effective date.** This act is effective on passage and approval.

Approved February 25, 1987.

## CHAPTER NO. 53

[SB 285]

AN ACT TO DESIGNATE AS THE OFFICIAL STATE VIETNAM VETERANS' MEMORIAL THE MEMORIAL IN ROSE PARK, MISSOULA; AND DIRECTING THAT STATE HIGHWAY MAPS CARRY A REFERENCE TO THE MEMORIAL.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Vietnam veterans' memorial.** The memorial located in rose park, Missoula, Montana, dedicated to the men and women who served the United States in the Republic of Vietnam, is the official state Vietnam veterans' memorial.

**Section 2. Marking on highway maps.** The department of commerce in the production of highway maps of the state of Montana is directed to reference the location of the official state Vietnam veterans' memorial in rose park, Missoula, Montana, on such maps.

Approved March 11, 1987.

## CHAPTER NO. 54

[SB 26]

AN ACT REQUIRING THE DEPARTMENT OF REVENUE, ON BEHALF OF THE STATE OF MONTANA, TO ACCEPT IN-KIND PAYMENT OF CERTAIN INHERITANCE AND ESTATE TAXES FROM THE MOSS ESTATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, House Bill No. 701 (Chapter 736, Laws of 1985) was adopted during the 49th Legislative Session; and

WHEREAS, House Bill 701 provided for the in-kind payment of estate and inheritance taxes by the transfer to the state of unique objects, sites, or buildings of significant or unique historical interest; and

WHEREAS, House Bill 701 further provided for a rigorous application and review process before property could be accepted as in-kind payment of estate and inheritance taxes; and

WHEREAS, the Montana Historical Society has made application to the Department of Revenue for in-kind payment of inheritance and estate taxes in the form of the Moss Mansion; and

WHEREAS, the Moss Mansion was the family home of the P.B. and Mattie Moss family in Billings, Montana, and is a site of unique and significant historical interest to the State of Montana; and

WHEREAS, the rigorous review process specified in House Bill 701 involves direct participation by the Montana Historical Society, the Department of Revenue, the Legislature's Revenue Oversight Committee, and others; and

WHEREAS, the results of the application and review process are a recommendation by the Montana Historical Society, the Department of Revenue, and the Legislature's Revenue Oversight Committee to the 50th Legislature that the Department of Revenue be allowed to accept as in-kind payment for \$113,000 due in estate and inheritance taxes an ownership interest in the Moss Mansion.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Approval of Moss mansion for in-kind payment — terms and conditions.** (1) Subject to the terms and conditions set forth in this section, the department of revenue shall accept as in-kind payment

for \$113,000 due in estate and inheritance taxes an ownership interest in the Moss mansion, described in the preamble of this act.

(2) The Montana historical society is authorized to take title by warranty deed to the real and personal property associated with the Moss mansion, in the name of the state of Montana, as tenants in common with the city of Billings, in the proportion contributed by each to acquire Moss mansion. Accordingly, the state is entitled to a 61.5% ownership interest in the property based on a \$50,000 appropriation in 1983 for the Moss mansion and the in-kind payment of \$113,000 under this act, and the city of Billings is entitled to a 38.5% ownership interest in the property based on its \$102,000 investment in the property.

(3) Upon taking title under subsection (2), the Montana historical society shall record its interest and promptly notify the department of revenue. The department shall notify the county treasurer and state treasurer of the in-kind payment.

(4) The Montana historical society may not take title under subsection (2) until it receives a contract executed by the Billings preservation society, the city of Billings, and the Montana historical society in which contract the Billings preservation society agrees to assume full responsibility for the management, maintenance, and operational costs of the Moss mansion and associated personal property and to make major changes or modifications to such property only upon approval by the Montana historical society and the city of Billings.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 13, 1987.

## CHAPTER NO. 55

[SB 31]

AN ACT GENERALLY REVISING THE LAWS REGULATING THE PRACTICE OF PHYSICAL THERAPY; AND AMENDING SECTIONS 2-15-1858 AND 37-11-104, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-1858, MCA, is amended to read:

**"2-15-1858. Board of physical therapy examiners.** (1) There is a board of physical therapy examiners.

(2) The board consists of *five* members appointed by the governor with the consent of the senate for a term of 3 years. *The members are:*

*(a) three physical therapists licensed under Title 37, chapter 11, who have been actively engaged in the practice of physical therapy for the 3 years preceding appointment to the board;*

*(b) one physician licensed under Title 37, chapter 3, who has been actively engaged in the practice of medicine for the 3 years preceding appointment to the board; and*

*(c) one member of the general public who is not a physician or a physical therapist.*

(3) Each member must have been a resident of Montana for the 3 years preceding appointment to the board.

(4) (a) Within 30 days following July 1, 1979, the governor shall make initial appointments to the board of physical therapy examiners. He shall appoint one member each to hold office for terms of 1 year, 2 years, and 3 years, respectively. At the end of each member's appointed term, a member shall be appointed for a full 3-year term.

*(b) The Montana medical association may submit names of nominees under subsection (2)(b) to the governor as provided in 37-1-132.*

*(c) A physician and a member of the general public must be appointed to the board on or before January 1, 1988, for a 3-year term.*

(5) A vacancy on the board must be filled in the same manner as the original appointment. These appointments may only be made for the unexpired portions of the term.

(6) No member may be appointed for more than two consecutive terms.

(7) The governor may remove any board member for negligence in performance of any duty required by law and for incompetence or unprofessional or dishonorable conduct.

(8) A board member is not liable to civil action for any act performed in good faith in the execution of the duties required by Title 37, chapter 11.

(9) The board shall provide for its organizational structure by rule, which shall include a chairman, vice-chairman, and secretary-treasurer.

(10) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

#### **Section 2. Duty to report violations — immunity from liability.**

(1) Notwithstanding any provision of state law regarding the confidentiality of health care information, a physical therapist shall report to the board any information that appears to show that another physical therapist is:

(a) mentally or physically unable to engage safely in the practice of physical therapy; or

(b) guilty of any act, omission, or condition that is grounds for disciplinary action under 37-11-321.

(2) There is no liability on the part of and no cause of action may arise against a physical therapist who in good faith provides information to the board as required by subsection (1).

**Section 3. Section 37-11-104, MCA, is amended to read:**

**"37-11-104. Physical therapy — evaluation and treatment.** (1) Physical therapy evaluation includes the administration, interpretation, and evaluation of tests and measurements of bodily functions and structures; the development of a plan of treatment; consultative, educational, and other advisory services; and instruction and supervision of supportive personnel.

(2) Treatment employs, for therapeutic effects, physical measures, activities and devices, for preventive and therapeutic purposes, exercises, rehabilitative procedures, massage, mobilization, and physical agents including but not limited to mechanical devices, heat, cold, air, light, water, electricity, and sound.

(3) The evaluation and treatment procedures listed in subsections (1) and (2) may be performed by a licensed physical therapist without referral."

**Section 4. Codification instruction.** Section 2 is intended to be codified as an integral part of Title 37, chapter 11, and the provisions of Title 37, chapter 11, apply to section 2.

Approved March 13, 1987.

## CHAPTER NO. 56

[SB 32]

**AN ACT AMENDING SECTION 5-17-101, MCA, TO REVISE THE MEMBERSHIP OF THE CAPITOL BUILDING AND PLANNING COMMITTEE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 5-17-101, MCA, is amended to read:

**"5-17-101. Capitol building and planning committee — appointment, composition, and meetings.** (1) There is a capitol building and planning committee consisting of *eight* members as follows:

(a) *two* members of the house of representatives appointed by the speaker on a bipartisan basis;

(b) *two* members of the senate appointed by the committee on committees on a bipartisan basis;

(c) the director of the department of administration, who shall serve as a nonvoting member;

(d) the administrator of the architectural and engineering division of the department of administration, who shall serve as a nonvoting member;

(e) a representative of the governor's office, designated by the governor, who shall serve as a nonvoting member; and

(f) *a representative of the city of Helena, designated by the governing body, who shall serve as a nonvoting member.*

(2) The committee shall select a chairman, who may call meetings at his discretion for the conduct of committee business."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 13, 1987.

## CHAPTER NO. 57

[SB 46]

AN ACT TO REVISE AND CONTINUE THE AGRICULTURAL LOAN LINKED DEPOSIT PROGRAM; AMENDING SECTIONS 17-6-103, 80-14-102, 80-14-202, AND 80-14-203, MCA, AND SECTION 9, CHAPTER 5, SPECIAL LAWS OF MARCH 1986; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 80-14-102, MCA, is amended to read:

**"80-14-102. (Temporary) Definitions.** As used in this chapter, the following definitions apply:

(1) "Board" means the board of investments established under 2-15-1005.

(2) "Eligible agricultural operation" means any person, corporation, partnership, or other entity which is engaged in the production of agricultural, livestock, poultry, dairy, or fruit or other horticultural products and which:

(a) derives at least 70% of its gross income from such production; and

(b) has total financial liabilities exceeding 30% of its total assets.

(3) "Eligible lending institution" means a financial institution that:

(a) is eligible to make commercial loans;

(b) is a public depository of state funds; and

(c) agrees to participate in the linked deposit program established by this chapter.

(4) "Linked deposit" means an agreement between the board and an eligible financial institution whereby a certificate of deposit for a term *not less than 30 days and not exceeding 12 months* is placed by the board with an eligible lending institution at a rate 1% below the current market rate for such a deposit, as determined by the board, provided the institution agrees to lend the value of such deposit, pursuant to the deposit agreement

provided in 80-14-202, to eligible agricultural operations at an interest rate not exceeding 3 percentage points greater than the rate payable on the certificate of deposit."

Section 2. Section 80-14-202, MCA, is amended to read:

**"80-14-202. (Temporary) Approval and acceptance of deposit — deposit agreement.** (1) The board may accept or reject the linked deposit loan package or any portion thereof.

(2) Upon acceptance of the linked deposit loan package or any portion thereof, the board may place certificates of deposit for a term *not less than 30 days and* not to exceed 12 months with the eligible lending institution at a rate 1% below the current market rate for such certificates, as determined by the board.

(3) The eligible lending institution must enter into a deposit agreement with the board, which shall specify the recipients, amount, rate of interest, and length of time of loans which the institution will make upon receiving a linked deposit. The agreement must also specify that interest on the linked deposit must be paid at the times determined by the board.

(4) The period of time for which a certificate of deposit is placed with an eligible lending institution may be neither longer nor shorter than the period of time for which the linked deposit is used to provide loans at reduced interest rates."

Section 3. Section 80-14-203, MCA, is amended to read:

**"80-14-203. (Temporary) Linked deposit loans.** (1) Upon placement of a linked deposit with an eligible lending institution, the institution must lend such funds to each approved eligible agricultural operation listed in the linked deposit loan package required by 80-14-201 and in accordance with the deposit agreement required by 80-14-202. Each loan must be at a fixed rate of interest not exceeding 3 percentage points greater than the rate payable on the linked deposit.

(2) All records and documents pertaining to each loan shall be segregated by the lending institution for ease of identification and examination.

(3) Each eligible agricultural operation receiving a loan under this chapter shall promptly certify receipt of the loan to the board in the form and manner prescribed by the board.

(4) Any report of noncompliance by an eligible lending institution chartered under the laws of this state must be referred to the financial division of the department of commerce for appropriate action. Any report of noncompliance by an eligible lending institution chartered under federal law must be referred to the office of United States comptroller of the currency or other appropriate federal regulatory agency for appropriate action."

Section 4. Section 17-6-103, MCA, is amended to read:

**"17-6-103. Security for deposits of public funds.** The following kinds of securities may be pledged or guarantees may be issued to secure deposits of public funds:



- (1) direct obligations of the United States;
- (2) securities as to which the payment of principal and interest is guaranteed by the United States;
- (3) securities issued or fully guaranteed by the following agencies of the United States or their successors, whether or not guaranteed by the United States:
  - (a) commodity credit corporation;
  - (b) federal intermediate credit banks;
  - (c) federal land bank;
  - (d) bank for cooperatives;
  - (e) federal home loan banks;
  - (f) federal national mortgage association;
  - (g) government national mortgage association;
  - (h) small business administration;
  - (i) federal housing administration; and
  - (j) federal home loan mortgage corporation;
- (4) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;
- (5) revenue bonds of any county, city, or other political subdivision of the state, when backed by the full faith and credit of such subdivision or when the revenues pledged to the payment of the bonds are derived from a water or sewer system and the issuer has covenanted to establish and maintain rates and charges for the system in an amount sufficient to produce revenues equal to at least 125% of the average annual principal and interest due on all bonds payable for such revenues during the outstanding term of such bonds;
- (6) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state issued in evidence of claims in an amount which, with all other claims on the same fund, do not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;
- (7) obligations of housing authorities of the state secured by a pledge of annual contributions or by a loan agreement made by the United States or any agency thereof providing for contributions or a loan sufficient with other funds pledged to pay the principal of and interest on the obligations when due. Subject to rules prescribed by the department of commerce, the bonds and other obligations made eligible for investment in 32-1-424(3) and 7-15-4505 may be used as security for all deposits of public funds or obligations for which depository bonds or any kind of bonds or other securities are required or may by law be deposited as security.
- (8) general obligation bonds of other states and of municipalities, counties, and school districts of other states;

(9) undertaking or guarantees issued by a surety company authorized to do business in the state;

(10) first mortgages and trust indentures on real property. The depository shall, on a quarterly basis, certify to the state treasurer that sufficient first mortgages and trust indentures on real property are available and segregated to secure deposits of public funds. The board of investments shall determine the amount of security required.

(11) bonds issued pursuant to Title 7, chapter 12, parts 21 and 41;

(12) bonds issued pursuant to Title 90, chapter 6, part 1;

(13) revenue bonds issued by any unit of the university system of the state of Montana;

(14) advance refunded bonds secured by direct obligations of the United States treasury held in irrevocable escrow; and

(15) *linked deposit loan obligations incurred under 80-14-203."*

Section 5. Section 9, Chapter 5, Special Laws of March 1986, is amended to read:

"Section 9. **Effective date — termination.** This act is effective on passage and approval and terminates *June 30, 1989.*"

Section 6. **Effective date — termination.** This act is effective on passage and approval and terminates June 30, 1989.

Approved March 13, 1987.

## CHAPTER NO. 58

[SB 75]

AN ACT REQUIRING ONLY ONE TAILLAMP ON MOTORCYCLES, MOTOR-DRIVEN CYCLES, AND QUADRICYCLES; AND AMENDING SECTION 61-9-204, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-9-204, MCA, is amended to read:

**"61-9-204. Taillamps.** (1) Every motor vehicle, trailer, semitrailer, and pole trailer and any other vehicle which is being drawn at the end of a train of vehicles shall be equipped with at least one taillamp mounted on the rear, which, when lighted as hereinbefore required, shall emit a red light plainly visible from a distance of 500 feet to the rear, provided that in the case of a train of vehicles only the taillamp on the rearmost vehicle need actually be seen from the distance specified. Further, every such above-mentioned vehicle, other than a *motorcycle, motor-driven cycle, quadricycle, or truck tractor*, registered in this state and manufactured or

assembled after January 1, 1956, shall be equipped with at least two taillamps mounted on the rear, which when lighted as herein required, shall comply with the provisions of this section.

(2) Every taillamp upon every vehicle shall be located at a height of not more than 72 inches or less than 15 inches.

(3) Either taillamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any taillamp or taillamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted.

(4) Taillamps are not required on a motorcycle that is registered under 61-3-411 as a collector's item, but such motorcycle may not be operated on a highway or street from one-half hour after sunset to one-half hour before sunrise or when persons and vehicles are not clearly discernible at a distance of 500 feet unless it is equipped with the required taillamps."

Section 2. **Extension of authority.** Any existing authority of the department of justice to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 13, 1987.

## CHAPTER NO. 59

[SB 76]

AN ACT RAISING THE AMOUNTS OF PROPERTY DAMAGE RESULTING FROM A MOTOR VEHICLE ACCIDENT THAT TRIGGER NOTIFICATION TO AND REPORTING BY LAW ENFORCEMENT OFFICERS; AND AMENDING SECTIONS 61-7-108 AND 61-7-109, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-7-108, MCA, is amended to read:

**"61-7-108. Immediate notice of accidents.** The driver of a vehicle involved in an accident resulting in injury to or death of any person or property damage to an apparent extent of \$250 or more shall immediately by the quickest means of communication give notice of such accident to the local police department if such accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the highway patrol."

Section 2. Section 61-7-109, MCA, is amended to read:

**"61-7-109. Written reports of accidents — additional information — form of report.** (1) The operator of any motor vehicle which is in any manner involved in an accident within this state in which any

person is killed or injured or in which damage to the property of any one person in excess of \$400 is sustained shall, within 10 days after such accident, report the matter in writing to the department unless the accident was investigated and reported by a law enforcement officer as provided in subsection (3).

(2) The department may require any driver of a vehicle involved in an accident of which report must be made as provided in this section to file supplemental reports whenever the original report is insufficient and may require witnesses of accidents to render reports.

(3) Every law enforcement officer who in the regular course of duty investigates a motor vehicle accident in which any person is killed or injured or in which damage to the property of any person exceeds \$400, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses, shall within 10 days after completing the investigation forward a written report of the accident to the department.

(4) The form of the accident report required under this section shall contain information sufficient to enable the department to determine whether the requirements for the deposit of security for safety responsibility are inapplicable by reason of the existence of insurance or other exemptions specified in this part."

**Section 3. Extension of authority.** Any existing authority of the department of justice to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 13, 1987.

## CHAPTER NO. 60

[SB 227]

AN ACT TO CLARIFY HOW AN APPROPRIATION MAY BE ENCUMBERED BY AN INTERAGENCY AGREEMENT AND WHEN THE ENCUMBERED APPROPRIATION REVERTS TO THE FUND FROM WHICH IT WAS ORIGINALLY APPROPRIATED; AMENDING SECTION 17-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-7-302, MCA, is amended to read:

**"17-7-302. Encumbrance of fiscal yearend obligations.** (1) Any valid obligation not paid within the fiscal year, including valid written interagency or intra-agency service agreements for systems development, shall be encumbered for payment thereof at the end of each fiscal year in the department of administration's accounts. *Except as provided in subsection (2), an appropriation shall be deemed to be encumbered at the time and to the extent that a valid obligation against the appropriation is created.*

(2) *An appropriation may be encumbered by a written interagency or intra-agency agreement with the department for the alteration, repair, maintenance, or renovation of a building pursuant to the provisions of Title 18, chapter 2. If the appropriation is not encumbered by a valid obligation at the end of the next fiscal year, the appropriation reverts to the fund from which it was originally appropriated."*

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 13, 1987.

## CHAPTER NO. 61

[HB 30]

AN ACT PROHIBITING TRANSFER OF BEER BETWEEN LICENSED PREMISES; CLARIFYING WHOLESALERS' RESPONSIBILITIES IN THE DISTRIBUTION OF BEER; DEFINING "DISTRIBUTE" WITH REGARD TO BEER AND TABLE WINE; AMENDING SECTIONS 16-3-301, 16-4-103, AND 16-4-108, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Purposes.** The legislature finds and declares that the purposes of 16-3-221 through 16-3-226 and [this act] are to assure continued interbrand competition in malt beverage sales through competing independent wholesalers and to assure breweries the ability to protect the reputations of their products through quality control arrangements.

Section 2. Section 16-3-301, MCA, is amended to read:

**"16-3-301. Unlawful purchases, transfers, sales, or deliveries.**

(1) It is unlawful for a licensed retailer to purchase or acquire beer from anyone except a brewer or wholesaler licensed under the provisions of this code.

(2) *It is unlawful for a licensed retailer to transport beer from one licensed premises or other facility to any other licensed premises owned by the licensee.*

(3) It is unlawful for any licensee, his or her employee or employees, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

(a) any person under 19 years of age;

(b) any intoxicated person or any person actually, apparently, or obviously intoxicated.

(4) Any person under 19 years of age or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining an alcoholic beverage from such licensee is equally guilty with said licensee and,

upon conviction thereof, is subject to the penalty provided in 45-5-624. *However, nothing herein contained may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.*

(5) It is further mandatory under the provisions of this code that all licensees display in a prominent place in their premises a placard as issued by the department stating fully the consequences for violations of the provisions of this code by persons under 19 years of age."

**Section 3. "Distribute" defined.** As used in [sections 4 and 5], 16-4-103, and 16-4-108, "distribute" means to deliver beer or wine to a retailer's premises licensed to sell beer or table wine.

**Section 4. Dock sales restricted.** A beer wholesaler or a table wine distributor may not deliver beer or wine to a licensed retailer at any location other than the retailer's licensed premises, except that a retailer located within the territory for which a wholesaler has been appointed to distribute a brand may personally or through his employee obtain from the wholesaler's warehouse quantities of beer not exceeding three barrels in packaged or draft form. An all-beverages licensee may upon presentation of his license or a photocopy of his license personally obtain from any wholesaler's warehouse such quantities of beer as he and the wholesaler may agree to buy and sell.

**Section 5. Wholesalers' service obligations — applicability.** (1) A wholesaler appointed to distribute a brand of beer within a territory specified by agreement pursuant to 16-3-221(3) shall call on and offer that brand to at least 75% of the retailers within that territory at least every 3 weeks.

(2) If a retailer's account with a wholesaler is current as required under 16-3-243, the wholesaler may not refuse to sell the retailer any brand of beer for which the wholesaler has been appointed for the territory in which the retailer is located. The wholesaler shall offer to deliver the beer to such retailer at least every 3 weeks.

(3) This section applies to all beer distribution agreements entered into, assigned, or amended after July 1, 1986. It does not apply to a distribution agreement for a named brand entered into before July 1, 1986, but does not prohibit a brewer party to such an agreement from requiring the appointed wholesaler to fulfill similar service obligations in the territory.

**Section 6.** Section 16-4-103, MCA, is amended to read:

**"16-4-103. Wholesalers' licenses — application for and issuance — subwarehouses — imported beer handled through warehouse or subwarehouse.** (1) Any person desiring to sell and distribute beer as a wholesaler under the provisions of this code shall apply to the department for a license to do so and tender with his application the license fee provided for, and the department is hereby empowered, authorized, and directed to issue wholesale licenses to qualified applicants in accordance with the provisions of this code. Such license shall be at all times prominently displayed in the place of business of such wholesaler.

(2) An applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house, or warehouse for the receiving of,

storage, handling, and moving of beer in large and jobbing quantities for distribution and sale in original packages to other licensed wholesalers or licensed retailers. Each wholesaler is entitled to only one wholesale license, which license shall be issued for his principal place of business in Montana. A duplicate license may be issued for one subwarehouse only, in Montana, for each wholesale licensee. The duplicate license shall at all times be prominently displayed at said subwarehouse.

(3) If the applicant is a foreign corporation, the corporation must be authorized to do business in Montana.

(4) *As used in subsection (1), "distribute" has the meaning given to it in [section 3].*

Section 7. Section 16-4-108, MCA, is amended to read:

**"16-4-108. Wine distributor's license.** (1) Any person desiring to sell and distribute table wine at wholesale to retailers under the provisions of this code shall apply to the department of revenue for a license to do so and shall tender with his application the annual license fee of \$400 and the department may issue licenses to qualified applicants in accordance with the provisions of this code.

(2) All table wine distributors' licenses issued in any year expire on June 30 at midnight of such year.

(3) No license fee may be imposed upon table wine distributors by a municipality or any other political subdivision of the state.

(4) The license shall be at all times prominently displayed in the place of business of such table wine distributor.

(5) An applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house or warehouse for the receiving of, storage, handling, and moving of table wine in large and jobbing quantities for distribution and sale in original packages to other licensed table wine distributors or licensed retailers. Each table wine distributor is entitled to only one wholesale table wine license, which license shall be issued for his principal place of business in Montana. A duplicate license may be issued for one subwarehouse only in Montana for each table wine distributor's license. The duplicate license shall at all times be prominently displayed at said subwarehouse. A table wine distributor may also hold a license to sell beer at wholesale but shall not hold or have any interest, direct or indirect, in any license to sell beer, wine, or liquor at retail.

(6) If the applicant is a foreign corporation, the corporation must be authorized to do business in Montana.

(7) *As used in subsection (1), "distribute" has the meaning given to it in [section 3].*

Section 8. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 9. **Codification instruction.** Sections 3 through 5 are intended to be codified as an integral part of Title 16, chapter 3, part 2,

and the provisions of Title 16, chapter 3, part 2, apply to sections 3 through 5.

**Section 10. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 11. Effective date.** This act is effective May 1, 1987.

Approved March 13, 1987.

## CHAPTER NO. 62

[HB 51]

AN ACT MAKING ORAL INTERVIEWS OF APPLICANTS FOR LICENSURE TO PRACTICE DENTISTRY DISCRETIONARY WITH THE BOARD OF DENTISTRY; AUTHORIZING THE BOARD TO DESIGNATE THE TIME AND PLACE FOR ADMINISTERING JURISPRUDENCE EXAMINATIONS TO APPLICANTS FOR LICENSURE; MODIFYING ONE POSTLICENSING PRACTICE STANDARD FROM "GROSS MALPRACTICE OR REPEATED MALPRACTICE" TO "MALPRACTICE"; AUTHORIZING THE BOARD OF DENTISTRY TO IMPOSE FINES NOT TO EXCEED \$5,000 PER INCIDENT AS A LICENSE DISCIPLINE SANCTION; AUTHORIZING THE BOARD OF DENTISTRY TO RECOVER REASONABLE COSTS OF PROCEEDINGS WHEN A LICENSEE HAS BEEN SUBJECTED TO DISCIPLINARY ACTION; AND AMENDING SECTIONS 37-4-301 AND 37-4-321, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-4-301, MCA, is amended to read:

**"37-4-301. Examination — qualifications — fees — certification.** (1) Applicants for licensure shall take and pass an examination in order to be licensed. The examination shall consist of a written part and a practical or clinical part. *It may also include, at the board's discretion, an oral interview with the board which may include questions pertaining to the practice of dentistry.* The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence *to be administered at times and places approved by the board.* The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(2) Acceptance by the board of such written and practical examination shall be conditioned on evidence that the examination is sufficiently thorough to test the fitness of the applicant to practice dentistry. It shall include, written in the English language, questions on anatomy, histology,



physiology, chemistry, pharmacology and therapeutics, metallurgy, pathology, bacteriology, anesthesia, operative and surgical dentistry, prosthetic dentistry, prophylaxis, orthodontics, periodontics and endodontics, and any additional subjects pertaining to dental service.

(3) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing any such examination procedures.

(4) Applicants for licensure shall submit an application, which shall include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) three affidavits of good moral character;

(d) certificate of graduation from a board-approved dental school;

(e) an examination fee commensurate with costs and set by the board;

(f) a licensure fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant; and

(h) copies of all other state licenses that are held by the applicant.

(5) Applications must be submitted no less than 20 days prior to the board interview and jurisprudence examination.

(6) Applicants may not take the jurisprudence examination or the oral interview without first having completed and passed all other parts of the examination.

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass his first examination, if otherwise qualified, may take a subsequent examination upon payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures."

Section 2. Section 37-4-321, MCA, is amended to read:

**"37-4-321. Grounds for disciplinary proceedings — range of sanctions — recovery of costs.** (1) The board may censure, prescribe probation, suspend, or revoke any license issued under this chapter *or fine the licensee not to exceed \$5,000 per incident* for any of the following causes:

(a) physical or mental incompetence;

(b) malpractice;

(c) unprofessional conduct, as defined by rule of the board; or

(d) violation of any of the provisions of this chapter or rules or orders of the board.

(2) *The board may, following a final determination resulting in any disciplinary action taken by the board under subsection (1), recover from the disciplined party all reasonable costs of any proceeding incurred for the purposes of that disciplinary action. Fines and costs recovered must be deposited in the board's earmarked revenue account."*

Section 3. **Extension of authority.** Any existing authority of the board of dentistry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 13, 1987.

## CHAPTER NO. 63

[HB 68]

AN ACT REVISING THE LAW ON SECURITY PATROLMEN AND INVESTIGATORS TO CLARIFY TERMS, DEFINITIONS, AND VIOLATIONS; PROVIDING FOR THE APPLICATION OF ADMINISTRATIVE FINES AND PENALTIES; AMENDING SECTIONS 37-60-101, 37-60-105, 37-60-202, 37-60-301, 37-60-303, 37-60-304, 37-60-307 THROUGH 37-60-310, 37-60-312, 37-60-321, 37-60-322, 37-60-405 THROUGH 37-60-407, AND 37-60-411, MCA; REPEALING SECTIONS 37-60-305 AND 37-60-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, it is the intent of this bill to provide for effective enforcement of licensure laws by removing certain exemptions, to clarify violations, and to provide the licensing board with the means to impose penalties or cause prosecution for violations of licensure laws.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-60-101, MCA, is amended to read:

**"37-60-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means any individual employed by a contract security company or a proprietary security organization to respond to security alarm system signals.

(2) "Armed carrier service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

(3) "Armed private investigator" means a private investigator who at any time wears, carries, possesses, or has access to a firearm in the performance of his duties.

(4) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, carrier service guard, or alarm response runner and who at any time wears or carries a firearm in the performance of his duties.

(5) "Armored car service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

(6) "Board" means the board of private security patrolmen and investigators provided for in 2-15-1891.

(7) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

(8) "Contract security company" means any person who installs or maintains a security alarm system, undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

(9) "Department" means the department of commerce provided for in 2-15-1801.

(10) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration whatsoever conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes or wrongs committed or threatened against the United States or any state or territory thereof.

(11) "Licensee" means a person licensed under this chapter.

(12) "Person" includes any individual, firm, company, association, organization, partnership, and corporation.

(13) "Private investigator" means a person other than an insurance adjuster who for any consideration whatsoever makes or agrees to make any investigation with reference to:

(a) crimes or wrongs done or threatened against the United States or any state or territory thereof;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or

(e) securing evidence to be used before any court, board, officer, or investigating committee.

(14) "Private security guard" means an individual employed *or assigned duties* to protect a person or property or both a person and property from criminal acts and whose duties *or any portion of whose duties* include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property, or the direction of the movements of the public in public areas.

(15) "Proprietary security organization" means any person who employs a private security guard, an alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

(16) "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.

(17) "*Resident agent*" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

(18) "Security alarm system" means an assembly of equipment and devices or a single device such as a solid state unit which plugs directly into a 110-volt AC line, designed to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a protected premises, to which signals police, private security guards, or alarm response runners are expected to respond. Fire alarm systems and alarm systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a premises are not included within the meaning of this definition.

(19) "Street patrol service" means any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares.

(20) "Unarmed private investigator" means a private investigator who does not wear, carry, possess, or have access to a firearm in the performance of his duties.

(21) "Unarmed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty *or any portion of whose duty* is that of a private security guard, armored car service guard, or alarm response runner, who does not wear or carry a firearm in the performance of those duties."

Section 2. Section 37-60-105, MCA, is amended to read:

**"37-60-105. Exemptions.** This chapter does not apply to:

(1) (a) any one person employed singly and exclusively by any one employer in connection with the affairs of such employer only and where

there exists an employer-employee relationship and the employee is unarmed, does not wear a uniform, and is guarding inside a structure which at the time is not open to the public;

(b) *a person:*

(i) *employed singly and exclusively by a retail merchant;*

(ii) *performing at least some of his work for the retail merchant as a private security guard; and*

(iii) *who has received training as a private security guard from the employer or at the employer's direction;*

(2) an officer or employee of the United States of America or of this state or a political subdivision thereof while such officer or employee is engaged in the performance of his official duties;

(3) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit;

(4) an attorney at law in performing his duties as such attorney at law or a legal intern employed by a licensed attorney;

(5) a collection agency or finance company licensed to do business under the laws of this state, or an employee thereof while acting within the scope of his employment, while making an investigation incidental to the business of the agency or company, including an investigation of the location of a debtor or his property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof;

(6) special agents employed by railroad companies, provided the railroad company notifies the board that such agents are operating in the state;

(7) insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them;

(8) an insurance adjuster, as defined by 37-60-101(10); or

(9) an internal investigator or auditor, while making an investigation incidental to the business of the agency or company by which he is singularly and regularly employed."

Section 3. Section 37-60-202, MCA, is amended to read:

**"37-60-202. Rulemaking power.** The board shall adopt and enforce rules:

(1) specifying the form of and procedure to be used in granting, denying, suspending, or revoking any license or identification card;

(2) fixing the qualifications of resident managers, qualifying agents, licensees, and holders of identification cards, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare;

(3) establishing, in accordance with 37-1-134, application and examination fees for original or renewal licenses and identification cards, and providing for refunding of any such fees;

(4) prohibiting the establishment of branch offices of any licensee, except a proprietary security organization, without approval by the board, establishing qualification requirements and license fees for those offices;

(5) for the certification of private investigator and private security guard training programs, including the certification of firearms training programs and firearms instructors;

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees to *file such insurance policy or proof of financial responsibility as the board considers necessary with the board*;

(9) defining "unprofessional conduct" for the purposes of removal from the board and suspension or revocation of licenses and identification cards;

(10) establishing the expiration and renewal periods for licenses and identification cards;

(11) for the temporary employment of persons without the required licenses or identification cards;

(12) providing for the issuance of probationary and temporary licenses for contract security companies and private investigators;

(13) providing for the issuance of probationary identification cards for private investigators who do not meet the requirements for age, employment experience, and written examination; and

(14) *providing for the application of administrative fines and penalties for minor infractions of this chapter and supporting rules."*

Section 4. Section 37-60-301, MCA, is amended to read:

**"37-60-301. License required.** (1) Except as provided in 37-60-105, it is unlawful for any person to act as or perform the duties as defined in 37-60-101 of a contract security company or proprietary security organization, a private investigator, or a private security guard without having first obtained a license from the board. Those persons licensed on April 18, 1983, shall retain their current licensure status and must renew their licenses on the renewal date as prescribed by the board.

(2) *It is unlawful for any unlicensed person to act as, pretend to be, or represent himself as being licensed as a private investigator, a contract security company, a proprietary security organization, or a private security guard.*

(3) *A person who knowingly engages an unlicensed private investigator, private security guard, or contract security company is guilty of a misdemeanor punishable under 37-60-411."*

Section 5. Section 37-60-303, MCA, is amended to read:

**"37-60-303. License qualifications.** (1) *Except as otherwise specified in this section, an applicant for licensure under this chapter shall submit evidence under oath that he:*

- (a) *is at least 18 years of age;*
- (b) *is a citizen of the United States;*
- (c) *has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;*
- (d) *has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;*
- (e) *is not suffering from habitual drunkenness or from narcotics addiction or dependence;*
- (f) *is of good moral character; and*
- (g) *has complied with such other experience qualifications as may be set by the rules of the board.*

(2) *In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard shall:*

(a) *complete the training requirements of a private security guard training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of such training; and*

(b) *fulfill such other requirements as the board may by rule prescribe.*

(3) *In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that he:*

- (a) *is at least 21 years of age;*
- (b) *has at least a high school education or its equivalent;*
- (c) *has not been dishonorably discharged from any branch of the United States military service;*
- (d) *for a period of not less than 3 years:*
  - (i) *has been lawfully engaged in the private investigative business;*
  - (ii) *has been lawfully employed as a private investigator or been the holder of a certificate of authority to conduct a private investigative business; or*
  - (iii) *has been an investigator, detective, special agent, or peace officer of a city, county, or state government or of the United States government;*
- (e) *has completed the training requirements of a private investigator training program certified by the board and furnished, on a form prescribed by the board, written notice of satisfactory completion of such training; and*
- (f) *has fulfilled such other requirements as the board may by rule prescribe.*

(4) Up to one-half of the experience required by *subsection (3)(d)* may be met by a combination of education and training as accepted by the board. All college credits must be from an accredited college or university and be verified by transcript.

(5) *Applicants who will wear or carry firearms in performance of their duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as it may by rule prescribe.*

(6) A corporation applying for a license under this section must be incorporated under the laws of this state or be duly qualified to do business within this state.

(7) The board shall require an applicant to demonstrate by written examination such additional qualifications as the board may by rule require."

Section 6. Section 37-60-304, MCA, is amended to read:

**"37-60-304. Licenses — application form and content.** (1) Application for a license shall be made on a form prescribed by the board and accompanied by the application fee set by the board.

(2) An application shall be made under oath and shall include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, a private investigator, or a private security guard;

(e) two recent photographs of the applicant, of a type prescribed by the board, and two classifiable sets of his fingerprints;

(f) a statement of his *age and* experience qualifications;

(g) such other information, evidence, statements, or documents as may be prescribed by the rules of the board; and

(h) if the applicant is a person other than an individual, the full name and residence address of each of its partners, officers, and directors and its manager.

(3) The board shall verify the statements in the application and the applicant's moral character. The board shall send written notification to the chief of police, the sheriff, and the county attorney in whose jurisdiction the principal office of the applicant is to be located that an application has been submitted."

Section 7. Section 37-60-307, MCA, is amended to read:

**"37-60-307. Action on application.** (1) The board shall grant the application for an original or renewal license or identification card unless it finds that the applicant, branch office manager, or qualifying agent has:



- (a) not met the qualifications of 37-60-303;
- (b) practiced fraud, deceit, or misrepresentation in the application process;
- (c) knowingly made a material misstatement in the application for a license;
- (d) violated any of the provisions of this chapter or the rules of the board; or
- (e) taken any action warranting suspension or revocation under 37-60-321.

(2) If an original or renewal license or identification card is denied, the applicant may request a hearing within 30 days after receipt of notice of denial. The hearing shall be held in accordance with the provisions of the Montana Administrative Procedure Act and the rules of the department of commerce.

(3) Licenses or identification cards shall be granted by name for those categories of persons listed in 37-60-101(1), (2), (3), (4), (5), (8), (13), (14), (15), (16), (17), (19), (20), or (21), or any combination of the foregoing."

Section 8. Section 37-60-308, MCA, is amended to read:

**"37-60-308. Temporary employment without identification card — authority of board.** The board may, under such conditions as it shall prescribe by rule, authorize the employment by any licensee of any person for not more than 30 days who, because of his failure to obtain an identification card in accordance with 37-60-301 or 37-60-304, could otherwise not act as a private security guard or private investigator."

Section 9. Section 37-60-309, MCA, is amended to read:

**"37-60-309. Form of license and identification card.** The license and identification card shall be in such form as may be determined by the board."

Section 10. Section 37-60-310, MCA, is amended to read:

**"37-60-310. Display of license and identification card.** (1) A license shall at all times be posted in a conspicuous place in the principal place of business of the licensee.

(2) Any holder of an identification card must carry the card on his person while performing his duties. Any peace officer of this state or any of its political subdivisions may request to see the card at any reasonable time, and the card must be shown."

Section 11. Section 37-60-312, MCA, is amended to read:

**"37-60-312. Annual renewal.** (1) Licenses and identification cards issued under this chapter expire at 12 midnight on the dates prescribed by the board if not, in each instance, renewed. To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the board and pay the renewal fee prescribed by this chapter.

(2) The board may refuse to renew a license or identification card for any reason for which it could refuse to grant an original application or suspend or revoke any license or identification card under 37-60-321."

Section 12. Section 37-60-321, MCA, is amended to read:

**"37-60-321. Suspension or revocation.** The board may suspend or revoke a license or identification card issued under this chapter if it determines that the licensee or its manager or qualifying agent or any of its officers, directors, or partners or any holder of an identification card has:

(1) made any false statement or given any false information in connection with an application for a grant, renewal, or reinstatement of a license or identification card;

(2) violated any provisions of this chapter;

(3) violated any rule of the board adopted pursuant to the authority contained in this chapter;

(4) been convicted of a felony or any crime involving moral turpitude or illegally using, carrying, or possessing a dangerous weapon and as a result of such conviction is under state supervision;

(5) impersonated or permitted or aided and abetted an employee to impersonate a law enforcement officer or employee of the United States of America or of any state or political subdivision thereof;

(6) committed or permitted any employee to commit any act, while the license or identification card was expired, which would be cause for suspension, revocation, or denial of an application;

(7) willfully failed or refused to render to a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties;

(8) knowingly violated or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee or holder of an identification card;

(9) resorted to fraud, misrepresentation, or deception, in the course of business, which was not required to perform a client service; or

(10) been guilty of unprofessional conduct as defined by the rules of the board."

Section 13. Section 37-60-322, MCA, is amended to read:

**"37-60-322. Surrender of licenses and identification cards.** (1) Whenever a license is suspended or revoked, the licensee shall within 24 hours after receiving notification of the suspension or revocation by the board surrender the license by mailing it or delivering it personally to the board.

(2) Whenever any person to whom an identification card has been issued ceases employment for which the card was issued or has his card revoked or suspended by the board, he shall surrender the card within 5 days by mail or personally deliver the card to the board."

Section 14. Section 37-60-405, MCA, is amended to read:

**"37-60-405. Approval of weapons.** The weapons to be carried by *armed licensees or identification card holders* must be approved by the board."

Section 15. Section 37-60-406, MCA, is amended to read:

**"37-60-406. Peace officer's casual employment.** A peace officer, as defined in 46-1-201, or a reserve officer, as defined in 7-32-201, is not prohibited or restricted from accepting and engaging in employment as a security guard during his off-duty hours, provided that he does not advertise his services or solicit employment and further provided that the chief of his department previously approves the off-duty employment. A peace officer or reserve officer so engaged in casual employment is exempt from the provisions of this chapter *only if the casual employment is authorized in writing by his sheriff or chief of police.*"

Section 16. Section 37-60-407, MCA, is amended to read:

**"37-60-407. Regulation of uniforms, badges, and equipment.** (1) No licensee or officer, director, partner, manager, or employee of a licensee may wear, carry, or display a badge in connection with the activities of the licensee's business.

(2) The board is authorized to establish rules regulating uniforms and any emblems, patches, insignias, and devices that may be either worn or displayed on uniforms, vehicles, or equipment."

Section 17. Section 37-60-411, MCA, is amended to read:

**"37-60-411. Penalties — investigation — enforcement — review.** (1) Any person who violates any of the provisions of this chapter *or who conspires with another person to violate any of the provisions of this chapter relating to licensure* is guilty of a misdemeanor punishable by a fine of not more than \$1,000 or by imprisonment of not more than 1 year or by both such fine and imprisonment.

(2) *The board shall:*

(a) *gather evidence of violations of this chapter, and of any rule established pursuant to this chapter, by persons engaged in a business subject to licensure under this chapter who fail to obtain licenses; and*

(b) *furnish that evidence to prosecuting officers of any county or city.*

(3) *The prosecuting officer of any county or city shall prosecute all violations of this chapter occurring within his jurisdiction.*

(4) (a) *If upon investigation the board considers it appropriate, it may issue a citation to a licensee. The citation may contain:*

(i) *an order of abatement fixing a reasonable time for abatement of the violation; and*

(ii) *assessment of an administrative fine in an amount not to exceed \$500 for each violation of this chapter.*

(b) *A citation or fine assessment must inform the licensee that if he contests the finding of a violation, a review by the board may be requested in accordance with the Montana Administrative Procedure Act. If a review is not requested pursuant to this section, payment of the fine does not constitute an admission of the violation charged.*

(c) *If the licensee neither requests a review nor pays the assessed fine within 20 days of notice of the citation, the board shall suspend the license of such person 30 days after the notice of citation.*

(d) *All fines collected pursuant to this section must be deposited in the state special revenue fund for use of the board."*

**Section 18. Repealer.** Sections 37-60-305 and 37-60-306, MCA, are repealed.

**Section 19. Effective date.** This act is effective on passage and approval.

Approved March 13, 1987.

## CHAPTER NO. 64

[HB 88]

AN ACT TO AUTHORIZE HOSPITAL DISTRICTS TO ESTABLISH CAPITAL REPLACEMENT FUNDS TO BE USED FOR THE REPLACEMENT OF PROPERTY, PLANT FACILITIES, AND EQUIPMENT; TO LIMIT THE AMOUNT THAT MAY BE ACCUMULATED IN A CAPITAL REPLACEMENT FUND; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Hospital district capital replacement fund.** (1) A hospital district may establish a capital replacement fund. The fund may be used only for the replacement of property, plant facilities, or equipment. The cost of such capital equipment must exceed \$5,000 and have a life expectancy of 5 years or more.

(2) A capital replacement fund established under subsection (1) may not exceed 10% of the total value of the hospital's property, plant facilities, and equipment at the end of a fiscal year.

**Section 2. Effective date.** This act is effective July 1, 1987.

Approved March 13, 1987.

**CHAPTER NO. 65**

[HB 92]

**AN ACT REQUIRING FENDERS, SPLASH APRONS, OR FLAPS ON POLE TRAILERS; AND AMENDING SECTION 61-9-407, MCA.***Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-9-407, MCA, is amended to read:

**"61-9-407. Fenders, splash aprons, or flaps required on certain vehicles — dimension and location.** (1) It shall be unlawful for any person to move, or permit to be moved, any truck, bus, truck tractor, trailer, *pole trailer*, or semitrailer, as defined in this title, upon the public highways without having first equipped the rearmost wheels or set of wheels of such vehicle with fenders, splash aprons, or flaps. Such fenders, splash aprons, or flaps shall be designed, constructed, and attached to the vehicle in such manner so as to arrest and deflect dirt, mud, water, rocks, and other substances which may be picked up by the rear wheels of such vehicle and thrown into the air, as follows:

(a) If the vehicle is equipped with fenders, the same shall extend in full width from a point above and forward of the center of the tire or tires over and to the rear thereof.

(b) If the vehicle is equipped with splash aprons or flaps, the same shall extend downward in full width from a point not lower than halfway between the center of the tire or tires and the top of said tire or tires and to the rear thereof.

(c) If the vehicle is in excess of 8,000 pounds gross vehicle weight, such fenders, splash aprons, or flaps shall extend downward to a point that is not more than 10 inches above the surface of the highway when the vehicle is empty.

(d) If the vehicle is 8,000 pounds or less gross vehicle weight such fenders, splash aprons, or flaps shall extend downward to a point that is not more than 20 inches above the surface of the highway when the vehicle is empty.

(2) Fenders, splash aprons, or flaps, as used in subsection (1) of this section, shall be deemed to be of sufficient size and construction as to comply with the requirements thereof, if constructed as follows:

(a) when measured on the cross-sections of the tread of the wheel or on the combined cross-sections of the treads of multiple wheels, such fender, splash apron, or flap extends at least to each side of the width of the tire or of the combined width of the multiple tires, as the case may be; and

(b) such fender, splash apron, or flap is so constructed as to be capable at all times of arresting and deflecting such dirt, mud, water, or other substance as may be picked up and carried by such wheel or wheels."

Section 2. **Extension of authority.** Any existing authority of the department of justice to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 13, 1987.

## CHAPTER NO. 66

[HB 116]

AN ACT REPEALING SECTION 50-16-401, MCA, WHICH REQUIRES THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER A HEALTH INFORMATION CENTER OPERATED BY A PRIVATE CORPORATION UNDER CONTRACT TO THE DEPARTMENT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Repealer.** Section 50-16-401, MCA, is repealed.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 13, 1987.

## CHAPTER NO. 67

[HB 126]

THE MONTANA OLDER AMERICANS ACT; REQUIRING THE USE OF AVAILABLE RESOURCES FOR THE WELL-BEING OF OLDER MONTANANS; AND ESTABLISHING STATE RESPONSIBILITY FOR COORDINATING SERVICES TO OLDER MONTANANS AND DEVELOPING ALTERNATIVE FORMS OF SERVICE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** This act may be cited as the "Montana Older Americans Act".

Section 2. **Definitions.** In [this act], the following definitions apply:

(1) "Department" means the department of social and rehabilitation services.

(2) "Older Montanan" means a resident of this state who is at least 60 years of age.

Section 3. **Purpose and policy.** (1) The legislature finds that older Montanans constitute a valuable resource of this state and that their competence, experience, and wisdom must be used more effectively for the benefit of all Montanans.

(2) The legislature further finds that a complete range of services is not available in all areas of the state and that many Montanans lack access to the services that are available.

(3) The legislature declares that it is the policy of this state, subject to available funding, to provide a wide range of coordinated services to enable older Montanans to maintain an independent lifestyle, avoid unnecessary institutional care, and live in dignity.

(4) It is the intent of the legislature that available federal, state, regional, and local resources be used to strengthen the economic, social, and general well-being of older Montanans and that the state:

- (a) develop appropriate programs for older Montanans;
- (b) coordinate and integrate all levels of service, with emphasis on the whole person; and
- (c) promote alternative forms of service that will create options for older Montanans.

**Section 4. Services to be provided.** Subject to available funding, the department, in conjunction with other state, local, and private agencies and organizations, shall identify and may provide for older Montanans, in addition to existing services:

- (1) a directory of available services;
- (2) transportation that provides access to services;
- (3) housing, nutrition, education, homemaker, escort, respite, hospice, and other programs that facilitate self-care;
- (4) physical and mental health care, including inpatient and outpatient services, screening, appliances and supplies, and home health care;
- (5) placement in adult day care, foster care, personal care, supervisory care, and nursing homes;
- (6) protective advocacy and legal programs;
- (7) job training, job development, and income maintenance;
- (8) adult education; and
- (9) training and research in aging.

**Section 5. Role of department.** The department shall develop a plan to coordinate the services identified in [section 4], facilitate cooperation among agencies, avoid duplication, and increase efficiency.

**Section 6. Coordination with federal legislation.** Nothing in [this act] shall be construed to prevent the department from complying with the rules and regulations promulgated by the U.S. department of health and human services pursuant to the "Older Americans Act of 1965", as amended.

**Section 7. Codification instruction.** Sections 1 through 6 are intended to be codified as an integral part of Title 53, chapter 5, and the provisions of Title 53, chapter 5, apply to sections 1 through 6.

Section 8. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 13, 1987.

## CHAPTER NO. 68

[HB 133]

AN ACT TO MAKE CONSISTENT CERTAIN TERMS IN THE MONTANA ALCOHOLIC BEVERAGE CODE; AND AMENDING SECTIONS 16-1-101, 16-1-104 THROUGH 16-1-106, 16-1-201, 16-1-204, 16-1-303, 16-1-405, 16-2-101, 16-2-103, 16-2-104, 16-2-106 THROUGH 16-2-108, 16-2-203, 16-2-302, 16-3-101, 16-3-105, 16-3-106, 16-3-310, 16-3-401, 16-4-106, 16-4-108, 16-4-201, 16-4-202, 16-4-208, 16-4-302, 16-4-401, 16-4-404, 16-4-405, 16-4-411, 16-4-501, 16-6-104, 16-6-301, 16-6-305, 16-6-306, 16-6-309, 16-6-312, AND 16-6-313, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 16-1-101, MCA, is amended to read:

**"16-1-101. Citation — declaration of policy — subject matters of regulation.** (1) Chapters 1 through 6 of this title may be cited as the "Montana Alcoholic Beverage Code".

(2) It is hereby declared to be the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale, and distribution of *alcoholic beverages* within the state of Montana, as that term is defined in this code, subject to the authority of the state of Montana through the Montana department of revenue.

(3) This code is an exercise of the police power of the state, in and for the protection of the welfare, health, peace, morals, and safety of the people of the state, and its provisions shall be construed for the accomplishment of such purposes."

Section 2. Section 16-1-104, MCA, is amended to read:

**"16-1-104. Intent and construction of code.** The purpose and intent of this code are to prohibit transactions in *alcoholic beverages* which take place wholly within the state of Montana except under state control as specifically provided by this code, and every section and provision of this code shall be construed accordingly. The provisions of this code dealing with the importation, sale, and disposition of *alcoholic beverages* within the state, through the instrumentality of a department and otherwise, provide the means by which such state control shall be made effective, and nothing in this code shall be construed as forbidding, affecting, or regulating any transaction which is not subject to the legislative authority of the state."

Section 3. Section 16-1-105, MCA, is amended to read:



**"16-1-105. Divisions of code.** This code is divided into six chapters. Chapter 1 relates to the authority of the department of revenue to administer this code and the powers and functions of the department. Chapter 2 relates to the establishment of state stores and the keeping and selling of liquors. Chapter 3 relates to the control of liquor, wine, and beer. Chapter 4 relates to license administration. Chapter 5 (*now repealed*) related to identification cards. Chapter 6 relates to enforcement."

Section 4. Section 16-1-106, MCA, is amended to read:

**"16-1-106. Definitions.** As used in this code, the following definitions apply:

(1) "Agency agreement" means an agreement between the department and a person appointed to sell liquor *and table wine* as a commission merchant rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than .5% of alcohol by volume.

(4) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(5) "Beer importer" means a person other than a brewer who imports malt beverages.

(6) "Brewer" means a person who produces malt beverages.

(7) "Department" means the department of revenue.

(8) "Immediate family" means a spouse, dependent children, or dependent parents.

(9) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(10) "Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

(11) "Liquor" means an alcoholic beverage except beer and table wine.

(12) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom and with or without other wholesome products suitable for human food consumption.

(13) "Package" means a container or receptacle used for holding an alcoholic beverage.

(14) "Posted price" means the retail price of liquor *and table wine* as fixed and determined by the department and in addition thereto an excise and license tax as provided in this code.

(15) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(16) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(17) "Rules" means rules published by the department pursuant to this code.

(18) "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

(19) "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling liquor *and table wine*.

(20) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(21) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of such beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(22) "Table wine" means wine as defined below which contains not more than 16% alcohol by volume.

(23) "Warehouse" means a building or structure located in Montana owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(24) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 5. Section 16-1-201, MCA, is amended to read:

**"16-1-201. Acts not covered by code.** (1) Nothing in this code shall prevent any brewer, distiller, or other person, duly licensed under the provisions of any statute of the United States of America for the manufacture

of *alcoholic beverages*, from having or keeping *alcoholic beverages* in a place and in the manner authorized by or under any such statute.

(2) It is hereby declared to be the policy of the state of Montana that the manufacture of *alcoholic beverages*, including the distillation, rectification, bottling, and processing as these terms are defined under the provisions of the laws of the United States, shall be authorized and permitted by any brewer, distiller, rectifier, or other person duly licensed under any provision of any statute of the United States of America in a place and in the manner authorized by or under any statute of the United States, provided the department may make such rules as the department deems necessary with respect thereto not inconsistent with this code or with the statutes of the United States of America or regulations issued under the provisions of the federal Alcohol Administration Act, Title 27, United States Code, sections 201 through 212, inclusive, or regulations issued under the provisions of the Internal Revenue Code, Title 26, United States Code, sections 5001 through 5693, inclusive.

(3) Nothing in this code shall prevent:

- (a) the sale of liquor or *table wine* by any person to the department;
- (b) the purchase, importation, and sale of liquor and *table wine* by the department for the purposes of and in accordance with this code."

Section 6. Section 16-1-204, MCA, is amended to read:

**"16-1-204. Licensed hospital or health care facility.** Any person in charge of an institution regularly conducted as a licensed hospital or health care facility may administer *alcoholic beverages* purchased by him to any patient or inmate of the institution and may charge for the *alcoholic beverages* so administered."

Section 7. Section 16-1-303, MCA, is amended to read:

**"16-1-303. Department rules.** (1) The department may make such rules not inconsistent with this code as to the department seem necessary for carrying out the provisions of this code and for the efficient administration thereof.

(2) Without thereby limiting the generality of the provisions contained in subsection (1) hereof, it is declared that the power of the department to make rules in the manner set out in that subsection shall extend to and include the following:

- (a) regulating the equipment and management of state stores and warehouses in which liquor or table wine is kept or sold and prescribing the books and records to be kept therein;
- (b) prescribing the duties of the employees of the liquor division and regulating their conduct while in the discharge of their duties;
- (c) governing the purchase of liquor and *table wine* and the furnishing of liquor and *table wine* to state stores established under this code;
- (d) determining the classes, varieties, and brands of liquor and table wine to be kept for sale at any state store;

(e) prescribing, subject to this code, the hours during which state liquor stores shall be kept open for the sale of alcoholic beverages;

(f) providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each class, variety, or brand of liquor and table wine kept for sale under this code;

(g) prescribing forms to be used for the purpose of this code or of the rules made thereunder and the terms and conditions in permits and licenses issued and granted under this code;

(h) prescribing the form of records of purchase of liquor and table wine and the reports to be made thereon to the division and providing for inspection of the records so kept;

(i) prescribing the manner of giving and serving notices required by this code or the rules thereunder;

(j) prescribing the fees payable in respect of permits and licenses issued under this code for which no fees are prescribed in this code and prescribing the fees for anything done or permitted to be done under the rules made thereunder;

(k) prescribing, subject to the provisions of this code, the conditions and qualifications necessary for the obtaining of *alcoholic beverage licenses* and the books and records to be kept and the returns to be made by the licensees and providing for the inspection of such licensed premises;

(l) specifying and describing the place and the manner in which *alcoholic beverages* may be lawfully kept or stored;

(m) specifying and regulating the time and periods when and the manner, methods, and means by which vendors and brewers shall deliver *alcoholic beverages* under this code and the time and periods when and the manner, methods, and means by which *alcoholic beverages*, under this code, may be lawfully conveyed or carried;

(n) governing the conduct, management, and equipment of any premises licensed to sell *alcoholic beverages* under this code;

(o) providing for the imposition and collection of taxes and making rules respecting returns, accounting, and payment of the taxes to the department.

(3) Whenever it is provided in this code that any act, matter, or thing may be done if permitted or authorized by the rules or may be done in accordance with the rules or as provided by the rules, the department, subject to the restrictions set out in subsection (1) hereof, shall have the power to make rules respecting such act, matter, or thing."

Section 8. Section 16-1-405, MCA, is amended to read:

**"16-1-405. Use of license tax proceeds.** The license tax moneys when so apportioned shall be deposited to the credit of the general funds of said incorporated cities, towns, and counties and shall be expended by said incorporated cities, towns, and counties for law enforcement and the

regulation and control of the sale of *alcoholic beverages* and the use thereof."

Section 9. Section 16-2-101, MCA, is amended to read:

**"16-2-101. Establishment and closure of state liquor stores — kinds and prices of liquor and table wine.** (1) (a) The department shall establish and maintain one or more stores, to be known as "state liquor stores", as the department finds feasible for the sale of liquor *and table wine* in accordance with the provisions of this code and the rules made thereunder.

(b) The department shall enter into an agency agreement or employ the necessary help to operate said stores and shall designate the duties to be performed by the agent or employees.

(2) The department may from time to time fix the prices at which the various classes, varieties, and brands of liquor *and table wine* may be sold, and prices shall be the same at all state stores."

Section 10. Section 16-2-103, MCA, is amended to read:

**"16-2-103. Duplicate invoices of sales required.** (1) The state liquor store shall, upon each sale of liquor *or table wine* to any licensee, issue a duplicate invoice of the liquor *or table wine* purchased, as provided by the department, a copy of which shall be delivered to the licensee and one copy retained at such store.

(2) The invoice shall show the date of purchase, name of employee making the sale, the quantity of each kind of liquor *or table wine* purchased, the price paid therefor, the name of the licensee, and the number of the license, with such other information as may be required by the department.

(3) The licensee shall keep and retain his duplicate invoice of all purchases made by him from the state liquor store, which shall at all times be subject to inspection by the duly authorized officers, agents, and employees of the department."

Section 11. Section 16-2-104, MCA, is amended to read:

**"16-2-104. Hours.** (1) State liquor stores shall be and remain open during such period of the day as the department shall deem advisable. The stores shall be closed for the transaction of business on legal holidays and between the close of normal business Saturday p.m. up to the opening of normal business Tuesday a.m. as set by department rule.

(2) No sale or delivery of liquor *or table wine* shall be made on or from the premises of any state liquor store nor shall any store be open for the sale of liquor *or table wine*:

(a) on any holiday recognized by state law;

(b) during such other period and on such other days as the department may direct."

Section 12. Section 16-2-106, MCA, is amended to read:

**"16-2-106. Purchase price in advance.** A store manager may sell to any person such liquor *and table wine* as that person is entitled to purchase in conformity with the provisions of this code and the rules made thereunder, provided that no delivery shall take place until the purchaser has paid the purchase price."

Section 13. Section 16-2-107, MCA, is amended to read:

**"16-2-107. No open alcoholic beverage container or alcoholic beverage consumption on premises of state store.** No officer, clerk, or agent of the department employed in a state store shall allow any *alcoholic beverage* container to be opened on the premises of a state store or allow any *alcoholic beverage* to be consumed on the premises of a state store, nor shall any person open an *alcoholic beverage* container or consume any *alcoholic beverage* on such premises."

Section 14. Section 16-2-108, MCA, is amended to read:

**"16-2-108. Disposition of money received.** All moneys received from the sale of liquor *and table wine* at the state liquor stores shall be deposited in the enterprise fund in the state treasury to the credit of the department. The department is hereby authorized to purchase liquor *and table wine* from moneys deposited to its account in the enterprise fund. The department shall pay from its account in the enterprise fund its administrative expenses, subject to the limits imposed by legislative appropriation. No obligation created or incurred by the department may ever be or become a debt or claim against the state of Montana but shall be payable by the department solely from funds derived from the operation of state liquor stores. The department shall pay into the state treasury to the credit of the general fund the receipts from all taxes and licenses collected by it and also the net proceeds from the operation of state liquor stores."

Section 15. Section 16-2-203, MCA, is amended to read:

**"16-2-203. Department sales to licensees.** The department may sell through its stores to licensees licensed under this code all kinds of liquor *and table wine* at the posted price thereof in the store in which the liquor *and table wine* are sold. All sales shall be upon a cash basis."

Section 16. Section 16-2-302, MCA, is amended to read:

**"16-2-302. State distribution.** The department may import and distribute one or more named table wines to one or more designated state liquor stores, in the same manner as if the wine contained more than 16% alcohol by volume."

Section 17. Section 16-3-101, MCA, is amended to read:

**"16-3-101. Alcoholic beverages dispensed only in accordance with code.** No brewer, beer importer, distiller, or manufacturer of *alcoholic beverages* shall, within the state, by himself, his clerk, servant, or agent, give to any person any *alcoholic beverage* except as may be permitted by and in accordance with the rules made under this code."

Section 18. Section 16-3-105, MCA, is amended to read:

**"16-3-105. Restrictions on alcoholic beverages in hotels.** Except in the case of *alcoholic beverages* kept or consumed in premises for which a license has been granted under the law and which form a part of a hotel, no person shall:

(1) keep or consume *alcoholic beverages* in any part of a hotel other than a private guest room;

(2) keep or have any *alcoholic beverage* in any room in a hotel unless he is a bona fide guest of the hotel and is duly registered in the office of the hotel as an occupant of that room."

Section 19. Section 16-3-106, MCA, is amended to read:

**"16-3-106. Conveyance of liquors, table wines, and beer — opening alcoholic beverages during transit forbidden.** (1) It shall be lawful to carry or convey liquor or *table wine* to any state store and to and from any warehouse or depot established by the department for the purposes of this code, and when permitted to do so by this code and the rules made thereunder and in accordance therewith, it shall be lawful for any common carrier or other person to carry or convey liquor or *table wine* sold by a vendor from a state store or beer, when lawfully sold by a brewer, from the premises wherein such beer was manufactured or from premises where the beer may be lawfully kept and sold to any place to which the same may be lawfully delivered under this code and the rules made thereunder.

(2) No common carrier or any other person shall open, break, or allow to be opened or broken any package or vessel containing an *alcoholic beverage* or drink or use or allow to be drunk or used any *alcoholic beverage* therefrom while being carried or conveyed."

Section 20. Section 16-3-310, MCA, is amended to read:

**"16-3-310. Lapse of license for nonuse.** Any retail license issued pursuant to this code (including any retail license to sell beer and *table wine* for off-premises consumption) not actually used in a going establishment for 90 days shall automatically lapse. Upon determining the fact of nonuse for such period, the department shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this section shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, resort, park hotel, tourist facility, or like business, provided such licensee has secured written authority from the department to close and has licensed premises for a specified period of greater than 90 days' duration. Should the department determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision shall not apply."

Section 21. Section 16-3-401, MCA, is amended to read:

**"16-3-401. Public policy.** The public policy of the state of Montana is to maintain a system for the importation and sale of *table wine* by the state through state liquor facilities and provide for, regulate, and control the acquisition, importation, and distribution of *table wine* by licensed *table wine* distributors and the state."

Section 22. Section 16-4-106, MCA, is amended to read:

**"16-4-106. Beer and table wine license transfers.** A transfer of any brewer's, beer wholesaler's, table wine distributor's, beer retailer's, or table wine retailer's license may be made on application to the department with the consent of the department, provided that the transferee qualifies under this code."

Section 23. Section 16-4-108, MCA, is amended to read:

**"16-4-108. Table wine distributor's license.** (1) Any person desiring to sell and distribute table wine at wholesale to retailers under the provisions of this code shall apply to the department of revenue for a license to do so and shall tender with his application the annual license fee of \$400 and the department may issue licenses to qualified applicants in accordance with the provisions of this code.

(2) All table wine distributors' licenses issued in any year expire on June 30 at midnight of such year.

(3) No license fee may be imposed upon table wine distributors by a municipality or any other political subdivision of the state.

(4) The license shall be at all times prominently displayed in the place of business of such table wine distributor.

(5) An applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house or warehouse for the receiving of, storage, handling, and moving of table wine in large and jobbing quantities for distribution and sale in original packages to other licensed table wine distributors or licensed retailers. Each table wine distributor is entitled to only one wholesale table wine license, which license shall be issued for his principal place of business in Montana. A duplicate license may be issued for one subwarehouse only in Montana for each table wine distributor's license. The duplicate license shall at all times be prominently displayed at said subwarehouse. A table wine distributor may also hold a license to sell beer at wholesale but shall not hold or have any interest, direct or indirect, in any license to sell beer, *table wine*, or liquor at retail.

(6) If the applicant is a foreign corporation, the corporation must be authorized to do business in Montana."

Section 24. Section 16-4-201, MCA, is amended to read:

**"16-4-201. All-beverages license quota.** (1) Except as otherwise provided by law, a license to sell liquor, beer, and *table wine* at retail (an all-beverages license) in accordance with the provisions of this code and the rules of the department may be issued to any person who is approved by the department as a fit and proper person to sell such beverages, except that the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities and towns shall be determined on the basis of population prescribed in 16-4-502 as follows:



(a) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than two retail licenses;

(b) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 3,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities and towns, three retail licenses for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

(c) in incorporated cities of over 3,000 inhabitants and within a distance of 5 miles from the corporate limits thereof, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500 inhabitants.

(2) The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail licenses that may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their respective corporate limits shall be determined on the basis of the combined populations of both of such municipalities and may not exceed the foregoing limitations. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

(3) Retail all-beverages licenses of issue on March 7, 1947, and all-beverages licenses issued under 16-4-209, which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations.

(4) Such limitations do not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail license to an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

(5) The number of retail all-beverages licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits thereof may not be more than one license for each 750 population of the county after excluding the population of incorporated cities and incorporated towns in such county."

Section 25. Section 16-4-202, MCA, is amended to read:

**"16-4-202. Resort licenses.** (1) It is the intent and purpose of this section to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of

existing recreational sites by the establishment of resort areas within which retail *all-beverages* licenses may be issued by the department under the terms and as more particularly prescribed below. In addition to the licenses as otherwise set forth in this code, the department may issue resort retail *all-beverages* licenses in a resort area.

(2) For the purposes of this section, a resort area is defined as a recreational facility meeting the qualifications determined by the department as hereinafter provided.

(3) The department shall determine that the area for which licenses are to be issued is a resort area, such determination to be made under and pursuant to rules to be first promulgated on or before December 31, 1975.

(4) In addition to the other requirements of this code, a resort area, for the purposes of qualification for the issuance of a resort retail *all-beverages* license, must have a current actual valuation of resort or recreational facilities, including land and improvements thereon, of not less than \$500,000, at least half of which valuation must be for a structure or structures within the resort area, and must be under the sole ownership or control of one person or entity at the time of the filing of the resort area plat referred to in subsection (5) of this section. The word control shall mean lands held under lease, option, or permit.

(5) The resort area must be determined by the resort developer or landowner by a plat setting forth the resort boundaries, designating the ownership of the lands within the resort area, which plat must be verified by the resort developer or landowner and filed with the department prior to the filing of any applications by individuals for licenses within the resort area. Such plat must show the location and general design of the buildings and other improvements to be built in said area in which resort retail *all-beverages* licenses are to or may be located. A master plan for the development of the area may be filed by the resort developer in satisfaction of this section.

(6) Upon such filing the department shall forthwith schedule a public hearing to be held in Helena, Montana, to determine whether the facility proposed by the resort developer or landowner is a resort area within the meaning of the rules of the department. At least 30 days prior to the date of the hearing, the department shall publish notice thereof, with a description of the location of the proposed resort area, in a newspaper published in the county or counties in which the resort is located, once a week for 4 consecutive weeks. Each resort developer or landowner shall, at the time of filing his application, pay to the department an amount sufficient to cover the costs of said publication.

(7) Persons may present statements to the department at the hearing in person or in writing in opposition or support of the plat.

(8) Within 30 days of the hearing, the department shall accept or reject the plat. If rejected the department must state its reasons and set forth the conditions, if any, under which the plat will be accepted, and the decision of the department may be reviewed pursuant to the review procedure set forth in 16-4-406.

(9) Once filed with the department, the boundaries of a resort may not be changed without full hearing as above provided and the prior approval of the department, which approval shall be according to public convenience and necessity.

(10) (a) When the department has accepted a plat and a given resort area has been determined, applications may then be filed with the department by persons for the issuance of resort retail *all-beverages* licenses within the resort area.

(b) Each applicant must submit plans showing the location, appearance, and floor plan of the premises for which application for a license is made.

(c) If an applicant otherwise qualifies for a resort license but the premises to be licensed are still in construction or are otherwise incomplete at the time of such application, the department shall issue a letter stating that the license will be issued at such time as the qualifications for a licensed premises have been met, setting forth such time limitations and requirements as the department may establish.

(11) In addition to the restrictions on sale or transfer of a license as provided in 16-4-204 and 16-4-404, no resort retail *all-beverages* license may be sold or transferred for operation at a location outside of the boundaries of the resort area.

(12) A resort retail *all-beverages* license shall not be subject to the quota limitations set forth in 16-4-201, and if the requirements of this section have been met, a resort retail *all-beverages* license shall be issued by the department on the basis that the department has determined that such license is justified by public convenience and necessity, in accordance with the procedure required in 16-4-207."

Section 26. Section 16-4-208, MCA, is amended to read:

**"16-4-208. Airport all-beverages license.** (1) The department of revenue shall issue one all-beverages license, to be known as a public airport all-beverages license, for use at each publicly owned airport served by scheduled airlines and enplaning and deplaning a minimum total of 20,000 passengers annually when:

(a) application is made;

(b) upon finding that this license is justified by public convenience and necessity, including the convenience and necessity of the public traveling by scheduled airlines; and

(c) following a hearing as provided in 16-4-207.

(2) Application shall be made by the agency owning and operating the airport. The agency owning and operating the airport may lease the airport all-beverages license to an individual or entity approved by the department.

(3) A public airport all-beverages license and all retail *alcoholic beverage* sales thereunder shall be subject to all statutes and rules governing all-beverages licenses.

(4) The department of revenue shall issue a public airport all-beverages license to a qualified applicant regardless of the number of all-beverages

licenses already issued within the all-beverages license quota area in which the airport is situated."

Section 27. Section 16-4-302, MCA, is amended to read:

**"16-4-302. Passenger carrier licenses.** Common carriers serving Montana may serve *alcoholic beverages* to passengers in aircraft over or railroad cars in the state of Montana upon the issuance of a retail *all-beverages* license by the department for that purpose. Such licenses shall be issued on an annual basis to common carriers making application therefor and shall be effective from July 1 of the current year to July 1 of the following year."

Section 28. Section 16-4-401, MCA, is amended to read:

**"16-4-401. License as privilege — criteria for decision on application.** (1) A license under this code is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in subsection (6), in the case of a license that permits on-premises consumption, the department must find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant or any member of his immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of *alcoholic beverages*;

(iii) the applicant is a resident of the state and is qualified to vote in a state election;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments; and

(v) the applicant is not under the age of 19 years; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (2)(a)(iii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a) of this section;

(iii) the corporation is authorized to do business in Montana; and

(iv) in the case of a corporation not listed on a national stock exchange, each owner of stock meets the requirements of subsection (2)(a)(i); and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (2)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (2)(b).

(3) In the case of a license that permits only off-premises consumption, the department must find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant or any member of his immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of *alcoholic beverages*;

(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, his rights have been restored;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments; and

(v) the applicant is not under the age of 19 years; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (3)(a)(iii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a) of this section; and

(iii) the corporation is authorized to do business in Montana; and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (3)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (3)(b).

(4) In the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic beverage, the department must find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant has no ownership interest in any establishment licensed under this chapter for retail alcoholic beverages sales;

(ii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, his rights have been restored;

(iii) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments;

(iv) the applicant is not under the age of 19 years; and

(v) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (4)(a)(ii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a) of this section:

(iii) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(iv) the corporation is authorized to do business in Montana; and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (4)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (4)(b).

(5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b) apply separately to each class of stock.

(6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302."

Section 29. Section 16-4-404, MCA, is amended to read:

**"16-4-404. Protest period — contents of license — posting — privilege — transfer.** (1) No license may be issued until on or after the date set in the notice for hearing protests.

(2) Every license issued under this code shall set forth the name of the person to whom issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under said license, and such other information as the department shall deem necessary. If the licensee is a partnership or if more than one person has any interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises wherein the business

authorized under the license is conducted, and such license shall be exhibited upon request to any authorized representative of the department or to any peace officer of the state of Montana.

(3) Any license issued under the provisions of this code shall be considered a privilege personal to the licensee named in the license and shall be good until the expiration of the license unless sooner revoked or suspended.

(4) A license may be transferred to the executor or administrator of the estate of any deceased licensee when such estate consists in whole or in part of the business of selling *alcoholic beverages* under a license, and in such event the license may descend or be disposed of with the business to which it is applicable under appropriate probate proceedings.

(5) In the event of a major loss or damage to licensed premises by unforeseen natural causes or in case of expiration of lease of the licensed premises or in the event of eviction or increase of rent by the landlord (in case of rented licensed premises) or in case of proposed removal of license to premises as substantially suited for the retail *alcoholic beverages* business as the premises vacated, the licensee may apply to the department for a transfer of the license to different premises. The department may in its discretion permit a transfer in such cases if it appears to the department that such a transfer is required to do justice to the licensee applying for the transfer. The department shall in no event nor for any cause permit a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than such facilities which exist or had existed at the premises from which the transfer is proposed to be made.

(6) Upon a bona fide sale of the business operated under any license, the license may be transferred to a qualified purchaser. No transfer of any license as to person or location shall be effective unless and until approved by the department, and any licensee or transferee or proposed transferee who operates or attempts to operate under any supposedly transferred license prior to the approval of such transfer by the department, endorsed upon the license in writing, shall be considered as operating without a license and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval, providing the application for transfer has been filed with the department.

(7) Except as provided in subsections (2) through (6) and 16-4-204, no license shall be transferred or sold nor shall it be used for any place of business not described in the license; provided, however, that such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license."

Section 30. Section 16-4-405, MCA, is amended to read:

**"16-4-405. Denial of license.** (1) The department may deny the issuance of a retail *alcoholic beverages* license if it determines that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(2) No retail license may be issued by the department for any premises situated within any zone of such city or town where the sale of *alcoholic*

*beverages* is prohibited by ordinance, a certified copy of which has been filed with the department.

(3) Nor may a license under this code be issued if the department finds from the evidence at the hearing that the welfare of the people residing in the vicinity of the place for which such license is desired will be adversely and seriously affected or that the purposes of this code will not be carried out by the issuance of such license."

Section 31. Section 16-4-411, MCA, is amended to read:

**"16-4-411. Appeals concerning alcoholic beverages laws.** (1) Any interested party shall have the right to appeal any decision of the department of revenue concerning the issuance, transfer, suspension, or revocation of *alcoholic beverages* licenses to the district court in the county in which the issuance, transfer, suspension, or revocation occurred or, at the appellant's option, in the district court of the first judicial district.

(2) The appeal must be in conformity with the provisions of Title 2, chapter 4, part 7."

Section 32. Section 16-4-501, MCA, is amended to read:

**"16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee as follows:

(a) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, \$500; for each storage depot, \$400;

(b) each beer wholesaler, \$400; each table wine distributor, \$400; each subwarehouse, \$400;

(c) each beer retailer, \$200;

(d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license; for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, \$200;

(e) any unit of a nationally chartered veterans' organization, \$50.

(2) The permit fee under 16-4-301(1) is computed at the rate of \$15 a day for each day beer and table wine are sold at those events lasting 2 or more days but in no case be less than \$30.

(3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses shall be issued upon payment by the applicant of an annual license fee in the sum of \$300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is \$200.

(6) The annual fee for resort retail *all-beverages* licenses within a given resort area shall be \$2,000 for each license.



(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as hereinafter provided, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, \$250 for a unit of a nationally chartered veterans' organization and \$400 for all other licensees;

(b) except as hereinafter provided, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, \$350 for a unit of a nationally chartered veterans' organization and \$500 for all other licensees;

(c) except as hereinafter provided, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, \$500 for a unit of a nationally chartered veterans' organization and \$650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and shall be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and shall be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsection (d) of this subsection shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original license fee of \$20,000 for any such license issued. The one-time license fee of \$20,000 shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee.

(8) The fee for one all-beverage license to a public airport shall be \$800. This license is nontransferable.

(9) The license fees herein provided for are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

(10) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 ⅓% of any license fee delinquent on July 1 of the renewal year, 66 ⅔% of any license fee delinquent on August 1 of the renewal year, and 100% of any license fee delinquent on September 1 of the renewal year."

Section 33. Section 16-6-104, MCA, is amended to read:

**"16-6-104. Unlawful alcoholic beverage — seizure — forfeiture.** (1) Any investigator or peace officer who finds an alcoholic beverage which he has reasonable cause to believe is had or kept by any person in violation of the provisions of this code may forthwith seize and remove the same and the packages in which the alcoholic beverage is kept, and upon conviction of the person, the alcoholic beverage and all packages containing the same shall, in addition to any other penalty prescribed by this code, ipso facto be forfeited to the state of Montana.

(2) Any beer which has been shipped into Montana and has not been shipped to and distributed from a warehouse of a licensed wholesaler shall be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of *alcoholic beverages*."

Section 34. Section 16-6-301, MCA, is amended to read:

**"16-6-301. Transfer, sale, and possession of alcoholic beverages — when unlawful.** (1) Except as provided by this code, no person shall, within the state, by himself, his clerk, servant, or agent, expose or keep for sale or, directly or indirectly or upon any pretense or upon any device, sell or offer to sell or, in consideration of the purchase or transfer of any property or for any other consideration or at the time of the transfer of any property, give to any other person any *alcoholic beverage*.

(2) No person shall have or keep any *alcoholic beverage* which has not been purchased *within* the state of Montana. Nothing in this code shall prohibit any person entering this state from any other state or from any foreign country from having in his possession not to exceed 3 wine gallons of *alcoholic beverage* which *beverage* shall have been purchased in another state or foreign country, but no person claiming to have so entered the state shall at any time have in his possession more than 3 wine gallons of *alcoholic beverage* which shall not have been purchased *within the state of Montana*. This subsection shall not apply to the department or to the keeping or having of *alcoholic beverages* by brewers, distillers, and other persons duly licensed by the United States for the manufacture of such *alcoholic beverages* or to the keeping or having of any proprietary or patent medicines or of any extracts, essences, tinctures, or preparations where such having and keeping is authorized by this code.

(3) Nothing contained in this section shall apply to the possession by a sheriff or his bailiff of *alcoholic beverages* seized under execution or other judicial or extrajudicial process or to sales under executions or other judicial or extrajudicial process to the department or a licensee.

(4) Except as provided in this code, no person shall, within the state, by himself, his clerk, servant, or agent:

- (a) attempt to purchase any alcoholic beverage;
- (b) directly or indirectly or upon any pretense or device, purchase any alcoholic beverage; or
- (c) in consideration of the sale or transfer of any property or for any other consideration or at the time of the transfer of any property, take or accept from any other person any alcoholic beverage."

Section 35. Section 16-6-305, MCA, is amended to read:

**"16-6-305. Age limit for sale of alcoholic beverages.** (1) Except in the case of an alcoholic beverage given to a person under 19 years of age by his parent or guardian for beverage or medicinal purposes or administered to him by his physician or dentist for medicinal purposes or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply an alcoholic beverage to any person under 19 years of age or permit any person under that age to consume an alcoholic beverage.

(2) Any person shall be guilty of a misdemeanor who:

(a) invites a person under the age of 19 years into a public place where an alcoholic beverage is sold and treats, gives, or purchases an alcoholic beverage for such person;

(b) permits such person in a public place where an alcoholic beverage is sold to treat, give, or purchase *alcoholic beverages* for him; or

(c) holds out such person to be 19 years of age or older to the owner of the establishment or his or her employee or employees.

(3) It is unlawful for any person to fraudulently misrepresent his or her age to any dispenser of alcoholic beverages or to falsely procure any identification card or to alter any of the statements contained in any identification card."

Section 36. Section 16-6-306, MCA, is amended to read:

**"16-6-306. Bottle clubs prohibited.** The operation of alcoholic beverage bottle clubs is hereby prohibited by any person, persons, partnership, firm, corporation, or association. A bottle club is defined as any person, persons, partnership, firm, corporation, or association maintaining premises not licensed for the sale of *alcoholic beverages*, for a fee or other consideration, including the sale of food, mixes, ice, or any other fluids for *alcoholic beverages*, or otherwise furnishing premises for such purposes and from which they would derive revenue."

Section 37. Section 16-6-309, MCA, is amended to read:

**"16-6-309. Alcoholic beverages administered to institution inmates.** No *alcoholic beverage* shall be administered by any person under 16-1-204 except to bona fide patients or inmates of the institution of which he is in charge, and every person in charge of an institution who administers *alcoholic beverages* in evasion or violation of this code shall be guilty of an offense against this code."

Section 38. Section 16-6-312, MCA, is amended to read:

**"16-6-312. Premises where alcoholic beverages illegally sold public nuisance.** Any room, house, building, boat, vehicle, structure, or place where alcoholic beverages are knowingly manufactured, sold, or bartered in violation of this code or 45-8-111 and all property knowingly kept and used in maintaining the same is hereby declared to be a public nuisance, and any person who maintains such a nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$100 or more than \$500 and be imprisoned not less than 30 days or more than 6 months."

Section 39. Section 16-6-313, MCA, is amended to read:

**"16-6-313. Injunction actions.** An action to enjoin any nuisance defined in this code may be brought in the name of the state of Montana by the attorney general of the state or by any county attorney. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear, by affidavits or otherwise, to the satisfaction of the court or judge in vacation that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the fixtures or other things used in connection with the violation of this code constituting such nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find the property involved was being unlawfully used at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no *alcoholic beverages* shall be manufactured, sold, or bartered in such room, house, building, boat, vehicle, structure, or place or any part thereof. Upon judgment of the court ordering such nuisance to be abated, the court may order that the room, house, building, structure, boat, vehicle, or place shall not be occupied or used for 1 year thereafter. The court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal and liquidated sum of not less than \$500 or more than \$1,000, payable to the state of Montana and conditioned that *alcoholic beverages* will not thereafter be manufactured, sold, or bartered therein or thereon and that he will pay all fines, costs, and damages that may be assessed for any violations of this code upon said property."

Section 40. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 41. **Coordination.** If House Bill No. 313, House Bill No. 562, House Bill No. 586 or any other legislation enacted by the 50th legislature deletes or modifies the authority of the department of revenue to import and sell table wine, any amendment in this act that adds the phrase "and table wine" after the word "liquor" is void to the extent such amendments conflict with the substantive policy regarding table wine contained in such

other act. The code commissioner, in consultation with the agency administering the liquor laws, shall delete such void amendments enacted in this act from the next publication of the Montana Code Annotated.

Approved March 13, 1987.

## CHAPTER NO. 69

[HB 151]

AN ACT TO MAKE PROPERTY TAXES FIRST PAYABLE ON NOVEMBER 30 OF EACH YEAR, OR WITHIN 30 DAYS AFTER THE TAX NOTICE IS POSTMARKED, WHICHEVER IS LATER; TO CLARIFY THAT TAXES THAT FALL DUE ON A HOLIDAY OR SATURDAY MAY BE PAID WITHOUT PENALTY OR INTEREST THE NEXT BUSINESS DAY; AND AMENDING SECTIONS 1-1-307 AND 15-16-102, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-16-102, MCA, is amended to read:

**"15-16-102. Time for payment — penalty for delinquency.** All taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103 and assessments made on new production as provided in Title 15, chapter 23, part 6, and payable under 15-16-121, shall be payable as follows:

(1) One-half of the amount of such taxes shall be payable on or before 5 p.m. on November 30 of each year, *or within 30 days after the tax notice is postmarked, whichever is later*, and one-half on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of such taxes are paid on or before 5 p.m. on November 30 of each year, *or within 30 days after the tax notice is postmarked, whichever is later*, then such amount so payable shall become delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year shall be delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(4) *If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-307."*

Section 2. Section 1-1-307, MCA, is amended to read:

**"1-1-307. Postponement of day appointed for an action when it falls on a holiday or Saturday.** Whenever any act of a secular nature,

other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday or a *Saturday*, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed."

Approved March 13, 1987.

## CHAPTER NO. 70

[HB 230]

AN ACT TO GENERALLY REVISE THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT IN ORDER TO BRING THE ACT INTO COMPLIANCE WITH FEDERAL LAW; AND AMENDING SECTIONS 82-4-203, 82-4-222, AND 82-4-223, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82-4-203, MCA, is amended to read:

**"82-4-203. Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume.

(2) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities; but the term does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(3) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities which permit or have the potential to permit economic development as a water source.

(4) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all land overlying any tunnels, shafts, or other excavations used to extract the mineral, lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral, processing facilities at or near the mine site or other mine associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining, and all activities necessary and incident to the reclamation of such operations.

(5) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(6) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of this state.

(7) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation to include plans for the removal and utilization of minable and marketable coal located within the area planned to be mined.

(8) "*Coal preparation*" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation. The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

(9) "*Coal preparation plant*" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

(10) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

(11) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(12) "Degree" means from the horizontal and in each case is subject to a tolerance of 5% error.

(13) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(14) "Failure to conserve coal" means the nonremoval or nonutilization of minable and marketable coal by an operation, provided that the nonremoval or nonutilization of minable and marketable coal in accordance with reclamation standards established by the department shall not be considered failure to conserve coal.

(15) "Fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(16) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or

serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

(17) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(18) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

(19) "Minaable coal" means that coal which can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

(20) "Mineral" means coal and uranium.

(21) "Operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, *including coal preparation plants*, and all activities, including excavation incident thereto, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

(22) "Operator" means a person engaged in strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden or a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location or a person *engaged in operating a coal preparation plant*.

(23) "Overburden" means all of the earth and other materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of mining.

(24) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

(25) "Prime farmland" means that land previously prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface-layer composition, susceptibility to flooding, and erosion characteristics and which historically has been used for intensive agricultural purposes and as defined in the Federal Register.

(26) "Prospecting" means the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit.

(27) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and



other work to restore an area of land affected by strip mining or underground mining under a plan approved by the department.

(28) "*Remining*" means conducting surface coal mining and reclamation operations that affect previously mined areas; for example, the recovery of additional mineral from existing gob or tailings piles.

(29) "*Strip mining*" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral. *For the purposes of this part only, strip mining also includes remining and coal preparation. The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.*

(30) "*Subsidence*" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

(31) "*Surface owner*" means a person who holds legal or equitable title to the land surface and whose principal place of residence is on the land or who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of his income, if any, from such farming or ranching operations or the state of Montana where the state owns the surface.

(32) "*Topsoil*" means the unconsolidated mineral matter naturally present on the surface of the earth that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macro- and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

(33) "*Underground mining*" means any part of the process followed in the production of a mineral such that vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata are utilized and includes mining by in situ methods.

(34) "*Unwarranted failure to comply*" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this part due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or this part due to indifference, lack of diligence, or lack of reasonable care.

(35) "*Waiver*" means any document which demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

(36) "*Written consent*" means such written statement as is executed by the owner of the surface estate, upon a form approved by the department, demonstrating that such owner consents to entry of an operator for the

purpose of conducting strip-mining operations and that such consent is given only to such strip-mining and reclamation operations which fully comply with the terms and requirements of this part."

Section 2. Section 82-4-222, MCA, is amended to read:

**"82-4-222. Permit application.** (1) An operator desiring a permit shall file an application which shall contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. Such plan shall reflect thorough advance investigation and study by the operator and shall include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of such use and shall state:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the area of land to be affected by the permit and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the affected area;

(c) the names and addresses of the present owners of record and any purchasers under contracts for deed of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this part and an identification of those permits;

(g) whether the applicant is in compliance with 82-4-251 and, if known, whether every officer, partner, director, or any individual owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant is subject to any of the provisions of 82-4-251 and he shall so certify and whether any of the foregoing parties or persons have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond and, if so, a detailed explanation of the facts involved in each case must be attached;

(h) *whether the applicant has a record of outstanding reclamation fees with the federal coal regulatory authority;*

(i) the names and addresses of any persons who are engaged in strip- or underground-mining activities on behalf of the applicant;

(j) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(k) the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature

and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of such seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application shall contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set shall depict subsurface conditions at such intervals as the department requires across the surface and shall run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section shall depict the thickness and geologic character of all known strata beginning with the topsoil. In addition, each application for an underground-mining permit shall be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit period. These cross sections shall also include all existing shafts, entries, and haulageways.

(l) the name and date of a daily newspaper of general circulation within the county in which the applicant will prominently publish at least once a week for 4 successive weeks after submission of the application an announcement of his application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected should a permit be granted;

(m) a determination of the probable hydrologic consequences of coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface- and ground-water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made. However, this determination is not required until such time as hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit may not be approved until such information is available and is incorporated into the application.

(n) a coal conservation plan; and

(o) such other or further information as the department may require.

(2) The application for a permit shall be accompanied by two copies of all maps meeting the requirements of the subsections below. The maps shall:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining and the boundaries of surface properties and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of such area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan shall indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

(k) show the surface location lines of any geologic cross sections which have been submitted;

(l) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs, and trees;

(m) be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification shall be signed and notarized. The department may reject a map as incomplete if its accuracy is not so attested.

(n) contain such other or further information as the department may require.

(3) If the department finds that the probable total annual production at all locations of any strip- or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic consequences that the department requires and the statement of result of test borings or core samplings shall, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received funds for this purpose.

(4) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading

work, highwall reduction, topsoiling, planting, revegetating, and a reclamation plan for the area affected by the operation, which proposals shall meet the requirements of this part and rules adopted under this part. The reclamation plan shall address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is anticipated that individual permits will be sought.

(5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by an insurance company authorized to do business in the state certifying that the applicant has in force for the strip- or underground-mining and reclamation operations for which the permit is sought a public liability insurance policy, or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of strip- or underground-coal-mining and reclamation operations, including use of explosives, and entitled to compensation under applicable provisions of state law. The permittee must maintain the policy in full force and effect during the term of the permit and any renewal until all reclamation operations have been completed.

(6) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of his application for public inspection with the clerk and recorder at the courthouse of the county where the major portion of mining is proposed to occur."

Section 3. Section 82-4-223, MCA, is amended to read:

**"82-4-223. Permit fee and surety bond.** (1) An application fee of \$100 shall be paid before the permit required in this part shall be issued.

(2) Before a permit may be issued, the operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board, on the recommendation of the commissioner, of not less than \$200 for each acre or fraction thereof of the area of land affected, with a minimum bond of \$10,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board. The operator may elect to deposit cash, negotiable bonds, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area. The level of bonding shall be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond unless required to do so by the board. The board shall adjust the amount of bond required if the cost of reclamation changes.

(3) In determining the amount of the bond, the board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but in no event shall the bond be less than the total estimated cost to the state of completing the work described in the reclamation plan."

**Section 4. Extension of authority.** Any existing authority of the department of state lands or the board of land commissioners to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 13, 1987.

## CHAPTER NO. 71

[HB 238]

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO DISASTER AND EMERGENCY SERVICES; AND AMENDING SECTIONS 10-3-101, 10-3-103, 10-3-311, AND 10-3-401, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 10-3-101, MCA, is amended to read:

**"10-3-101. Declaration of policy.** Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action and natural disasters and in order to provide for prompt and timely reaction to an emergency or disaster, to insure that preparation of this state will be adequate to deal with such disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state, it is hereby found and declared to be necessary to:

(1) authorize the creation of local or interjurisdictional organizations for disaster and emergency services in the political subdivisions of this state;

(2) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made disasters;

(3) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;

(4) clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from emergencies and disasters;

(5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of this state and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;

(7) provide an emergency and disaster management system embodying all aspects of emergency or disaster prevention, preparedness, response, and recovery;

(8) assist in prevention of disasters caused or aggravated by inadequate planning for public and private facilities and land use; and

(9) supplement, without in any way limiting, authority conferred by previous statutes of this state and increase the capability of the state, local, and interjurisdictional disaster and emergency services agencies to perform disaster and emergency services."

Section 2. Section 10-3-103, MCA, is amended to read:

**"10-3-103. Definitions.** As used in parts 1 through 4 of this chapter, the following definitions apply:

(1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(2) "Department" means the department of military affairs.

(3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, or air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, or accidents involving radiation byproducts or other hazardous materials.

(4) "Disaster and emergency services" means the preparation for and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to *mitigate*, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(5) "Division" means the division of disaster and emergency services of the department of military affairs.

(6) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property which timely action can avert or minimize.

(7) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(8) "Principal executive officer" means the mayor, chairman of the county commissioners, or other chief executive officer of a political subdivision.

(9) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings."

Section 3. Section 10-3-311, MCA, is amended to read:

**"10-3-311. Emergency or disaster expenditures — restrictions.**

(1) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies the expenditure and is declared by the governor, to meet contingencies and needs arising from an emergency or disaster, as defined in 10-3-103, which results in damage to the works, buildings, or property of the state or any political subdivision thereof or which menaces the health, welfare, safety, lives, or property of any considerable number of persons in any county or community of the state, upon demonstration by the political jurisdiction that:

(a) such political jurisdiction has exhausted all available emergency levies;

(b) the emergency is beyond the financial capability of the political jurisdiction to respond and for which no appropriation in the affected fund is available in sufficient amount to meet the emergency or disaster; or

(c) federal funds available for such emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws.

*(2) No expenditures for flood-related damages may be made to assist a political subdivision that is sanctioned because it has flood hazard areas identified under the national flood insurance program, parts 59 through 77 of 44 C.F.R., and does not have in effect adequate regulations for such areas or has failed to enforce such regulations as required by the national flood insurance program.*

(3) The governor is charged with the implementation of the program.

(4) The administration and development of rules for implementation of this section must be promulgated by the department."

Section 4. Section 10-3-401, MCA, is amended to read:

**"10-3-401. Local and interjurisdictional disaster and emergency plan — distribution.** (1) Each political subdivision eligible to receive funds under this chapter shall prepare a local or interjurisdictional disaster and emergency plan and program covering the area for which that political subdivision is responsible. This plan shall be in accordance with and in support of the state disaster and emergency plan and program.

(2) The political subdivision shall prepare and distribute on behalf of the principal executive officers, in written form, a clear and complete statement of:

(a) the emergency responsibilities of all local agencies, if any, and officials;

(b) the disaster and emergency chain of command;

(c) local evacuation authority and responsibility; and

(d) local authority and responsibility for control of ingress and egress to and from an emergency or disaster area."



**Section 5. Authority of principal executive officer.** The principal executive officer shall:

(1) direct and compel the evacuation of all or part of the population from an emergency or disaster area within that political subdivision when necessary for the preservation of life or other disaster mitigation, response, or recovery; and

(2) control the ingress and egress to and from an emergency or disaster area, the movement of persons within the area, and the occupancy of premises therein.

**Section 6. Extension of authority.** Any existing authority of the department of military affairs to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 7. Codification instruction.** Section 5 is intended to be codified as an integral part of Title 10, chapter 3, part 4, and the provisions of Title 10, chapter 3, part 4, apply to section 5.

Approved March 13, 1987.

## CHAPTER NO. 72

[HB 257]

AN ACT TO REVISE THE REQUIREMENTS FOR LICENSURE AS A PROFESSIONAL LAND SURVEYOR OR LAND SURVEYOR-IN-TRAINING; AMENDING SECTIONS 37-67-303 AND 37-67-308 THROUGH 37-67-310, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-67-303, MCA, is amended to read:

**“37-67-303. Application — contents — fees.** (1) Applications for registration shall be on forms prescribed by the board and furnished by the department, shall contain statements made under oath showing the applicant's education and a detailed summary of his technical work, and shall contain *the required* references.

(2) The fee for engineer-in-training is as prescribed by the board and shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(3) The application fee for registration as a professional engineer is as prescribed by the board for those holding an engineer-in-training certificate validated for Montana. For those holding a valid engineer-in-training certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of engineer-in-training certification and one examination. Upon approval of application for registration as a professional engineer, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a professional engineer.

(4) The department, subject to approval by the board, may, on approval of the application, payment of a fee as prescribed by the board and payment of an additional fee equal to the appropriate renewal fee, issue a certificate of registration as a professional engineer to a person who holds a certificate of qualification or registration issued to him by the committee on national engineering certification of the national council of engineering examiners or by a state, territory, or possession of the United States or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board.

(5) The fee for land surveyor-in-training is as prescribed by the board, which shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(6) The application fee for registration as a professional land surveyor is as prescribed by the board for those holding a land surveyor-in-training certificate validated in Montana. For those holding a valid land surveyor-in-training certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of the certification. Upon approval of application for registration as a professional land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a professional land surveyor.

(7) The application fee for registration as both a professional engineer and professional land surveyor is as prescribed by the board for those holding engineer-in-training and land surveyor-in-training certificates validated in Montana. For those holding valid engineer-in-training and land surveyor-in-training certificates from another state, the application fee is as prescribed by the board. The fee shall accompany the application. Upon approval of application for registration as a professional engineer and professional land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate.

(8) If the board denies issuance of a certificate of registration to any applicant, the initial fee deposited shall be retained as an application fee."

Section 2. Section 37-67-308, MCA, is amended to read:

**"37-67-308. General qualifications of applicants for registration as professional land surveyor or land surveyor-in-training.** (1) To be eligible for admission to examination for professional land surveyor or land surveyor-in-training, an applicant must be of good character and reputation. The applicant shall submit five references with his application for registration as a professional land surveyor, three of which references shall be professional land surveyors having personal knowledge of his land surveying experience. In the case of an application for certification as a land surveyor-in-training, the applicant shall submit three references, one of whom shall be a professional land surveyor having personal knowledge of the applicant's land surveying experience.

(2) The evaluation of a land surveyor applicant's qualifications involves a consideration of his education, technical and land surveying experience, exhibits of land surveying projects which he has been *in charge of*, recommendations by references, and a reviewing of these categories. *The board may require an interview if it considers one necessary.*"

Section 3. Section 37-67-309, MCA, is amended to read:

**"37-67-309. Qualifications of applicant for registration as professional land surveyor.** One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a professional land surveyor:

(1) have a bachelor of science degree in a board-approved curriculum *which must contain a minimum of 10 quarter credit hours in surveying techniques, principles, and practices*, and present evidence satisfactory to the board that, in addition thereto, he has had at least 4 years of combined office and field experience in land surveying, with a minimum of 3 years of *progressive* experience on land surveying projects under the direct supervision of a professional land surveyor, and have passed the examinations as required by the board;

(2) have 2 years of formal education in a board-approved curriculum above high school level with at least 90 quarter credit hours *which must contain a minimum of 40 quarter credit hours in surveying techniques, principles, and practices*, or equivalent semester hours passed, or the equivalent approved by the board, and present evidence satisfactory to the board that, in addition thereto, he has had at least 6 years of combined office and field experience in land surveying satisfactory to the board, with a minimum of 4 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and have passed the examinations as required by the board;

(3) *have a bachelor of science degree in a board-approved curriculum and present evidence satisfactory to the board that, in addition thereto, he has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and have passed the examinations as required by the board; or*

(4) present evidence satisfactory to the board that he has had at least 10 years of combined office and field experience in land surveying satisfactory to the board, with a minimum of 6 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and has passed the examinations as required by the board."

Section 4. Section 37-67-310, MCA, is amended to read:

**"37-67-310. Qualifications of applicant for registration as land surveyor-in-training.** One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a land surveyor-in-training:

(1) have a bachelor of science degree in a *board-approved* curriculum, *which must contain a minimum of 40 quarter credit hours in surveying techniques, principles, and practices*, and have passed the written examinations required by the board;

(2) have at least 2 years of formal education in an approved curriculum *which must contain a minimum of 40 quarter credit hours in surveying techniques, principles, and practices*, above high school level with at least

90 quarter credit hours or equivalent semester hours passed, or the equivalent approved by the board, and have passed the written examinations required by the board;

(3) *have a bachelor of science degree in a board-approved curriculum and present evidence satisfactory to the board that, in addition thereto, he has had at least 2 years of combined office and field experience in land surveying, with a minimum of 1 year in charge of land surveying projects under the supervision of a professional land surveyor, and have passed the written examinations required by the board; or*

(4) *present evidence satisfactory to the board that he has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of experience in charge of land surveying projects in Montana, under the supervision of a professional land surveyor, and has passed the examinations required by the board."*

Section 5. **Extension of authority.** Any existing authority of the board of professional engineers and professional land surveyors to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 6. **Applicability.** This act applies to applicants for initial licensure on or after October 1, 1987.

Approved March 13, 1987.

## CHAPTER NO. 73

[HB 269]

### AN ACT INCREASING THE MAXIMUM HEIGHT OF TRUCKS; AND AMENDING SECTIONS 61-10-103 AND 61-10-124, MCA.

WHEREAS, to establish uniformity with neighboring states in the matter of height of trucks traveling between states, Montana must adopt a height limit of 14 feet.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-10-103, MCA, is amended to read:

**"61-10-103. Height.** A vehicle, unladen or with load, may not exceed a height of 14 feet."

Section 2. Section 61-10-124, MCA, is amended to read:

**"61-10-124. Special permits — fee.** (1) Except as provided in subsection (2)(b), in addition to the regular registration and gross vehicle weight fees, a fee of \$10 for each trip permit and a fee of \$75 for each term permit issued for size and weight in excess of that specified in 61-10-101 through 61-10-110 shall be paid for all movements under special permits on the public highways under the jurisdiction of the department.

(2) (a) Except as provided in subsection (2)(b), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load,

or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; and an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet, or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. Special permits for vehicle combinations of more than two trailers are not permitted under this section. Special permits for vehicle combinations may specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). The fee for this permit is \$75. This permit covers a period of 1 year and expires on December 31 of each year with no grace period.

(c) With payment of the appropriate gross weight fee required by 61-10-203 and with payment of the fee prescribed in subsection (1), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit."

**Section 3. Extension of authority.** Any existing authority of the department of highways to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 13, 1987.

## CHAPTER NO. 74

[HB 281]

AN ACT TO PROVIDE RULEMAKING AUTHORITY TO THE DEPARTMENT OF JUSTICE TO IMPLEMENT TITLE 61, CHAPTER 5, MCA, RELATING TO LICENSING FOR MOTOR VEHICLE OPERATORS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Authority of department.** The department shall administer and enforce the provisions of this chapter and may adopt rules to implement this chapter.

**Section 2. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 61, chapter 5, and the provisions of Title 61, chapter 5, apply to section 1.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved March 13, 1987.

**CHAPTER NO. 75**

[HB 297]

**AN ACT TO EXEMPT APPROVED BICYCLE HIGHWAY RACING EVENTS FROM COMPLIANCE WITH TRAFFIC SAFETY LAWS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Bicycle racing — when lawful.** (1) Bicycle racing on a highway is prohibited except as authorized in this section.

(2) Bicycle racing on a highway is lawful when a racing event is approved by state or local authorities on any highway under their respective jurisdictions. Approval of bicycle highway racing events will be granted only under conditions that assure reasonable safety for all race participants, spectators, and other highway users and that prevent unreasonable interference with traffic flow.

(3) By agreement with the approving authority, participants in an approved bicycle highway racing event may be exempted from compliance with any traffic laws otherwise applicable if traffic control is adequate to assure the safety of all highway users.

**Section 2. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 61, chapter 8, part 6, and the provisions of Title 61, chapter 8, part 6, apply to section 1.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved March 13, 1987.

**CHAPTER NO. 76**

[HB 321]

**AN ACT TO ALLOW DRIVER RECORDS TO BE REPRODUCED ON FILM OR PLACED ON A COMPUTER STORAGE DEVICE; TO ESTABLISH THAT REPRODUCTIONS OF SUCH RECORDS PLACED ON A COMPUTER STORAGE DEVICE ARE CONSIDERED ORIGINALS AND ADMISSIBLE IN EVIDENCE; AND AMENDING SECTION 61-11-102, MCA.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-11-102, MCA, is amended to read:

**"61-11-102. Records to be kept by the department.** (1) The department shall file every application for a driver's license received by it and shall maintain suitable indexes containing, in alphabetical order:

(a) all applications denied and on each thereof note the reasons for such denial;

(b) all applications granted; and

(c) the name of every licensee whose license has been suspended or revoked by the department and after each such name note the reasons for such action.

(2) The department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this state and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and certain traffic accidents in which he has been involved shall be readily ascertainable and available for the consideration of the department upon any application for renewal of license and at other suitable times. No record of involvement in a traffic accident may be entered on a licensee's record unless he was convicted, as defined in 61-11-203, for an act causally related to the accident.

(3) The department is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident.

(4) *The department may photograph, microphotograph, photostat, or reproduce on film any of its records. The film or reproducing material must be durable, and the device used to reproduce the records on the film or material must accurately reproduce and perpetuate the original records. Such a photograph, microphotograph, photostatic copy, or photographic film of the original record is an original record for all purposes and is admissible in evidence in all courts or administrative agencies. A facsimile, exemplification, or certified copy of the original record is a transcript of the original for purposes stated in this section.*

(5) *The department may place on a computer storage device the information contained on original records or reproductions of original records made pursuant to this section. Signatures on records need not be placed on a computer storage device.*

(6) *A reproduction of the information placed on a computer storage device is an original of the record for all purposes and is admissible in evidence without further foundation in all courts or administrative agencies when the following certification by a custodian of the record appears on each page:*

*The individual named below, being a duly designated custodian of the driver records of the department of justice, motor vehicle division, certifies this document as a true reproduction, in accordance with 61-11-102(6), of the information contained in a computer storage device of the department of justice, motor vehicle division.*

*Signed:*

*(Print Full Name)"*

**Section 2. Extension of authority.** Any existing authority of the department of justice to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 13, 1987.

**CHAPTER NO. 77**

[HB 332]

AN ACT AUTHORIZING THE PUBLIC SERVICE COMMISSION TO  
ISSUE PROTECTIVE ORDERS FOR TRADE SECRETS; AND  
AMENDING SECTION 69-3-105, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 69-3-105, MCA, is amended to read:

**"69-3-105. Access to commission records and reports — protective order.** (1) *Except as provided in subsection (2), the reports, records, accounts, files, papers, and memoranda of every nature in the possession of the commission are open to the public at reasonable times, subject to the exception that when the commission considers it necessary, in the interest of the public, it may withhold from the public any facts or information in its possession for a period of not more than 90 days after the acquisition of the facts or information.*

(2) *The commission may issue a protective order when necessary to preserve trade secrets, as defined in 30-14-402, required to carry out its regulatory functions."*

Section 2. **Extension of authority.** Any existing authority of the public service commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 13, 1987.

**CHAPTER NO. 78**

[HB 334]

AN ACT TO GENERALLY REVISE THE LICENSING REQUIREMENTS FOR SOCIAL WORKERS AND PROFESSIONAL COUNSELORS; REQUIRING POSTDEGREE WORK FOR SOCIAL WORKERS; RECOGNIZING NATIONAL EXAMS FOR PROFESSIONAL COUNSELORS; PROVIDING FOR ANNUAL LICENSES FOR SOCIAL WORKERS; AMENDING SECTIONS 37-22-301, 37-22-303, AND 37-23-202, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-22-301, MCA, is amended to read:

**"37-22-301. License requirements — exemptions.** (1) A license applicant shall satisfactorily complete an examination prepared and administered by the board, except that during the 365-day period following the



effective date of this chapter a license must be granted without examination if the requirements of subsection (2) are met.

(2) Before an applicant may take the examination, he shall present three letters of reference from social workers, psychiatrists, psychologists, or psychiatric nurses who have knowledge of the applicant's professional performance and demonstrate to the board that he:

(a) has a doctorate or master's degree in social work from a program accredited by the council on social work education or approved by the board;

(b) has accumulated 3,000 hours of *postdegree work experience* in psychotherapy within the past 5 years; and

(c) abides by the social work ethical standards adopted under 37-22-201.

(3) An applicant who has failed the examination may reapply to take the examination.

(4) An applicant is exempt from the examination requirement if he satisfies the board that he is licensed, certified, or registered under the laws of a state or territory of the United States that imposes substantially the same requirements as this chapter and that he has passed an examination similar to that required by the board."

Section 2. Section 37-22-303, MCA, is amended to read:

**"37-22-303. Issuance, effective date, and display of license.** (1) Upon successful completion of the examination required by 37-22-301 or upon demonstration by a person that he is exempt from examination and has otherwise fulfilled the requirements of 37-22-301, the applicant must be issued a license attesting to the date and fact of licensure. The license is effective on the date of issuance and expires *December 31 of each year*.

(2) The license must be displayed in the registrant's place of business or employment."

Section 3. Section 37-23-202, MCA, is amended to read:

**"37-23-202. Licensure requirements.** (1) To be licensed on or before December 31, 1987, as a professional counselor under this chapter, an applicant must have satisfactorily completed:

(a) a planned graduate program of study that was primarily counseling in nature which resulted in an advanced degree in a counseling field from an institution accredited to offer such a degree program;

(b) 2,000 hours or more of postdegree work experience as a counselor in a hospital, school, agency, or other supervised setting;

(c) and passed an examination prepared and administered by:

(i) the board, based on a national examination approved by the board;

(ii) the national board of certified counselors; or

(iii) *the national academy of certified clinical mental health counselors;*  
and

(d) an application form and process prescribed by the board that includes submission of three letters of nomination from counselors or related professionals, each of whom holds a master's degree or higher and who can attest to the quality of the applicant's work.

(2) To be licensed after December 31, 1987, an applicant must have satisfactorily completed:

(a) a planned graduate program of 90 quarter hours, primarily counseling in nature, nine quarter hours of which were earned in an advanced counseling practicum, which resulted in a graduate degree from an institution accredited to offer a graduate program in counseling;

(b) 2,000 hours of counseling practice supervised by a licensed professional counselor or licensed member of an allied mental health profession, at least half of which was postdegree. The applicant must have each supervisor endorse his application for licensure, attesting to the number of hours supervised.

(c) and passed an examination prepared and administered by:

(i) the board, based on a national examination approved by the board;

(ii) *the national board of certified counselors; or*

(iii) *the national academy of certified clinical mental health counselors;*  
and

(d) an application form and process prescribed by the board."

**Section 4. Expiration of two-year licenses.** A 2-year license expires on the expiration date contained therein and a new license must be issued to an applicant meeting renewal requirements. The new license must be issued for the remaining portion of the calendar year, for a fee based on the pro rata portion of the time remaining in the year.

**Section 5. Extension of authority.** Any existing authority of the board of social work examiners and professional counselors to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 6. Applicability.** This act applies to licenses issued after the effective date of this act.

**Section 7. Effective date.** This act is effective on passage and approval.

Approved March 13, 1987.

**CHAPTER NO. 79**

[HB 427]

**AN ACT PERMITTING A VESTED MEMBER TO QUALIFY EMPLOYMENT SERVICE WITH THE MONTANA COOPERATIVE EXTENSION SERVICE UNDER THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-4-401 AND 19-4-405, MCA; AND PROVIDING AN EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Creditable service for extension service employment.**

(1) At any time before retirement, a member with 5 years or more of creditable service in the retirement system may make a written election with the retirement board to qualify up to 5 years of his employment service with the Montana cooperative extension service, subject to the limitation contained in 19-4-405, if:

(a) the service involved instructional service at a unit of the Montana university system; and

(b) the member received a refund of his membership contributions under the civil service retirement system or the federal employees' retirement system for the service to be qualified.

(2) To qualify service under this section, the member shall contribute to the retirement system an amount equal to the combined employer and employee contribution for his first full year's teaching salary earned after becoming a member of the retirement system for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service. The contribution rate must be that rate in effect at the time he is eligible for such service.

(3) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the retirement board.

**Section 2. Section 19-4-401, MCA, is amended to read:**

**"19-4-401. Creditable service.** (1) The creditable service of a member begins on the date of his employment in a capacity prescribed for his eligibility in 19-4-302 and accumulates to the member's credit on the basis of the retirement board's policy governing creditable service.

(2) The creditable service of a member includes the following:

(a) each year of service for which contributions to the retirement system were deducted from his compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that no credit may be awarded for those years of service for which the contributions have been withdrawn and not replaced;

(b) any service awarded by a prior service certificate issued under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, and their subsequent amendments or under the provisions of 19-4-406;

(c) any out-of-state employment service awarded by the retirement board under the provisions of 19-4-402;

(d) any service awarded for employment while on leave under 19-4-403;

(e) any service in the military, red cross, or merchant marine awarded by the retirement board under 19-4-404;

(f) any employment service awarded by the retirement board under the provisions of 19-4-408; and

(g) any service awarded by the retirement board for extension service employment under [section 1].

(3) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service."

Section 3. Section 19-4-405, MCA, is amended to read:

**"19-4-405. Limit on creditable service which can be awarded.** The total creditable service for out-of-state teaching, employment while on leave, *employment with the Montana cooperative extension service*, and active service in the armed forces of the United States or the American red cross or merchant marine may not exceed 5 years."

Section 4. **Extension of authority.** Any existing authority of the teachers' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 19, chapter 4, and the provisions of Title 19, chapter 4, apply to section 1.

Section 6. **Effective date.** This act is effective July 1, 1987.

Approved March 13, 1987.

## CHAPTER NO. 80

[HB 469]

AN ACT TO ELIMINATE THE STATUTORY REQUIREMENTS FOR THE QUALIFICATIONS OF THE SUPERINTENDENT OF THE MONTANA STATE HOSPITAL; REPEALING SECTION 53-6-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Repealer.** Section 53-6-302, MCA, is repealed.

Section 2. **Extension of authority.** Any existing authority of the department of institutions to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 13, 1987.

**CHAPTER NO. 81**

[HB 484]

AN ACT GENERALLY REVISING PROVISIONS CONCERNING THE SHERIFFS' RETIREMENT SYSTEM; EXCLUDING CERTAIN RETIRED SHERIFFS FROM MEMBERSHIP IN THE SYSTEM; PROVIDING A REDUCTION IN THE RETIREMENT ALLOWANCE RECEIVED BY THESE SHERIFFS; REVISING THE METHOD FOR CALCULATING AN OPTIONAL DEATH BENEFIT UNDER THE SYSTEM; AMENDING SECTIONS 19-7-301 AND 19-7-604, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-7-301, MCA, is amended to read:

**"19-7-301. Membership — exclusions — allowance reduction.**

(1) Every sheriff is required to become a member of the sheriffs' retirement system on July 1, 1974, unless he was previously a member of the public employees' retirement system, in which case he may at his option become a member of the sheriffs' retirement system. All sheriffs who become members of the sheriffs' retirement system must remain members so long as actively employed in such capacity, *except as provided in subsection (2).*

(2) *A retired sheriff who is employed as a sheriff after retirement for less than 60 working days in a calendar year is excluded from membership. The retirement allowance of a retired sheriff so employed must be reduced by \$1 for each \$3 earned in excess of \$5,000 in a calendar year."*

Section 2. Section 19-7-604, MCA, is amended to read:

**"19-7-604. Payments in case of death before retirement.** (1) If a member dies before retirement, his beneficiary is entitled to elect one of the following options for which the member qualified and the beneficiary qualifies:

(a) a lump-sum payment of the accumulated deductions standing to the member's credit at his death;

(b) a retirement allowance based on 2% of the final salary for each year of service up to a maximum of 25 years, reduced actuarially from age 65 or the date he would have completed 25 years of creditable service, *whichever provides a larger retirement allowance;*

(c) a retirement allowance based on one-half of final salary, reduced to 25% of final salary for the period of time the beneficiary receives workers' compensation, if the board finds that the member died as a direct and proximate result of injuries received in the course of employment.

(2) On or before July 1, 1982, a beneficiary who is receiving a death benefit may elect a different option under subsection (1). Any change in options is subject to actuarial adjustments for benefits received prior to the change as determined by the board."

**Section 3. Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Effective date.** This act is effective July 1, 1987.

Approved March 13, 1987.

## CHAPTER NO. 82

[HB 485]

AN ACT INCREASING THE MAXIMUM PENSION THAT MAY BE PAID TO A SURVIVING SPOUSE OR CHILDREN OF CERTAIN DECEASED VOLUNTEER FIREFIGHTERS; AMENDING SECTION 19-11-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 19-11-605, MCA, is amended to read:

**"19-11-605. Pensions to surviving spouses and children.** (1) Each association shall pay, out of its disability and pension fund, a monthly pension to the surviving spouse or children of a deceased member of the association who on the date of his death was an active member of the fire department in the city or town in which the association was formed, who had elected to retire from active service in the fire department and receive a service pension as provided for by 19-11-602, or who, prior to death, had suffered a sickness or injury and was receiving or was qualified to receive a disability pension as provided by 19-11-604. The pension shall be equal to one-half of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for services rendered as an active member of the fire department in the city or town in which the association was formed.

(2) Effective July 1, 1974, if the deceased member had completed 20 years of service and had elected to serve additional years, the pension provided for in subsection (1) shall be increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for his services as an active member of the fire department.

(3) The monthly pension paid to the surviving spouse or children of an active member who dies after July 1, 1973, or an active member who elects to retire after July 1, 1973, must be at least one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to the surviving spouse or children of an active member who died prior to July 1, 1974, or who elected to retire before July 1, 1974, must be at least \$200. In the case

*of a volunteer firefighter, the pension paid to a surviving spouse or children may not exceed the amount provided for a service pension for a volunteer firefighter under 19-11-602(3).*

(4) A pension may be paid to the surviving spouse only so long as such spouse remains unmarried. A surviving spouse is not entitled to a pension under this section if the marriage was entered into after the firefighter had elected to retire from active service and had begun to receive a service pension as provided for by 19-11-602 or if the marriage was entered into after the firefighter had qualified for and had begun to receive a disability pension as provided for by 19-11-604. The pension provided for in this section may not be paid to the children of deceased firefighters after they have attained the age of 18."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 13, 1987.

## CHAPTER NO. 83

[HB 508]

AN ACT ALLOWING THE DEPARTMENT OF ADMINISTRATION TO WAIVE THE REQUIREMENT TO FORFEIT BID SECURITY WHEN A SUCCESSFUL BIDDER REFUSES TO EXECUTE PROPOSED CONTRACTS FOR BIDS FOR CONSTRUCTION OF PUBLIC BUILDINGS OR FACILITIES UNDER TITLE 18, CHAPTER 2; AMENDING SECTION 18-1-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 18-1-204, MCA, is amended to read:

**"18-1-204. Forfeiture — bidder's liability.** (1) *Except as provided in subsection (3), if in any instance one or more bids be accepted or a sale of any form of indebtedness is ordered or a contract is awarded, any bidder whose bid is accepted and who shall thereafter refuse to enter into and execute the proposed contract or carry out and consummate the purchase of any form of indebtedness, as stated in the covenant in the bid and herein, shall absolutely forfeit such moneys or bank instruments to the public authority concerned and become immediately liable on the bid bond but not in excess of the penal sum therein stated.*

(2) In no event shall the bidder's liability, the liability of the maker of the security instrument, or the liability on the bid bond exceed the amount specified by the public authority in the solicitation or advertisement for bids, whether the amount shall be posted in money, be stated as the amount payable in the security instrument, or as the maximum amount payable in the bid bond.

(3) *With respect to bids accepted under Title 18, chapter 2, the department may waive the requirement to forfeit bid security."*

**Section 2. Effective date.** This act is effective on passage and approval.

Approved March 13, 1987.

## CHAPTER NO. 84

[HB 553]

AN ACT TO REQUIRE ALL WARRANTS ISSUED FOR THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES THAT ARE FUNDED WITH FEDERAL MONEY TO BE PRESENTED FOR PAYMENT WITHIN 180 DAYS AFTER THE DATE OF ISSUE; AND AMENDING SECTION 17-8-303, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-8-303, MCA, is amended to read:

**"17-8-303. Warrants — presentation and cancellation.** (1) *State warrants must be presented for payment within the time limits specified as follows:*

(a) *Except as provided in subsection (1)(b), all warrants drawn by the state auditor on the state treasury shall be presented for payment within 1 year after the date of the issue thereof.*

(b) *Warrants issued for the department of social and rehabilitation services that are funded to any extent with federal money shall be presented for payment within 180 days after the date of issue.*

(2) *Should the payee or legal holder of any warrant fail to present it for payment within the time specified in subsection (1), the state auditor shall enter the same as canceled on the books of his office and the amount shall be credited to a separate agency fund account administered by the state auditor. Should the payee or legal owner of any canceled warrant present it for payment or present a claim for payment within 4 years from the date of issue, the state auditor may, upon proper showing by affidavit, issue a new warrant in lieu thereof.*

(3) *Three years after cancellation, the warrant shall be classed as unclaimed property subject to the provisions of Title 70, chapter 9, parts 1 through 3. Should the payee or legal owner of any canceled warrant present it for payment or present a claim for payment, such presentation shall be to the department of revenue as provided in 70-9-310."*

**Section 2. Costs of changes.** The department of social and rehabilitation services is responsible for all costs associated with the changes to the existing warrant writing system and computer programs to implement the requirement that warrants funded to any extent with federal money be presented for payment within 180 days after the date of issue.



Section 3. **Extension of authority.** Any existing authority of the state auditor to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 13, 1987.

## CHAPTER NO. 85

[SB 2]

AN ACT ESTABLISHING LIEN RIGHTS FOR PHYSICAL THERAPISTS, OCCUPATIONAL THERAPISTS, CHIROPRACTORS, AND PERSONS PRACTICING DENTISTRY; AMENDING SECTIONS 71-3-1111, 71-3-1112, 71-3-1114, 71-3-1115, 71-3-1117, AND 71-3-1118, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 71-3-1111, MCA, is amended to read:

**"71-3-1111. Short title.** This part may be cited as the "Physician, Nurse, Physical Therapist, Occupational Therapist, Chiropractor, Dentist, and Hospital Lien Act"."

Section 2. Section 71-3-1112, MCA, is amended to read:

**"71-3-1112. Purpose.** The purpose of this part is to establish lien rights for physicians, nurses, *physical therapists, occupational therapists, chiropractors, persons practicing dentistry*, and hospitals when a person receiving medical treatment:

- (1) is injured through the fault or neglect of another; or
- (2) is either insured or a beneficiary under insurance."

Section 3. Section 71-3-1114, MCA, is amended to read:

**"71-3-1114. Liens of physicians, nurses, physical therapists, occupational therapists, chiropractors, persons practicing dentistry, and hospitals.** (1) Whenever a physician, nurse, *physical therapist, occupational therapist, chiropractor, person practicing dentistry*, or hospital renders services to a person injured through the fault or neglect of another, the physician, nurse, *physical therapist, occupational therapist, chiropractor, person practicing dentistry*, or hospital, upon giving the required notice of lien, has a lien for the value of services rendered on:

- (a) any claim or cause of action the injured person, his estate, or successors may have for injury, disease, or death;
- (b) any judgment the injured person, his estate, or successors may obtain for injury, disease, or death; and
- (c) all money paid in satisfaction of such judgment or in settlement of the claim or cause of action.

(2) If a person is an insured or a beneficiary under insurance which provides coverage in the event of injury or disease, a physician, nurse, *physical therapist, occupational therapist, chiropractor, person practicing dentistry*, or hospital, upon giving the required notice of lien, has a lien for the value of services rendered on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) The lien is subject to the lien of an attorney provided in 37-61-420."

Section 4. Section 71-3-1115, MCA, is amended to read:

**"71-3-1115. Notice of lien.** (1) A physician, nurse, *physical therapist, occupational therapist, chiropractor, person practicing dentistry*, or hospital claiming a lien shall serve written notice upon the person and upon his insurer, if any, against whom liability for injury, disease, or death is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

(2) A physician, nurse, *physical therapist, occupational therapist, chiropractor, person practicing dentistry*, or hospital claiming a lien upon proceeds or payments payable by an insurer shall serve written notice upon the insurer against whom the lien is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed."

Section 5. Section 71-3-1117, MCA, is amended to read:

**"71-3-1117. Liability for failure to recognize lien.** If any insurer or person, after receiving notice of lien, makes payment on account of injury, disease, or death and the amount of the lien claimed by any physician, nurse, *physical therapist, occupational therapist, chiropractor, person practicing dentistry*, or hospital has not been paid, the insurer or person is liable to the physician, nurse, *physical therapist, occupational therapist, chiropractor, person practicing dentistry*, or hospital for the reasonable value of the services."

Section 6. Section 71-3-1118, MCA, is amended to read:

**"71-3-1118. Applicability.** (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers' Compensation Act or the Occupational Disease Act of Montana.

(2) This part applies to all payments awarded for medical, *therapy, chiropractic, dentistry*, and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under a policy of life insurance or group life insurance, a contract of disability insurance, or an annuity contract or to pension benefits payable under a qualified pension plan."

Approved March 16, 1987.

**CHAPTER NO. 86**

[SB 11]

AN ACT AMENDING THE UNIFORM TRANSFERS TO MINORS ACT TO PROVIDE THAT CUSTODIAL PROPERTY IS CREATED WHEN A SECURITY IS TRANSFERRED TO A CUSTODIAL ACCOUNT; AND AMENDING SECTION 72-26-603, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 72-26-603, MCA, is amended to read:

**"72-26-603. Manner of creating custodial property and effecting transfer — designation of initial custodian — control.** (1) Custodial property is created and a transfer is made whenever:

(a) an uncertificated security or a certificated security in registered form is either:

(i) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(ii) delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (2);

(b) money is paid or delivered or a security held in the name of a broker, financial institution, or its nominee is transferred to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(c) the ownership of a life or endowment insurance policy or annuity contract is either:

(i) registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(ii) assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for ..... (name of minor) under the Montana Uniform Transfers to Minors Act";

(d) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust

company, whose name in the notification is followed in substance by the words: "as custodian for ..... (name of minor) under the Montana Uniform Transfers to Minors Act";

(e) an interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Montana Uniform Transfers to Minors Act";

(f) a certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(ii) delivered to an adult other than the transferor or to a trust company, endorsed to that person, followed in substance by the words: "as custodian for ..... (name of minor) under the Montana Uniform Transfers to Minors Act"; or

(g) an interest in any property not described in subsections (1)(a) through (1)(f) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (2).

(2) An instrument in the following form satisfies the requirements of subsections (1)(a)(ii) and (1)(g):

**"TRANSFER UNDER THE MONTANA  
UNIFORM TRANSFERS TO MINORS ACT"**

I, ..... (name of transferor or name and representative capacity if a fiduciary) hereby transfer to ..... (name of custodian), as custodian for ..... (name of minor) under the Montana Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: .....

.....  
(Signature)

..... (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Montana Uniform Transfers to Minors Act.

Dated: .....

.....  
(Signature of Custodian)"

(3) A transferor shall place the custodian in control of the custodial property as soon as practicable."

Approved March 16, 1987.

## CHAPTER NO. 87

[SB 16]

AN ACT REQUIRING NOTICE TO THE OWNER OR PERSON WHO CONTRACTED FOR THE SERVICES OR MATERIALS PRIOR TO A SHERIFF'S SALE OF PROPERTY SOLD TO ENFORCE AN AGISTER'S LIEN OR LIEN FOR SERVICES; AND AMENDING SECTION 71-3-1203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 71-3-1203, MCA, is amended to read:

**"71-3-1203. Enforcement of lien — sale.** If payment for such work, labor, feed, or services or material furnished is not made within 30 days after the performance or furnishing of the same, the person entitled to a lien under the provisions of this *part* may enforce said lien in the following manner:

(1) He shall deliver to the sheriff or a constable of the county in which the property is located *an affidavit* of the amount of his claim against said property, a description of the property, and the name of the owner thereof or of the person at whose request the work, labor, or services were performed or the materials furnished.

(2) Upon receipt of such *affidavit*, the sheriff or constable shall proceed to advertise and sell at public auction so much of the property covered by said lien as will satisfy same.

(3) Such sale shall be advertised, conducted, and held in the same manner as provided by law for the sale of mortgaged personal property by sheriffs. *Public notice of the sale must be given for not less than 5 or more than 10 days prior to the date of sale.*

(4) *Before the sheriff or constable sells the property at public auction, he shall give notice of the sale to the owner or person at whose request the work, labor, or services were performed or the materials furnished.*

(a) *Notice to the owner must be given at least 10 days before the sale.*

(b) *The notice must state:*

(i) *the time and place of the sale;*

(ii) *the amount of the claim against the property;*

(iii) *a description of the property;*

(iv) *the name of the owner or person who contracted for the services or materials; and*

(v) *the name of the person claiming the lien.*

(c) *The notice may be given by personal service or by mailing by certified mail a copy of the notice to the last-known post office address of the owner or person who contracted for the services or materials.*

(d) *If the sheriff or constable is not able to effect personal service or service by mail because the location and mailing address of the owner or person who contracted for the services or materials are unknown, the sheriff or constable may give notice by posting notice of the sale in three public places in the county in which the property is located.*

(5) The proceeds of the sale shall be applied by the sheriff to the discharge of the lien and the cost of the proceedings in selling the property and enforcing the lien, and the remainder, if any, or such part as is required to discharge the claims, shall be turned over by the sheriff to the holders, in the order of their precedence, of the chattel mortgages or other lien claimants of record against said property, and the balance of the proceeds shall be turned over to the owner of the property.

(6) However, before making seizure of any property under the provisions of this section, the sheriff may require an indemnity bond from the lienor in not to exceed double the amount of the claim against said property, said bond and the surety or sureties thereon to be approved by said sheriff."

Approved March 16, 1987.

## CHAPTER NO. 88

[SB 57]

AN ACT TO REVISE SHERIFF'S PROCEDURES IN CIVIL MATTERS; CHANGING THE TIME REQUIREMENTS FOR THE PAYMENT OF FEES INTO THE COUNTY TREASURY; CLARIFYING THE TIME FOR EXECUTION AND RETURN OF A WRIT OF EXECUTION; PROVIDING AN ALTERNATIVE METHOD FOR THE RETURN OF A WRIT OF EXECUTION; MODIFYING NOTICE REQUIREMENTS FOR THE CONDUCT OF A SHERIFF'S SALE AND FOR THE ENFORCEMENT OF CERTAIN LIENS; REVISING THE LAWS RELATING TO THE IMPOUNDMENT AND SALE OF ABANDONED MOTOR VEHICLES; ALLOWING THE SHERIFF TO REQUIRE SECURITY FOR COSTS INCURRED IN THE SEIZURE OF PROPERTY UNDER AN ORDER FOR CLAIM AND DELIVERY; AMENDING SECTIONS 7-4-2511, 7-4-2512, 25-13-402, 25-13-404, 25-13-701, 61-12-401 THROUGH 61-12-403, 61-12-407, AND 71-3-1203, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-4-2511, MCA, is amended to read:

**"7-4-2511. Collection and disposal of fees.** (1) Each salaried county officer must charge and collect for the use of his county and pay into the county treasury *by the 10th day* in each month all fees now or hereafter allowed by law, paid or chargeable in all cases, except as provided in 25-10-403. Nothing in this subsection applies to the compensation

received by the sheriff as mileage while in the performance of official duties or for the board of prisoners or other persons while in his custody.

(2) No salaried county officer may receive for his own use any fees, penalties, or emoluments of any kind, except the salary as provided by law, for any official service rendered by him. Unless otherwise provided, all fees, penalties, and emoluments of every kind collected by a salaried county officer are for the sole use of the county and must be accounted for and paid to the county treasurer as provided by subsection (1) and credited to the general fund of the county."

Section 2. Section 7-4-2512, MCA, is amended to read:

**"7-4-2512. Statement and affidavit of fees collected.** (1) The fees and compensation collected and chargeable for the use of the county in each month must be paid to the county treasurer by the 10th day of the following month and must be accompanied by a statement and copy of the fee book for the preceding month, duly verified by the officer making the payment.

(2) The affidavit must be in the following form:

State of Montana

County of ....

I, ..., of the county of ..., do swear that the fee book in my office contains a true statement in detail of all fees and compensations of every kind and nature for official services rendered by me, paid or chargeable, or by my deputies or assistants for the month of ..., 19..., and that this fee book shows the full amount received or chargeable in said month and since my last monthly payment; and neither myself nor, to my knowledge or belief, any of my deputies or assistants have rendered any official service, except for the county or state, which is not fully set out in this fee book; and that the foregoing statement is a full, true, and correct copy thereof.

..... (Signature)

Subscribed and sworn to before me this ... day of ..., 19...

Seal

..... (Person authorized to take oaths)

..... (Title or notarial information)"

Section 3. Section 25-13-402, MCA, is amended to read:

**"25-13-402. How writ executed.** The sheriff must execute the writ against the property of the judgment debtor *no later than 60 days after receipt of the writ* by levying on a sufficient amount of property, if there be sufficient, collecting or selling the things in action, and selling the other property and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of the sheriff, he must levy only on such part of the property as the judgment debtor may indicate

if the property indicated be amply sufficient to satisfy the judgment and costs."

Section 4. Section 25-13-404, MCA, is amended to read:

**"25-13-404. Return of the execution.** (1) Except as provided in subsections (2) and (3), execution may be made returnable to the clerk of the court in which the judgment was rendered, at any time not less than 10 or more than 60 days after receipt of the recovery by the sheriff following imposition of levy, as provided in 25-13-402.

(2) The writ of execution issued by the county treasurer under 15-16-401 may be made returnable, at any time not less than 10 or more than 90 days after its receipt by the sheriff, to the county treasurer of the county in which the writ was issued.

(3) In compliance with the provisions of subsection (1) and in lieu of returning the writ of execution to the clerk of the court, the sheriff may enclose his return of the writ in an envelope to the officer, agent, or attorney who sent it and deposit it in the post office, prepaying the postage."

Section 5. Section 25-13-701, MCA, is amended to read:

**"25-13-701. Notice of sale on execution.** (1) Before the sale of the property on execution, notice thereof must be given as follows:

(a) in case of perishable property, by posting written notice of the time and place of the sale in three public places in the county where the sale is to take place, for such time as may be reasonable considering the character and condition of the property;

(b) in case of other personal property, by posting a similar notice in three public places in the county where the sale is to take place, for not less than 5 days or more than 10 days, and by publishing a copy of the notice at least 1 week before the sale in a newspaper of general circulation published in the county, if there be one;

(c) in case of real property, by posting a similar notice, particularly describing the property, for 20 days in three public places in the county where the property is situated and also where the property is to be sold, which may be either at the courthouse or on the premises, and publishing a copy thereof once a week for the same period in some newspaper published in the county, if there be one, which notice shall be substantially as follows:

#### SHERIFF'S SALE

....., Plaintiff,

vs.

....., Defendant,

To be sold at sheriff's sale on the .... day of ...., 19.., at ..... (Here insert brief description of property.)

Signed ....., Sheriff



(2) Any sheriff publishing a notice not in accordance with the form set forth in subsection (1)(c) and which shall cost more than such a notice shall not be entitled to any costs for publication of the same but shall be personally liable for the payment of such publication."

Section 6. Section 61-12-401, MCA, is amended to read:

**"61-12-401. Taking vehicle into custody.** (1) The following law enforcement agencies may take into custody any motor vehicle found abandoned for a period of 48 hours or more on any public highway, or for a period of 5 days or more on any city street, public property, or private property:

(a) the Montana highway patrol if the vehicle is upon the right-of-way of any public highway other than a county road;

(b) the sheriff of the county if the vehicle is upon the right-of-way of any county road within the county;

(c) the city police if the vehicle is upon a city street within the city.

(2) The Montana highway patrol, sheriff of the county, or the city police may use its or his personnel, equipment, and facilities for the removal and *storage* of the vehicle, or may hire other personnel, equipment, and facilities for those purposes.

(3) At the request of the owner or person in lawful possession or control of the private property, the sheriff of the county in which the vehicle is located or the city police of the city in which the vehicle is located may remove and hold it in the manner and upon the conditions provided in subsections (1) and (2)."

Section 7. Section 61-12-402, MCA, is amended to read:

**"61-12-402. Notice to owner.** (1) Within 72 hours after any vehicle is removed and held by or at the direction of the Montana highway patrol, the highway patrol shall notify the sheriff of the county in which the vehicle was located at the time it was taken into custody and the place where the vehicle is being held. In addition the Montana highway patrol shall furnish the sheriff a complete description of the vehicle to include year, make, model, serial number, and license number if available, any costs incurred to that date in the removal, *storage*, and custody of the vehicle, and any available information concerning its ownership.

(2) The sheriff or the city police shall make reasonable efforts to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle taken into custody under 61-12-401. If such name and address are ascertained, the sheriff or the city police shall notify such owner and lienholder or person of the location of the vehicle.

(3) If the vehicle is registered in the office of the department, notice shall be deemed given when a registered or certified letter addressed to the registered owner of the vehicle and lienholder, if any, at the latest address shown by the records in the office of the department, return receipt requested and postage prepaid thereon, is mailed at least 30 days before the vehicle is sold as hereinafter provided.

(4) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the county where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this part. Such notice by publication can contain multiple listings of abandoned vehicles. Any such notice shall be *provided in the same manner as prescribed in 25-13-701(1)(b).*

(5) If the abandoned vehicle is in the possession of a motor vehicle wrecking facility licensed under 75-10-511, the wrecking facility may make the required search to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall give the notices required in subsections (2) through (4). The wrecking facility shall deliver to the sheriff or the city police a certificate describing the efforts made to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall deliver to the sheriff or the city police proof of the notice given.

(6) A vehicle found by law enforcement officials to be a "junk vehicle" as defined by 75-10-501 and certified as having an appraised value of \$100 or less as determined by the county assessor in accordance with the rules of the department of revenue may be directly submitted for disposal in accordance with the provisions of part 5 of chapter 10, Title 75, upon a release given by the sheriff or the city police. In the release the sheriff or the city police shall include a description of the vehicle including year, make, model, serial number, and license number if available. A release provided by the sheriff or the city police under this section shall be transmitted to the motor vehicle wrecking facility and shall be considered by that facility to meet the requirements for records under 75-10-512 and 75-10-513. Vehicles described in this section may be submitted without notice and without a required holding period."

Section 8. Section 61-12-403, MCA, is amended to read:

**"61-12-403. Reclaiming vehicle.** The owner, lienholder, or person entitled to possession of the vehicle may reclaim it at any time after it is taken into custody and before it is sold. He shall present to the sheriff of the county or the city police of the city in which the vehicle was located at the time it was taken into custody satisfactory proof of ownership or right to possession, and pay the costs and expenses incurred in the removal, *storage*, and custody of the vehicle. He shall not be required to pay storage charges for a period longer than 90 days."

Section 9. Section 61-12-407, MCA, is amended to read:

**"61-12-407. Transmitting return of sale and balance of proceeds.** (1) When any vehicle is sold as provided in 61-12-404 the sheriff or the city police shall transmit to the department and to the county treasurer or to the city treasurer, respectively, a return of sale setting forth a description of the vehicle, the purchase price, the name and address of the purchaser, the costs incurred in the sale, and the costs and expenses incurred in the removal, *storage*, and custody of the vehicle.

(2) With the return of sale, the sheriff shall transmit to the county treasurer or the city police shall transmit to the city treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale and the costs and expenses incurred in the removal, *storage*, and custody of the vehicle.

(3) Upon receipt of the return of sale and such balance from:

(a) the county sheriff, the county treasurer shall file the return in his office and deposit the balance in the county road fund on all vehicles seized by the sheriff or highway patrol; or

(b) the city police, the city treasurer shall file the return in his office and deposit the balance in the city street fund on all vehicles seized by the city police."

Section 10. Section 71-3-1203, MCA, is amended to read:

**"71-3-1203. Enforcement of lien — sale.** If payment for such work, labor, feed, or services or material furnished is not made within 30 days after the performance or furnishing of the same, the person entitled to a lien under the provisions of this section may enforce said lien in the following manner:

(1) He shall deliver to the sheriff or a constable of the county in which the property is located a statement of the amount of his claim against said property, a description of the property, and the name of the owner thereof or of the person at whose request the work, labor, or services were performed or the materials furnished.

(2) Upon receipt of such statement, the sheriff or constable shall proceed to advertise and sell at public auction so much of the property covered by said lien as will satisfy same.

(3) Such sale shall be advertised, conducted, and held in the same manner as *prescribed in 25-13-701(1)(b)*.

(4) The proceeds of the sale shall be applied by the sheriff to the discharge of the lien and the cost of the proceedings in selling the property and enforcing the lien, and the remainder, if any, or such part as is required to discharge the claims, shall be turned over by the sheriff to the holders, in the order of their precedence, of the chattel mortgages or other lien claimants of record against said property, and the balance of the proceeds shall be turned over to the owner of the property.

(5) However, before making seizure of any property under the provisions of this section, the sheriff may require an indemnity bond from the lienor *that may not exceed double the amount of the claim against said property, said bond and the surety or sureties thereon to be approved by said sheriff.*"

Section 11. **Security for sheriff's costs when property seized.** If the sheriff will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of an order for claim and delivery shall provide a bond or other security to pay for all costs that may be incurred as a result of the service of such order.

**Section 12. Codification instruction.** Section 11 is intended to be codified as an integral part of Title 27, chapter 17, part 2, and the provisions of Title 27, chapter 17, part 2, apply to section 11.

**Section 13. Coordination instruction.** If this bill and Senate Bill No. 16, including the section of that bill amending 71-3-1203(3), are passed and approved, the amendment in Senate Bill No. 16 to 71-3-1203(3) is void.

**Section 14. Effective date.** Sections 1 and 2 and this section are effective July 1, 1987.

Approved March 16, 1987.

## CHAPTER NO. 89

[SB 72]

AN ACT TO EXTEND THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-5-205, MCA, is amended to read:

**“17-5-205. Application.** The application of the Bond Validating Act, Title 17, chapter 5, part 2, as hereby amended, is extended to bonds issued and proceedings taken prior to *[the effective date of this act]*.”

**Section 2. Effective date.** This act is effective on passage and approval.

Approved March 16, 1987.

## CHAPTER NO. 90

[SB 78]

AN ACT TO TRANSFER REGULATION OF PASSENGER TRAMWAYS FROM THE DEPARTMENT OF ADMINISTRATION TO THE DEPARTMENT OF COMMERCE; AMENDING SECTIONS 23-2-702, 23-2-715, AND 23-2-734, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 23-2-702, MCA, is amended to read:

**“23-2-702. Definitions.** As used in this part, the following definitions apply:

(1) "Area" means the area, terrain, or ski slopes served by a passenger tramway.

(2) "Department" means the department of *commerce* provided for in 2-15-1801.

(3) "Industry" means the passenger tramway business activities of all those persons in the state who own, manage, or direct the operation of passenger tramways.

(4) "Operator" means a person, including any political subdivision or instrumentality thereof, who owns, manages, or directs the operation of a passenger tramway.

(5) "Passenger tramway" means a device used to transport passengers by means of any of the following:

(a) two-car aerial passenger tramway, a device used to transport passengers in two open or enclosed cars attached to and suspended from a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar devices;

(b) multicar aerial passenger tramway, a device used to transport passengers in several open or enclosed cars or carrying device attached to and suspended from a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar devices;

(c) skimobile, a device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable or similar devices;

(d) chair lift, a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain, or link belt supported by trestles or towers with one or more spans or similar devices;

(e) a J-bar, T-bar, or platterpull, so-called, and similar types of devices or means of transportation which pull skiers riding on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans;

(f) rope tow, a type of transportation which pulls the skier, riding on skis as the skier grasps the rope or wire rope manually, or similar devices."

Section 2. Section 23-2-715, MCA, is amended to read:

**"23-2-715. Assessment on passenger tramway receipts.** (1) The department is hereby authorized to impose an assessment of  $\frac{1}{4}$  of 1% on the gross receipts of all passenger tramways operated in the state of Montana. A minimum of \$100 shall be collected annually from the owner of a passenger tramway facility. The assessment shall be calculated upon gross receipts received during the period July 1 of any year to July 1 of the following year. The assessments shall be collected by the department of revenue and remitted to the state special revenue fund by December 31 of each year.

(2) All proceeds of the gross receipts assessment and the fees collected under 23-2-714 shall be used only to support the duties of the department set forth in this part."

Section 3. Section 23-2-734, MCA, is amended to read:

**"23-2-734. Duties of operator with respect to passenger tramways.** A ski area operator shall construct, operate, maintain, and repair any passenger tramway in accordance with the rules of the department. However, nothing in this section relieves an operator from the duty of taking whatever other actions are necessary to properly construct, operate, maintain, and repair a passenger tramway."

Section 4. **Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Effective date.** This act is effective July 1, 1987.

Approved March 16, 1987.

## CHAPTER NO. 91

[SB 80]

AN ACT AMENDING THE DEVELOPMENT CORPORATION ACT TO ALLOW INDIVIDUALS TO PURCHASE STOCK IN A DEVELOPMENT CORPORATION AND TO REMOVE THE AUTHORITY OF CORPORATION MEMBERS TO TAKE PART IN GOVERNING THE CORPORATION; AND AMENDING SECTIONS 32-4-205, 32-4-206, 32-4-208, AND 32-4-301, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-4-205, MCA, is amended to read:

**"32-4-205. Amendment of articles of incorporation.** (1) The articles of incorporation may be amended by *vote* of the stockholders of the corporation and such amendments shall require approval by the affirmative vote of two-thirds of the stockholders, provided:

(a) that no amendment which is inconsistent with the general purposes expressed herein or which eliminates or curtails the obligation of the corporation to make reports as provided in 32-4-306 shall be made without amendment of this chapter; and

(b) that no amendment of the articles of incorporation which increases the obligation of a member to make loans to the corporation; makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of any outstanding loan of a member to the corporation; or affects a member's right to withdraw from membership as provided in 32-4-303 shall be made without the consent of each member affected by such amendment.

(2) Within 30 days after any meeting at which amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting

forth such amendment and the due adoption thereof, shall so far as consistent with this chapter be submitted, as prescribed in Title 35, to the secretary of state who shall examine them. If he finds that they conform to the requirements of this chapter, he shall so certify and endorse his approval thereon. Thereupon, the amended articles of incorporation shall be filed in the office of the secretary of state, and no such amendment shall take effect until such amended articles of incorporation shall have been filed as aforesaid."

Section 2. Section 32-4-206, MCA, is amended to read:

**"32-4-206. Board of directors.** (1) The business and affairs of the corporation shall be managed and conducted by a board of directors, a president and treasurer, and such other officers and such agents as the corporation by its bylaws shall authorize.

(2) The board of directors shall consist of such number, not less than nine, as shall be determined in the first instance by the incorporators and thereafter annually by the stockholders of the corporation.

(3) The directors need not be stockholders in the corporation.

(4) The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the stockholders and shall choose and appoint all the agents and officers of the corporation and fill all vacancies in the office of director.

(5) The board of directors shall be elected in the first instance by the incorporators and thereafter at each annual meeting of the corporation or, if no annual meeting shall be held in any year at the time fixed by the bylaws, at a special meeting held in lieu of the annual meeting. At each annual meeting or at each special meeting held in lieu of the annual meeting, the stockholders shall elect the directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election and until their successors are elected and qualified, unless sooner removed in accordance with the provisions of the bylaws.

(6) Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the willful misconduct of such directors and officers."

Section 3. Section 32-4-208, MCA, is amended to read:

**"32-4-208. Stock ownership and limitations.** Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization, or trust indentures:

(1) all *persons*, domestic corporations organized for the purpose of carrying on business within this state, including without implied limitation any public utility companies and insurance and casualty companies and foreign corporations licensed to do business in the state, and trusts are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation and, while owners of said stock, to exercise all the rights, powers, and

privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state;

(2) all financial institutions are hereby authorized to become members of the corporation by making loans to the corporation as provided herein;

(3) a financial institution which does not become a member of the corporation shall not be permitted to acquire any share of the capital stock of the corporation;

(4) each financial institution which becomes a member of the corporation is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation and, while owners of said stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state."

Section 4. Section 32-4-301, MCA, is amended to read:

**"32-4-301. Powers of stockholders.** (1) The stockholders of the corporation shall have the following powers of the corporation:

(a) to determine the number of and elect directors as provided in 32-4-206;

(b) to make, amend, and repeal bylaws;

(c) to amend the articles of incorporation as provided in 32-4-205;

(d) to exercise such other of the powers of the corporation as may be conferred on the stockholders by the bylaws.

(2) As to all matters requiring action by the stockholders of the corporation, and except as otherwise herein provided, such matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled.

(3) Each stockholder shall have one vote, in person or by proxy, for each share of capital stock held by him."

Section 5. **Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 16, 1987.

## CHAPTER NO. 92

[SB 84]

AN ACT ALLOWING LAW ENFORCEMENT AGENCIES THAT UTILIZE RESERVE OFFICERS TO OBTAIN WORKERS' COMPENSATION COVERAGE FROM PLAN NO. 1, NO. 2, OR NO. 3; AND AMENDING SECTION 7-32-203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-32-203, MCA, is amended to read:

**"7-32-203. Provision of workers' compensation coverage.** (1) Each law enforcement agency that utilizes reserve officers shall provide full



workers' compensation coverage for the officers while they are providing actual service for a law enforcement agency. *The law enforcement agencies shall pay to the insurer an appropriate premium, as established by the insurer, to cover the insurance risk of providing coverage to the officers.*

(2) Each law enforcement agency that utilizes auxiliary officers shall provide full workers' compensation coverage for the officers while they are providing actual service for a law enforcement agency."

**Section 2. Extension of authority.** Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 16, 1987.

## CHAPTER NO. 93

[SB 93]

AN ACT CLARIFYING AN ALLOWANCE ADJUSTMENT PROVISION UNDER THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM TO INCLUDE ALL POLICE OFFICERS WHO RETIRED ON OR AFTER JULY 1, 1975, BUT BEFORE JULY 1, 1985; AMENDING SECTION 19-9-1011, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-9-1011, MCA, is amended to read:

**"19-9-1011. Allowance adjustment.** (1) A monthly allowance paid under section 31(3), Chapter 456, Laws of 1977 (formerly section 11-1890(3), R.C.M. 1947), 19-9-804, 19-9-903, or 19-9-911 to a member retired on or after July 1, 1975, but before July 1, 1985, or to his surviving spouse or dependent child may not be less than one-half the monthly compensation paid on July 1, 1985, to a newly confirmed, active police officer of the city that last employed the member as a police officer, as provided each year in the budget of that city.

(2) At the beginning of each fiscal year, the administrator shall request and the state auditor shall pay to the administrator from the premium tax collected from insurance sold in this state to insure against the risks enumerated in 19-11-512(3) an amount sufficient to fund the allowance adjustment provided for in subsection (1)."

**Section 2. Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Applicability.** This act applies retroactively, within the meaning of 1-2-109, to fiscal years beginning after June 30, 1985.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 16, 1987.

## CHAPTER NO. 94

[SB 97]

AN ACT TO CHANGE THE DEFINITION OF A FINANCIAL INSTITUTION; TO INCREASE THE LIMITATION ON THE TOTAL OUTSTANDING INDEBTEDNESS OF THE MONTANA ECONOMIC DEVELOPMENT BOARD; TO DELETE ANNUAL EXAMINATIONS BY BANK EXAMINERS OF LOANS AND INVESTMENTS TO LOCAL GOVERNMENT UNITS; TO CHANGE THE DUE DATE OF THE BOARD'S ANNUAL FINANCIAL REPORT; AMENDING SECTIONS 17-5-1503, 17-5-1608, 17-5-1649, AND 17-5-1650, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-5-1503, MCA, is amended to read:

**"17-5-1503. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the Montana economic development board created in 2-15-1805.

(2) "Bond" means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the board pursuant to this part.

(3) "Department" means the department of commerce provided for in 2-15-1801.

(4) "Financial institution" means any bank, savings and loan association, credit union, development credit corporation, insurance company, investment company, trust company, savings institution, or other financial institution approved by the board.

(5) "Local government" means the city in which the project is located, if the project is located within an incorporated municipality, or the county if the project is located within the county but outside the boundaries of an incorporated municipality.

(6) "Major project" means a project whose cost or appraised value exceeds \$800,000.

(7) "Project" means a project as defined in 90-5-101.

(8) "Project costs" means the costs of acquiring or improving any project, including the following:

- (a) the actual cost of acquiring or improving real estate for any project;
- (b) the actual cost of construction of all or any part of a project, including architects' and engineers' fees;
- (c) all expenses in connection with the authorization, sale, and issuance of the bonds to finance such acquisition or improvement;
- (d) bond reserves and premiums for insurance or guaranty of loan payments or lease rentals pledged to pay the bonds; and
- (e) the interest on such bonds for a reasonable time prior to construction, during construction, and not exceeding 6 months after completion of construction."

Section 2. Section 17-5-1608, MCA, is amended to read:

**"17-5-1608. Limitations on amounts.** The board may not issue any bonds or notes that cause the total outstanding indebtedness of the board under this part (except for bonds or notes issued to fund or refund other outstanding bonds or notes or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in 7-6-1101) to exceed \$50 million."

Section 3. Section 17-5-1649, MCA, is amended to read:

**"17-5-1649. Annual audit.** The board's books and records must be audited at least once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit shall be paid from the board's funds."

Section 4. Section 17-5-1650, MCA, is amended to read:

**"17-5-1650. Annual report.** By *December 31* of each year, the board shall publish a financial report for distribution to the governor, the legislature, and the public. The report must include a statement of the board's current financial position with respect to its activities under this part, a summary of its activities pursuant to this part during the previous year (including a listing of the local governmental securities purchased by the board, a listing of the bonds and notes sold by the board, and a summary of the performance of any other investments of the board's funds received under this part), an estimate of the levels of such activities for the next year, and a comparison of such activities during the previous year with the estimates of those activities that were made in the previous annual report."

Section 5. **Extension of authority.** Any existing authority of the department of commerce and the Montana economic development board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved March 16, 1987.

**CHAPTER NO. 95**

[SB 98]

AN ACT PROVIDING THAT THE PRINTING OF THE MONTANA CODE ANNOTATED AND CERTIFICATES OF APPOINTMENT AND ELECTION TO OFFICE ARE SUBJECT TO THE RESIDENT BIDDER PREFERENCE FOR PUBLIC CONTRACTS; AMENDING SECTION 18-7-107, MCA; AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 18-7-107, MCA, is amended to read:

**"18-7-107. State printing, binding, and stationery work — resident preference.** All printing, binding, and stationery work for the state of Montana must be printed in the state of Montana by a responsible bidder if his bid does not exceed the lowest bid by a nonresident printer by more than the percentage in 18-1-102."

Section 2. **Effective date — applicability.** This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to January 1, 1987.

Approved March 16, 1987.

**CHAPTER NO. 96**

[SB 105]

AN ACT TO PROVIDE FOR AUDITS OF THE MONTANA MEDICAL LEGAL PANEL BY OR AT THE DIRECTION OF THE LEGISLATIVE AUDITOR; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Panel audits.** (1) The panel must be audited by or at the direction of the legislative auditor in accordance with the powers and duties set forth in 5-13-304 and 5-13-309. The audit must include a determination of the adequacy, sufficiency, and reasonableness of the annual surcharge or assessment provided for in 27-6-206.

(2) A copy of each audit report of the panel must be furnished to the supreme court.

(3) The cost of any audit of the panel performed pursuant to this section must be paid by the panel.

Section 2. **Implementation schedule.** The first audit to be conducted under [section 1] must be for the 2 fiscal years ending June 30, 1987.

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 27, chapter 6, and the provisions of Title 27, chapter 6, apply to section 1.

Section 4. **Effective date.** This act is effective July 1, 1987.

Approved March 16, 1987.

## CHAPTER NO. 97

[SB 112]

AN ACT TO REMOVE THE REQUIREMENT THAT SETTLEMENTS FROM THE SELF-INSURANCE RESERVE FUND OR THE DEDUCTIBLE RESERVE FUND FOR LESS THAN \$10,000 BE APPROVED BY THE DISTRICT COURT; AMENDING SECTION 2-9-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-9-303, MCA, is amended to read:

**"2-9-303. Compromise or settlement of claim against state.** The department of administration may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any. A settlement from the self-insurance reserve fund or deductible reserve fund *exceeding \$10,000* must be approved by the district court of the first judicial district except when suit has been filed in another judicial district, in which case the presiding judge must approve the compromise settlement."

Section 2. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 16, 1987.

## CHAPTER NO. 98

[SB 120]

AN ACT TO PROVIDE THAT GROUP POLICY COVERAGE BENEFITS FOR TREATMENT OF CHEMICAL DEPENDENCY ARE PAYABLE IF A FACILITY OR COUNSELOR HAS BEEN APPROVED BY THE DEPARTMENT OF INSTITUTIONS; AMENDING SECTION 33-22-702, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Inpatient and outpatient benefits.** (1) "Inpatient benefits" are benefits payable for charges made by a hospital or freestanding inpatient facility for the necessary care and treatment of mental illness,

alcoholism, or drug addiction furnished to a covered person while confined as an inpatient and, with respect to major medical policies or contracts, also includes those benefits payable for charges made by a physician for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient. Care and treatment of alcoholism or drug addiction in a freestanding inpatient facility must be in a chemical dependency treatment center that is approved by the department of institutions under 53-24-208.

(2) "Outpatient benefits" are benefits payable for:

(a) reasonable charges made by a hospital for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

(b) reasonable charges for services rendered or prescribed by a physician for the necessary care and treatment for mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

(c) reasonable charges made by a mental health or chemical dependency treatment center for the necessary care and treatment of a covered person provided in the treatment center. The chemical dependency treatment center must be approved by the department of institutions under 53-24-208.

(d) reasonable charges for services rendered by a licensed psychiatrist, psychologist, social worker, or chemical dependency counselor certified by the department of institutions under 53-24-204.

Section 2. Section 33-22-702, MCA, is amended to read:

**"33-22-702. Definitions.** For purposes of this part, the following definitions apply:

(1) "Inpatient benefits" *are as set forth in [section 1].*

(2) "Outpatient benefits" *are as set forth in [section 1].*

(3) "*Chemical dependency treatment center*" *means a treatment facility which:*

(a) *provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan approved and monitored by a physician or chemical dependency counselor certified by the state; and*

(b) *is licensed or approved as a treatment center by the department of institutions under 53-24-208.*

(4) "*Mental health treatment center*" *means a treatment facility organized to provide care and treatment for mental illness through multiple modalities or techniques pursuant to a written treatment plan approved and monitored by an interdisciplinary team, including a licensed physician, psychiatric social worker, and psychologist, and which facility is also:*

(a) *licensed as a mental health treatment center by the state;*

(b) *funded or eligible for funding under federal or state law; or*

(c) affiliated with a hospital under a contractual agreement with an established system for patient referral.

(5) "Mental illness" means neurosis, psychoneurosis, psychopathy, psychosis, or personality disorder."

**Section 3. Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 33, chapter 22, part 7, and the provisions of Title 33, chapter 22, part 7, apply to section 1.

**Section 5. Applicability.** This act applies to policies issued and contracts made after the effective date of this act.

Approved March 16, 1987.

## CHAPTER NO. 99

[SB 123]

AN ACT TO MAKE IT DISCRETIONARY RATHER THAN MANDATORY FOR ELECTION ADMINISTRATORS AND THE SECRETARY OF STATE TO KEEP A REGISTER OF CANDIDATES FOR PARTISAN AND NONPARTISAN ELECTIONS; AMENDING SECTIONS 13-10-205 AND 13-14-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-10-205, MCA, is amended to read:

**"13-10-205. Register of candidates.** The secretary of state and the election administrator *may* each keep a register of candidates who file with their respective offices. The register shall provide a complete record of the requisite information pertaining to all candidates in the primary and general election. Information on ballot issues may also be included in the register. The secretary of state *may* prepare and distribute a recommended format for the register."

**Section 2.** Section 13-14-114, MCA, is amended to read:

**"13-14-114. Register of candidates.** On receipt of a declaration or petition, the secretary of state or election administrator shall, *if a register is kept*, make an entry in the register of candidates for nomination, on a page different from entries made for candidates of political parties."

**Section 3. Effective date.** This act is effective on passage and approval.

Approved March 16, 1987.

**CHAPTER NO. 100**

[SB 124]

AN ACT PROVIDING FOR THE POSTING OF ELECTION RETURNS AT THE PLACE OF COUNTING RATHER THAN AT THE POLLING PLACE; AMENDING SECTION 13-15-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 13-15-101, MCA, is amended to read:

**"13-15-101. Votes to be publicly counted upon closing of polls.**

(1) When the polls are closed, the election judges shall immediately count the votes. The count shall be public and continue without adjournment until completed and the result is publicly declared.

(2) Immediately after all the ballots are counted, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the return forms furnished by the election administrator.

(3) The election judges shall immediately post one of the return forms at the place of counting and return a copy to the election administrator. Both forms shall be signed by all the election judges completing the count."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 16, 1987.

**CHAPTER NO. 101**

[SB 125]

AN ACT REVISING PROCEDURES RELATING TO ACTIONS ON CONSOLIDATION OF COUNTY OFFICES TO CONFORM TO STATE ELECTION LAWS; AMENDING SECTIONS 7-4-2302 THROUGH 7-4-2304, 7-4-2306, 7-4-2309, AND 7-4-2310, MCA, AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-4-2302, MCA, is amended to read:

**"7-4-2302. Petition for consolidation of county offices.** (1) At any time not later than 45 days before the date on which declarations for nomination may first be filed for any county office, a petition in writing may be filed with the board of county commissioners of a county asking for the consolidation of any two or more of said offices by the board of such county.



(2) The petition shall be signed by not less than 15% of the *registered* electors of such county."

Section 2. Section 7-4-2303, MCA, is amended to read:

**"7-4-2303. Petition for intercounty consolidation of offices.** (1) A written petition may also be filed with the boards of county commissioners of counties asking for consolidation of any two or more offices among several counties.

(2) In the case of consolidation of offices among several counties, the petition shall be signed by not less than 15% of the *registered* electors in each of the counties affected."

Section 3. Section 7-4-2304, MCA, is amended to read:

**"7-4-2304. Petition details.** (1) Said petition shall be addressed to the board or boards of county commissioners of the counties affected and shall set forth and state the reasons why such consolidation is believed by the petitioners to be necessary or desirable or for the best interests of the county taxpayers.

(2) Each person signing such petition shall place his *printed last name*, post-office address, and voting precinct after his *signature*.

(3) *For purposes of determining the number of signatures needed on a petition to meet the percentage requirements of this part, the number of electors must be the number of individuals registered to vote at the preceding general election for the county."*

Section 4. Section 7-4-2306, MCA, is amended to read:

**"7-4-2306. Processing of petition — resolution of intent and hearing.** (1) Upon the filing of a petition for consolidation, the board or boards of county commissioners shall cause the county clerk or clerks to examine the petition and the registration records of the county or counties.

(2) If after such examination the county clerk or clerks report to the board or boards of county commissioners that the petition has been signed by not less than 15% of the *registered* electors of the county, the board or boards shall set a date for a hearing and pass a resolution of intent to consider the consolidation. Upon passage of the resolution of intent by the board or boards, proper notice shall be given for the hearing. The date for the hearing may not be more than 20 days after the filing of the petition or the passage of the resolution of intent."

Section 5. Section 7-4-2309, MCA, is amended to read:

**"7-4-2309. Conduct of hearing — decision.** (1) At the time designated in said notice, the county commissioners shall proceed to hear said petition and the evidence for or against the same. Any *registered* elector of the county affected shall have the right to appear and be heard upon said petition, subject, however, to the right of the county commissioners to limit cumulative testimony and to prevent the undue prolonging of said hearing.

(2) Within 5 days after the date set for said hearing, the board or boards of county commissioners shall make such order in relation to the

consolidation of said offices as they shall deem proper. *Such order must be made at least 7 days before the date on which declarations for nomination may first be filed for any county office.*"

Section 6. Section 7-4-2310, MCA, is amended to read:

**"7-4-2310. Order for consolidation of offices.** (1) In consolidating county offices, the board of county commissioners shall, *not less than 7 days before the date on which declarations for nomination may first be filed for any office to be consolidated or not less than 6 months prior to the appointment to the offices to be consolidated, make and enter an order combining any two or more of the within-named offices.*

(2) Whenever an order consolidating two or more offices is made, the order shall be entered in full on the board's minutes of proceedings.

(3) The order shall be published in a newspaper of general circulation, printed and published in the county or counties affected, for a period of 2 successive weeks following the date of the making and entering of the order."

Section 7. **Effective date.** This act is effective on passage and approval.

Approved March 16, 1987.

## CHAPTER NO. 102

[SB 140]

AN ACT INCREASING THE PORTION OF INTEREST THE MONTANA ECONOMIC DEVELOPMENT BOARD MAY DEPOSIT IN THE LOAN LOSS RESERVE FUND; AND AMENDING SECTION 17-6-315, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-6-315, MCA, is amended to read:

**"17-6-315. Service charges — loan loss reserve fund.** (1) The board shall by rule establish reasonable service fees that may be charged on loans made from the Montana in-state investment fund.

(2) For both coal tax loans and industrial development bond guaranties the board may deposit service charges, and up to 2% of the interest on coal tax loans, to a loan loss reserve fund. The board shall use the loan loss reserve fund to protect the in-state investment fund from losses."

Approved March 16, 1987.

**CHAPTER NO. 103**

[SB 153]

AN ACT EXTENDING THE TIME FOR PURCHASING CERTAIN CREDITABLE SERVICE UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND FOR REDEPOSITING WITHDRAWN MEMBERSHIP CONTRIBUTIONS UNDER THE SHERIFFS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; AMENDING SECTIONS 19-3-504, 19-3-505, 19-7-306, 19-9-603, AND 19-13-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-3-504, MCA, is amended to read:

**"19-3-504. Absence due to illness or injury.** (1) Time, not to exceed 5 years, during which a member is absent from service by reason of injury or illness determined within 1 year after the end of such absence as arising out of and in the course of his employment shall be considered as spent in service for the purpose of qualification for service retirement benefits under Title 19, chapter 3, part 9, or survivorship allowances under Title 19, chapter 3, part 12, but not for the calculation of such benefits unless the member complies with subsections (2) through (4) of this section, in which case the absence shall be considered as time spent in service for both the calculation and qualification of benefits.

(2) (a) Any member absent because of an employment-related injury which entitles him to workers' compensation payments may contribute to the retirement system, upon his return to service, an amount equal to the contributions which would have been made by him to the system on the basis of his compensation at the commencement of his absence plus interest accruing from 1 year from the date after he returns to covered employment to the date he contributes for his period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute an amount equal to what its employer contributions would have been had the member not been absent from service. In addition, the employer may contribute an amount equal to the interest accruing on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to covered employment, a member must file with the board a written notice of his intent to pay the contributions under subsection (2).

(4) Payment of the employee's contributions which are due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis *before termination of covered employment.*

(5) A member so absent loses his right to contribute under this section if all of his accumulated normal contributions are refunded pursuant to 19-3-703."

Section 2. Section 19-3-505, MCA, is amended to read:

**"19-3-505. Qualification of service with employer.** (1) Subject to the provisions of this section, any person who has service with an employer which is not creditable service may convert all or a portion of such service to membership service by filing written notice thereof with the board.

(2) (a) The person must pay to the retirement system the sum of the amount which he and his employer would have contributed during the period of service so converted if the employer had then been an employer and the interest which would have accumulated thereon to the time of such payment; provided that the employer may pay the employer's portion including accrued interest.

(b) The employer must establish a policy as to the retroactive employer contributions and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination will be subject to the determination of the board. All successful appeals will obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing such appeal with the board. Each appeal will be heard on its individual merits and will not bind the employer to pay all retroactive payments for all former and present employees.

(3) A member may secure service credit not previously credited by submitting salary information certified by the member's employer or former employer to the board. The board will determine the eligibility of all service credit requests as prescribed in 19-3-304.

(4) Payment may be made in one sum at the time of filing notice or on an installment basis *before termination of covered employment*. Failure to make regular monthly payments in any month where the member receives his normal compensation shall thereafter forfeit such person's right to make any further installment payments, unless permission is granted to do so by the board."

Section 3. Section 19-7-306, MCA, is amended to read:

**"19-7-306. Reinstatement after withdrawal of contributions.** (1) A member may deposit in the retirement fund, in one sum or *on an installment basis before termination of covered employment*, an amount equal to that which was withdrawn at the last termination of membership plus an amount equal to the interest which would have been credited to the account had the member not withdrawn the contributions upon termination of membership, subject to minimum monthly or semimonthly payments as fixed by the board.

(2) If a member who is reentering the retirement system after a termination of membership does not elect to make or does not make the redeposit, he must reenter as a new member without credit for any service except the prior service credited before the termination. If a member does make the redeposit, his membership is continuous and unbroken by the last termination.

(3) Regardless of whether the redeposit is made, the documents held by the retirement system, as executed by the member prior to termination of membership, shall be held by the system for the same purposes as prior to the termination and beneficiaries nominated shall remain unchanged."

Section 4. Section 19-9-603, MCA, is amended to read:

**"19-9-603. Redeposit of amounts withdrawn upon reinstatement.** (1) Upon reinstatement to active membership, a member may redeposit in the fund, in one lump sum or in installments *before termination of covered employment*, an amount equal to the member contributions which he withdrew plus an amount equal to the interest which would have been credited to his account had he not withdrawn his member contributions. If a member makes such a redeposit, his credited service shall be reinstated.

(2) If an active member does not elect to make the redeposit provided for in subsection (1), he forfeits his credited service for the period attributable to the withdrawn member contributions."

Section 5. Section 19-13-603, MCA, is amended to read:

**"19-13-603. Redeposit of amounts withdrawn upon reinstatement.** (1) Upon reinstatement to active membership, a member may redeposit in the fund, in one lump sum or in installments *before termination of covered employment*, an amount equal to the member contributions that he withdrew plus an amount equal to the interest that would have been credited to his account had he not withdrawn his member contributions. If a member makes such a redeposit, his credited service shall be reinstated.

(2) If an active member does not elect to make the redeposit provided for in subsection (1), he forfeits his credited service for the period attributable to the withdrawn member contributions."

Section 6. **Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 7. **Effective date.** This act is effective on passage and approval.

Approved March 16, 1987.

## CHAPTER NO. 104

[SB 165]

AN ACT TO ALLOW THE BOARD OF LAND COMMISSIONERS TO REVIEW INTEREST RATES FOR FUTURE CONTRACTS FOR SALE OF STATE LANDS MORE OFTEN THAN ONCE A YEAR; AMENDING SECTION 77-2-329, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 77-2-329, MCA, is amended to read:

**"77-2-329. Terms of payment.** (1) Every purchaser of state land shall pay on the day of sale that portion of the purchase price as he may

desire, but in no case less than 10% of the total sales price. In case the balance on the purchase price is not an exact multiple of \$25, then he shall pay such additional sum as is necessary to reduce the balance to an even multiple of \$25.

(2) The balance of the purchase price shall draw interest at the rate set by the board, but in no instance shall the rate be less than 5% per year, payable annually, and the balance of the purchase price itself shall be payable through a period of 33 years on the amortization plan. This plan is defined as being that plan under which part of the principal is required to be paid each time interest becomes due and payable and under which this part payment on the principal increases at each succeeding installment in the same amount that the interest payment decreases so that the combined amount due on principal and interest on each due date remains the same until the loan or bond is paid in full. However, the amount of the last installment may vary from the other installments to the extent resulting from disregarding fractional cents in the previous installments. The balance of the purchase price on town and city lots shall be payable on the amortization plan through a period of 20 years, but the board may at any time fix a shorter period than 20 years for the payment of the balance on town and city lots. Different periods of time may be established for different towns and cities as the best interests of the state demand. The board shall annually review the interest rate prior to December 31 of each year and *may review the interest rate at any time the board determines such review is necessary. The interest rate fixed by the board applies to all contracts entered into until the board fixes a different interest rate.*

**Section 2. Extension of authority.** Any existing authority of the board of land commissioners to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved March 16, 1987.

## CHAPTER NO. 105

[SB 171]

AN ACT TO SEPARATE UPLAND GAME BIRD LICENSES FROM WATERFOWL LICENSES; AMENDING SECTIONS 87-2-401, 87-2-402, 87-4-504, AND 87-5-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-2-401, MCA, is amended to read:

**"87-2-401. Class A-1—resident upland game bird license.** Except as otherwise provided, a resident, as defined by 87-2-102, who is 12 years of age or older may, upon payment of a fee of \$4, receive a Class A-1

license which will entitle the holder to pursue, hunt, shoot, and kill *upland game birds, cranes, rails, snipes, and mourning doves* and possess the carcasses of *upland game birds, cranes, rails, snipes, and mourning doves* as authorized by department rules."

Section 2. Section 87-2-402, MCA, is amended to read:

**"87-2-402. Class B-1—nonresident upland game bird license.** Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of a fee of \$30 may receive a Class B-1 license which shall entitle the holder thereof to pursue, hunt, shoot, and kill *upland game birds, cranes, rails, snipes, and mourning doves* and possess the carcasses of *upland game birds, cranes, rails, snipes, and mourning doves* as authorized by department rules."

Section 3. Section 87-4-504, MCA, is amended to read:

**"87-4-504. Bird license required.** All persons hunting on shooting preserves must have a valid resident or nonresident *upland game bird license*."

Section 4. Section 87-5-204, MCA, is amended to read:

**"87-5-204. License and rules for falconry.** (1) The department may adopt specific rules for the keeping of records and for the trapping, taking, possession, training of raptors used in the practice of falconry and may authorize the issuance of licenses to persons for the practice of falconry. Except as provided in 87-5-210, it is unlawful for any person to possess a raptor or to train a raptor in the practice of falconry without a license.

(2) The fee for a falconry license is \$3 a year or any part of a year. A license expires April 30 each year.

(3) A license may not be issued to a person under the age of 12 years.

(4) Licensees shall have in possession a valid falconer's license when engaged in the practice of falconry. In addition, falconers loosing raptors at game birds shall have in possession a valid resident or nonresident *upland game bird license or waterfowl stamp, as appropriate*.

(5) Falconry licenses or permits are not transferable and may be revoked for due cause at any time by the department."

Section 5. **Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved March 16, 1987.

**CHAPTER NO. 106**

[SB 172]

**AN ACT TO ALLOW A RESIDENT TO PURCHASE HUNTING AND FISHING LICENSES FOR FAMILY MEMBERS; AMENDING SECTION 87-2-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-2-106, MCA, is amended to read:

**"87-2-106. Application for license.** (1) A license may be procured from the director, any warden, or any authorized agent of the director. The applicant shall state his name, age, occupation, place of residence, post-office address, the length of time in the state of Montana, whether a citizen of the United States or an alien, and such other facts, data, or descriptions as may be required by the department. Except as provided in subsections (2) *through* (4), the statements made by the applicant shall be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by mail. Statements on an application for a license to be issued by mail need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102(4), the applicant must apply to the director and must submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(4). The director shall process the application in an expedient manner.

(4) *A resident may apply for and purchase a wildlife conservation license, hunting license, and fishing license for his spouse, parent, child, brother, or sister who is otherwise qualified to obtain such licenses.*

(5) A license is void unless subscribed to by the licensee and by an employee or officer of the department or by a license agent or an authorized representative of the license agent.

(6) It is unlawful to subscribe to any statement, on any application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. Any person violating any provision of this statute is guilty of a misdemeanor."

**Section 2. Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved March 16, 1987.



**CHAPTER NO. 107**

[SB 182]

AN ACT TO REQUIRE THAT CERTAIN SECURITIES BE DEPOSITED IN ESCROW WHILE A CORPORATION IS IN THE DEVELOPMENTAL OR PROMOTIONAL STAGE AS A CONDITION OF REGISTRATION UNDER THE SECURITIES ACT OF MONTANA; AMENDING SECTION 30-10-206, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 30-10-206, MCA, is amended to read:

**"30-10-206. General provisions regarding registration of securities.** (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under parts 1 through 3 of this chapter or a predecessor law within 5 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) (a) The commissioner may require as a condition of registration by qualification or coordination:

(i) that *the following securities be deposited in escrow:*

(A) any security issued within the past 3 years or to be issued to:

(I) a promoter for a consideration substantially different from the public offering price; or

(II) any person for a consideration other than cash; and

(B) *any security issued or to be issued to a promoter while a corporation is still in a promotional or developmental stage; however, if shares were issued by a corporation while it was in a promotional or developmental stage and it no longer is in such stage, then this condition does not apply; and*

(ii) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

(b) The commissioner may determine the conditions of any escrow or impounding required hereunder but he may not reject a depository solely because of location in another state.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. Every registration shall remain effective for a period of 1 year unless it is revoked

by the commissioner, terminated upon request of the registrant with the consent of the commissioner, or renewed under 30-10-209(1)(b); however, said registration shall be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to said securities and shall continue suspended so long as such proceedings are pending and until the registration or filing with the securities and exchange commission is effective. All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding.

(4) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which:

(a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940; or

(b) are being offered and sold directly by or for the account of the issuer."

**Section 2. Extension of authority.** Any existing authority of the securities commissioner to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Applicability.** This act applies to securities registered on and after the effective date of this act.

**Section 4. Effective date.** This act is effective on passage and approval.

Approved March 16, 1987.

## CHAPTER NO. 108

[SB 204]

AN ACT AUTHORIZING COUNTIES TO ASSESS AN ADDITIONAL FEE OF \$3 TO DEFRAY THE COST OF ISSUING COMMEMORATIVE CENTENNIAL LICENSE PLATES; AMENDING 2-89-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the 1985 Montana Legislature authorized the issuance of commemorative centennial license plates; and

WHEREAS, that authorization provided that the issuance of the commemorative centennial license plates must be made at no cost to the State; and

WHEREAS, a county is a political subdivision of the State; and

WHEREAS, the issuance of commemorative centennial license plates will impose additional duties on County Treasurers, including:

- (1) handling at least three additional types of plates:
  - (a) passenger plates;
  - (b) truck plates; and
  - (c) trailer plates;
- (2) manpower to process extra applications for commemorative centennial license plates;
- (3) manpower to maintain recordkeeping and control of gift certificates;
- (4) mailing costs for notifying persons with gift certificates that plates are available to be picked up; and
- (5) costs of reprogramming county computers to process commemorative centennial plates; and

WHEREAS, the performance of these additional duties necessitates that additional costs be incurred on the part of the county issuing the commemorative centennial license plates; and

WHEREAS, the county should be reimbursed for the costs associated with issuing the commemorative centennial license plates.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-89-302, MCA, is amended to read:

**"2-89-302. (Temporary) Commemorative centennial license plates.** (1) Notwithstanding the 4-year period provided for in 61-3-332(2), the department of justice may issue commemorative centennial license plates for a different period if requested by the Montana statehood centennial office, at prices to be agreed upon by the department and the office as provided in 2-89-303.

(2) Commemorative license plates may be:

(a) collectors' license plates, intended to be collectors' items only, distinctively marked or colored. Such plates may be designated as not valid for the purpose of licensing motor vehicles within the state; or

(b) special or limited duration license plates valid for licensing motor vehicles in the state and carrying the same general centennial design as regularly issued license plates provided for in 2-89-301, except that they may differ from such regular license plates by:

(i) color;

(ii) use of a distinctive series of registration numbers or special prefixes or suffixes for the registration numbers; and

(iii) by other details not distracting from legibility or recognition of the license plate.

(3) (a) The proceeds from the sale of commemorative license plates, after payment of the agreed price to the department, must be used for centennial activities of the office as provided in part 1 of this chapter.

(b) *A county shall assess an additional fee of \$3 for each set of commemorative centennial license plates issued in the county to defray the costs incurred by the county treasurer. The county treasurer shall collect the fee and deposit the money in the county general fund.*

(c) The issuance of commemorative license plates must be made at no direct cost to the state.

(4) Commemorative license plates that are valid for licensing a motor vehicle must carry the assigned county number, as established in 61-3-332(8), either within the registration numbers or by means of an affixed nonremovable sticker bearing the appropriate county designation and used in accordance with instructions by the department. (Terminates July 1, 1991—sec. 5, Ch. 674, L. 1985.)"

Section 2. **Effective date — applicability.** This act is effective on passage and approval and applies to all commemorative centennial license plates issued on or after the effective date of this act.

Approved March 16, 1987.

## CHAPTER NO. 109

[SB 242]

AN ACT TO ALLOW THE DIVISION OF WORKERS' COMPENSATION ACCESS TO AN EMPLOYER'S PREMISES FOR THE PURPOSE OF INSPECTION; AND AMENDING SECTION 39-71-2305, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-71-2305, MCA, is amended to read:

**"39-71-2305. Advanced rate for dangerous places of employment — inspection.** (1) If, by reason of poor or careless management or otherwise, any place of employment is unduly dangerous in comparison with other like places of employment and the employer operating the same has not complied with the safety provisions of the Montana Safety Act and the employer is under compensation plan No. 3, the division, in addition to any other penalty provided, shall advance the rate upon such place of employment 50%. The advanced rate shall continue and be in force until the place of employment has ceased to be unduly dangerous in comparison with other like places of employment and the employer has obtained a certificate of the division.

(2) *Each employer who elects to be bound by compensation plan No. 3, by reason of such election, consents to provide the division reasonable access to the premises of his business for the purpose of permitting inspection necessitated under subsection (1)."*

**Section 2. Extension of authority.** Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 16, 1987.

## CHAPTER NO. 110

[SB 255]

AN ACT TO EXPAND THE NUMBER OF MEMBERS OF MUNICIPAL BOARDS OF ADJUSTMENT UPON THE DISCRETION OF THE MUNICIPALITY; AND AMENDING SECTION 76-2-322, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-2-322, MCA, is amended to read:

**"76-2-322. Membership and term of board members — vacancies.** (1) The board of adjustment shall consist of *not less than five or more than seven* members to be appointed for a term to be specified by the city or town council or other legislative body or, if no term is specified, then for a term of 3 years. A member is removable for cause by the appointing authority upon written charges and after public hearing.

(2) Vacancies shall be filled for the unexpired term of any member whose term becomes vacant."

Approved March 16, 1987.

## CHAPTER NO. 111

[SB 264]

AN ACT REQUIRING THAT THE TERMS, CONDITIONS, AND DETAILS OF ANY COMPROMISE OR SETTLEMENT AGREEMENT ENTERED INTO OR APPROVED BY A GOVERNMENTAL ENTITY BE SUBJECT TO PUBLIC INSPECTION; AND AMENDING SECTIONS 2-9-303 AND 2-9-304, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-9-303, MCA, is amended to read:

**"2-9-303. Compromise or settlement of claim against state.** (1) The department of administration may compromise and settle any claim

allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any. A settlement from the self-insurance reserve fund or deductible reserve fund must be approved by the district court of the first judicial district except when suit has been filed in another judicial district, in which case the presiding judge must approve the compromise settlement.

*(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into or approved pursuant to subsection (1) are public records available for public inspection."*

Section 2. Section 2-9-304, MCA, is amended to read:

**"2-9-304. Compromise or settlement of claim against political subdivision.** (1) The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of the insurance, if any. A settlement involving a self-insurance reserve fund or deductible reserve fund must be approved by the district court where the claim is filed.

*(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into or approved pursuant to subsection (1) are public records available for public inspection."*

Approved March 16, 1987.

## CHAPTER NO. 112

[HB 223]

### AN ACT TO ADOPT THE INTERSTATE CORRECTIONS COMPACT.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Compact adopted — text.** The Interstate Corrections Compact is entered into by this state with any and all other states legally joining therein in the form substantially as follows:

#### INTERSTATE CORRECTIONS COMPACT

##### Article I. Purpose and Policy

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

## Article II. Definitions

As used in this compact, unless the context requires otherwise:

(a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" means a state party to this compact in which conviction or court commitment was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) "Inmate" means a male or female offender who is committed under sentence to or confined in a penal or correctional institution.

(e) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates may lawfully be confined.

## Article III. Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

## Article IV. Procedures and Rights

(a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order

to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state. For transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subsection, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall



be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

#### Article V. Acts Not Reviewable in Receiving State — Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

#### Article VI. Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity

is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

#### Article VII. Entry Into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

#### Article VIII. Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

#### Article IX. Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

#### Article X. Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

**Section 2. Effectuation of purposes of compact.** The department of institutions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within its jurisdiction, including but not limited to the making and submission of such reports as are required by the compact.

Approved March 16, 1987.

**CHAPTER NO. 113**

[HB 329]

AN ACT REQUIRING ONLY ONE COPY OF A TECHNICAL CODE TO BE FILED WITH THE CITY OR TOWN CLERK FOR PUBLIC INSPECTION; AND AMENDING SECTION 7-5-4202, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-5-4202, MCA, is amended to read:

**"7-5-4202. Incorporation of technical codes by reference.** (1) The governing body of an incorporated city or town may adopt technical building, zoning, health, electrical, fire, and plumbing codes in whole or in part by reference.

(2) At least 15 days prior to final action by a governing body of the city or town, notice of intent to adopt a technical code in whole or in part by reference shall be published in a newspaper of general circulation in the city or town. A copy of the code or part to be adopted shall be filed with the clerk of the city or town for inspection by the public.

(3) If a technical code or part of a code is adopted by reference, a record in "The Ordinance Book" may be made by recording the ordinance without setting forth the provisions of the code or part of a code adopted."

Approved March 16, 1987.

**CHAPTER NO. 114**

[HB 587]

AN ACT TO CHANGE THE DATE DELINQUENT SEWER CHARGES ARE CERTIFIED TO THE COUNTY ASSESSOR FOR COLLECTION; PROVIDING OTHER CHANGES IN DATES RELATING TO SEWER CHARGES; AND AMENDING SECTION 7-13-4309, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-13-4309, MCA, is amended to read:

**"7-13-4309. Procedure to collect sewer charges.** (1) The sewer charges shall be collected by the treasurer.

(2) On or before *July* 15 of each year, notice shall be given by the city treasurer or town clerk to the owners of all lots or parcels of real estate to which sewer service has been furnished prior to *July* 1 by the city or town. Said notice shall specify the assessment owing and in arrears at the time of giving such notice. Such notice shall be in writing and shall state the amount of such arrearage, including any penalty and interest assessed pursuant to the provisions of the city or town ordinance and that unless

the same is paid by *August 15* thereafter, the same will be levied as a tax against the lot or parcel of real estate to which sewer service was furnished and for which payment is delinquent as above specified. Such notice may be delivered to such owner personally or by letter addressed to such owner at the post-office address of such owner as recorded in the office of the county assessor.

(3) (a) Except as provided in subsection (3)(b), on *September 1*, the city treasurer or town clerk shall certify and file with the county assessor a list of all lots or parcels of real estate, giving the legal description thereof, to the owners of which notices of arrearage in payments were given as above specified and which arrearage still remains unpaid and stating the amount of such arrearage, including any penalty and interest. The county assessor shall insert the same as a tax against such lot or parcel of real estate.

(b) In cities where the council has provided by ordinance for the collection of taxes, the city treasurer shall insert such delinquent amount, including penalty and interest, as a tax against the lot or parcel of real estate to which sewer service was furnished and payment for which is delinquent."

Approved March 16, 1987.

## CHAPTER NO. 115

[HB 625]

AN ACT TO CLARIFY THE PENALTIES A CITY OR TOWN MAY INVOKE FOR NONPAYMENT OF A CITY WATER OR SEWER ASSESSMENT; PROVIDING THAT SEWER SERVICE MAY BE DISCONTINUED, THAT FULL PAYMENT MUST BE MADE PRIOR TO REESTABLISHMENT, AND THAT PAST-DUE PAYMENTS ARE A DEBT COLLECTABLE IN COURT; AND AMENDING SECTIONS 7-13-4305, 7-13-4306, AND 7-13-4309, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-13-4305, MCA, is amended to read:

**"7-13-4305. Consumers required to pay for services.** (1) No person, firm, or corporation shall be permitted to use said system unless they pay the full and established rate for said service.

(2) *No person may have service reestablished after it is discontinued pursuant to 7-13-4306 unless they have paid the full amount past due, any interest or penalty on such past-due amount, and any required reestablishment deposit."*

Section 2. Section 7-13-4306, MCA, is amended to read:

**"7-13-4306. Effect of failure to pay charges.** In the event of non-payment of charges for either water or sewer service and benefits to any premises, the governing body may direct the supply of water or provision of sewer service to such premises to be discontinued until such charges are paid."

Section 3. Section 7-13-4309, MCA, is amended to read:

**"7-13-4309. Procedure to collect sewer charges.** (1) The sewer charges shall be collected by the treasurer.

(2) On or before January 15 of each year, notice shall be given by the city treasurer or town clerk to the owners of all lots or parcels of real estate to which sewer service has been furnished prior to January 1 by the city or town. Said notice shall specify the assessment owing and in arrears at the time of giving such notice. Such notice shall be in writing and shall state the amount of such arrearage, including any penalty and interest assessed pursuant to the provisions of the city or town ordinance and that unless the same is paid by July 1 thereafter, the same will be levied as a tax against the lot or parcel of real estate to which sewer service was furnished and for which payment is delinquent as above specified. *The notice shall also state that the city or town may by suit collect past-due assessments, interest, and penalties, as a debt owing the city or town, in any court of competent jurisdiction, including the city court.* Such notice may be delivered to such owner personally or by letter addressed to such owner at the post-office address of such owner as recorded in the office of the county assessor.

(3) (a) Except as provided in subsection (3)(b), on March 1, the city treasurer or town clerk shall certify and file with the county assessor a list of all lots or parcels of real estate, giving the legal description thereof, to the owners of which notices of arrearage in payments were given as above specified and which arrearage still remains unpaid and stating the amount of such arrearage, including any penalty and interest. The county assessor shall insert the same as a tax against such lot or parcel of real estate.

(b) In cities where the council has provided by ordinance for the collection of taxes, the city treasurer shall insert such delinquent amount, including penalty and interest, as a tax against the lot or parcel of real estate to which sewer service was furnished and payment for which is delinquent.

(4) *A city or town may, in addition to pursuing the collection of assessments in the same manner as a tax, bring suit in any court of competent jurisdiction, including city court, to collect the amount due and owing, including penalties and interest, as a debt owing the city or town."*

Approved March 16, 1987.

## CHAPTER NO. 116

[HB 646]

AN ACT AUTHORIZING THE CREATION OF A SPECIAL IMPROVEMENT DISTRICT OR RURAL IMPROVEMENT DISTRICT FOR THE PURPOSE OF FACILITATING THE CONSTRUCTION OF FACILITIES FOR TELECOMMUNICATIONS AND FOR THE TRANSMISSION OF ELECTRICITY AND NATURAL GAS; AND AMENDING SECTION 7-12-4102, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-12-4102, MCA, is amended to read:

**"7-12-4102. Authorization for creation of special improvement districts.** (1) The city or town council has power to create special improvement districts, designating the same by number; to extend the time for payment of assessments levied upon such districts for the improvements

thereon for a period not exceeding 20 years; to make such assessments payable in installments; and to pay all expenses of whatever character incurred in making such improvements with special improvement warrants or bonds.

(2) Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to:

(a) create special improvement districts for acquiring by purchase, building, constructing, or maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(b) create special improvement districts for acquiring by purchase or building and constructing municipal swimming pools and other recreation facilities;

(c) create special improvement districts and order the whole or any portion or portions, either in length or width, of any one or more of the streets, avenues, alleys, or places or public ways of any such city:

(i) graded or regraded to the official grade;

(ii) planked or replanked;

(iii) paved or repaved;

(iv) macadamized or remacadamized;

(v) graveled or regraveled;

(vi) piled or repiled;

(vii) capped or recapped;

(viii) surfaced or resurfaced;

(ix) oiled or reoiled;

(d) create special improvement districts and order the acquisition, construction, or reconstruction therein of:

(i) sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings (including the planting of grassplots and setting out of trees);

(ii) sewers, ditches, drains, conduits, and channels for sanitary and/or drainage purposes, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances;

(iii) waterworks, water mains, and extensions of water mains;

(iv) pipes, hydrants, hose connections for irrigating purposes;

(v) appliances for fire protection;

(vi) tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect the same from overflow or injury by water;

(vii) the opening of streets, avenues, and alleys and the planting of trees thereon;

(e) create special improvement districts and order the construction or reconstruction in, over, or through property or rights-of-way owned by such city of:

(i) tunnels, sewers, ditches, drains, conduits, and channels for sanitary and/or drainage purposes, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances;

(ii) pipes, hose connections for irrigating; hydrants and appliances for fire protection;

(iii) breakwaters, levees, retaining walls, and bulkheads; and

(iv) walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in any such city from overflow by water;

*(f) create special improvement districts to make monetary advances or contributions to aid in the construction of additional natural gas and electric distribution lines and telecommunications facilities in order to extend such public utility services;*

(g) create special improvement districts and order any work to be done which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way of such city; and

(h) maintain, preserve, and care for any and all of the improvements herein mentioned.

(3) The city governing body may order and create special improvement districts covering projects abutting the city limits and include properties outside the city where the special improvement district abuts and benefits that property. Property owners within the proposed district boundaries outside the city may not be included in the special improvement district if 40% of those property owners protest the creation of the special improvement district. The property outside the city must be treated in a similar manner as to improvements, notices, and assessments as the property inside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the special improvement district prior to passing the resolution of intention or the resolution creating the special improvement district. A copy of the resolution of intention and the resolution creating the special improvement district must be provided to the county commissioners upon the passage of the respective resolutions."

Approved March 16, 1987.

**CHAPTER NO. 117**

[SB 35]

AN ACT REVISING THE NEPOTISM LAWS TO PERMIT THE RENEWAL OF AN EMPLOYMENT CONTRACT OF A RELATIVE UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 2-2-302, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-2-302, MCA, is amended to read:

**"2-2-302. Appointment of relative to office of trust or emolument unlawful.** (1) It shall be unlawful for any person or any member of any board, bureau, or commission or employee at the head of any department of this state or any political subdivision thereof to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

(2) The provisions of this section and 2-2-303 do not apply to:

(a) sheriffs in the appointment of persons as cooks and/or attendants; and

(b) the renewal of an employment contract of a person who was initially hired before the member of the board, bureau, or commission or the department head to whom he is related assumed the duties of the office."

Section 2. **Applicability.** This act applies retroactively, within the meaning of 1-2-109, to occurrences on or after October 1, 1985, and permits the rehiring of a person whose employment contract was not renewed because of nepotism.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 17, 1987.

**CHAPTER NO. 118**

[SB 243]

AN ACT TO ALLOW A COUNTY TO REQUIRE PURCHASE OF A TEMPORARY PERMIT FOR OPERATION OF CERTAIN OUT-OF-STATE BOATS ON WATERS WITHIN THE COUNTY; TO PROVIDE FOR ENFORCEMENT, PENALTIES, AND DISPOSITION OF PERMIT FEE REVENUE; AND AMENDING SECTION 23-2-511, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-2-511, MCA, is amended to read:

**"23-2-511. Operation of unnumbered motorboats prohibited — display of decals.** (1) Every motorboat on the waters of this state, propelled by a motor or an engine of any description, must be properly numbered and display valid license decals. No person may operate or give



permission for the operation of any motorboat on such waters unless the motorboat is numbered and displays valid license decals in accordance with this part, with applicable federal law, or with a federally approved numbering system of another state and unless:

(a) the certificate of number assigned to the motorboat is in full force and effect;

(b) the identifying number set forth in the certificate of number and the valid license decals are displayed on such motorboat; and

(c) *a temporary permit has been obtained from the county in which the boat is being operated if that county requires a temporary permit for out-of-state motorboats, as provided in [section 2].*

(2) Upon transfer of ownership of a motorboat from a registered boat dealer or manufacturer, the transferred motorboat may be operated on the waters of this state for 20 consecutive calendar days immediately following the transfer of ownership without displaying the numbers and license decal required by subsection (1) provided that when the motorboat is operated during those 20 consecutive calendar days, a bill of sale or other evidence of transfer reciting the date of the transfer of ownership is retained in the motorboat and is exhibited to a warden or other officer upon request."

**Section 2. Temporary permit for operation of out-of-state motorboat — violation — penalty — disposition of proceeds.** (1) A temporary permit may be required by a county for operation of a motorboat on waters within the county if the motorboat is from a state that requires a similar temporary permit for operation in that state of a motorboat licensed in Montana. The permit may be purchased from the county for a fee of \$10. When properly affixed to the motorboat, such permit authorizes the operation of the motorboat for a period of 30 days within the county. The county shall provide reasonable notice of the permit requirement and shall make the permits available to the public.

(2) The temporary permit must be issued in the form of a decal that must denote the time during which it is valid. The decal must be conspicuously displayed on the motorboat during all times of operation.

(3) A person who operates a motorboat in violation of 23-2-511(1)(c) or this section is guilty of a misdemeanor and shall be fined no more than \$50.

(4) All proceeds received by the county from payment of the permit fee must be used in enforcing compliance with the temporary permit and developing and maintaining public boating access and facilities.

Approved March 17, 1987.

**CHAPTER NO. 119**

[HB 228]

**AN ACT AMENDING SECTION 33-1-711, MCA, TO REMOVE THE AUTOMATIC STAY OF AN ORDER UPON FILING NOTICE OF APPEAL UNDER THE MONTANA INSURANCE CODE.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-1-711, MCA, is amended to read:

**"33-1-711. Appeals from the commissioner.** (1) An appeal from the commissioner shall be taken only from an order on hearing or with respect to a matter as to which the commissioner has refused a hearing. Any person who was a party to such hearing or whose pecuniary interests are directly and immediately affected by any such order or refusal and who is aggrieved thereby may, within 30 days after the order has been mailed or delivered to the persons entitled to receive the same, the commissioner's order denying rehearing or reargument has been so mailed or delivered, or the commissioner's refusal to grant a hearing, appeal from such order on hearing or such refusal of a hearing. *Any request for a stay of the commissioner's order must be made within 60 days to run concurrently with the 30 days for appeal.* The appeal shall be taken to the district court of Lewis and Clark County by filing written notice of appeal in such court and by filing a copy of such notice with the commissioner, except that in appeals from the suspension or revocation of the certificate of authority of a domestic insurer or of the license of an agent, solicitor, or surplus line agent, the person taking the appeal may at his option, in lieu of the district court of Lewis and Clark County, take the appeal to the district court of the county of Montana in which the insurer has its principal place of business or the licensee resides.

(2) Upon filing of the notice of appeal therein, the court shall have full jurisdiction and shall determine whether such filing shall operate as a stay of the order or action appealed from.

(3) Within 20 days after filing of the copy of the notice of appeal in his office, the commissioner shall make and return to the court in which the appeal is pending a copy of his order appealed from and a full and complete transcript, duly certified by the commissioner, of his record of the hearing upon which the order was issued, together with all exhibits and documentary evidence introduced thereat. If the appeal is from an action of the commissioner with respect to which a hearing was refused, the commissioner shall within such 20-day period make and return to the court a full and complete transcript, duly certified by him, of all documents on file in his office directly relating to the matter as to which such appeal is taken.

(4) Upon receipt of such transcripts and evidence, the court shall hear the matter de novo as soon as reasonably possible thereafter. Upon the hearing of the appeal, the court shall consider the evidence contained in the transcript, exhibits, and documents therein filed by the commissioner,

together with such additional proper evidence as may be offered by any party to the appeal.

(5) After hearing the appeal, the court may affirm, modify, or reverse the order or action of the commissioner in whole or in part or remand the action to the commissioner for further proceedings in accordance with the court's direction.

(6) Costs shall be awarded as in civil actions.

(7) Appeal may be taken to the supreme court from the judgment of the district court as in other civil cases to which the state is a party. A stay of the effectiveness of any such judgment may be made only by order of the supreme court upon the giving of such security as that court deems proper.

(8) This section shall not apply to appeals as to matters covered by chapter 16."

**Section 2. Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 17, 1987.

## CHAPTER NO. 120

[HB 254]

**AN ACT REGULATING THE GROUNDS ON WHICH PROPERTY OR CASUALTY INSURANCE MAY BE CANCELED OR NOT RENEWED; AND REQUIRING NOTICE OF CANCELLATION OR NONRENEWAL OF A PROPERTY OR CASUALTY POLICY.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Purpose — applicability.** (1) The purpose of [sections 1 through 9] is to protect the public with regard to insurance transactions that involve cancellation, renewal, nonrenewal, or premium increases on contracts of property or casualty insurance by:

(a) regulating the grounds for midterm cancellation of an insurance policy;

(b) prohibiting midterm increases in premiums;

(c) increasing the opportunity for insureds to shop for replacement or substitute insurance;

(d) reducing the opportunity for breach of contract, misrepresentation by omission or untimely disclosure, and unfair discrimination among insureds; and

(e) increasing the opportunity for agents to compete freely.

(2) [Sections 1 through 9] apply to those forms of insurance defined in 33-1-206 and 33-1-210, except to the extent they conflict with chapter 23 of this title.

(3) [Sections 1 through 9] do not limit the activities that may constitute undefined unfair trade practices prohibited by 33-18-1003. The commissioner may apply other provisions of this code to insurance transactions involving cancellation, renewal, nonrenewal, or premium increases on contracts of property or casualty insurance. Policies may provide terms more favorable to insureds than are required by [sections 1 through 9]. The rights provided by [sections 1 through 9] are in addition to and do not prejudice any other rights that the insured may have under common law, statutes, or rules.

**Section 2. Definitions.** As used in [sections 1 through 9], the following definitions apply unless the context requires otherwise:

(1) "Anniversary date" means the month and day that rates, rating plans, and rating systems are initially applied to a policy in effect. The term includes each annual anniversary thereafter unless the insurer establishes a different date by a filing with the commissioner.

(2) "Cancellation" means the decision by the insurer to terminate an insurance policy prior to the expiration of its term.

(3) "Classification" means an arrangement of insurance risks into an underwriting or rating group according to a classification system used by an insurer as a basis for tabulating statistical experience and determining premium rates.

(4) "Classification system" means a schedule of classifications and a rule used by an insurer for determining the classifications applicable to an insured.

(5) "Insurer" means an insurer authorized to transact property or casualty insurance in this state.

(6) "Premium" means the contractual consideration charged to an insured for insurance for a specified period of time, regardless of the timing of actual charges.

(7) "Rate" means a monetary amount applied to the units of exposure assigned to a classification and used by an insurer to determine the premium for an insured.

(8) "Rating plan" means a rule used by an insurer to calculate:

(a) the premium for an insured; and

(b) the parameter values used in such calculation after application of classification premium rates to units of exposure.

(9) "Renewal" means an agreement between an insurer and an insured to extend or continue an existing insurance policy for 90 days or more.

**Section 3. Midterm cancellation.** (1) An insurer may not cancel an insurance policy before either the expiration of the agreed term or 1 year

from the effective date of the policy or renewal date, whichever is less, except:

- (a) for reasons specifically allowed by statute;
- (b) for failure to pay a premium when due; or
- (c) on grounds stated in the policy which pertain to the following:
  - (i) material misrepresentation;
  - (ii) substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk when the contract was written;
  - (iii) substantial breaches of contractual duties, conditions, or warranties;
  - (iv) determination by the commissioner that continuation of the policy would place the insurer in violation of this code;
  - (v) financial impairment of the insurer; or
  - (vi) any other reason approved by the commissioner.

(2) Cancellation under subsection (1) is not effective until 10 days after a notice of cancellation is either delivered or mailed to the insured.

(3) Subsections (1) and (2) do not apply to a newly issued insurance policy if the policy has been in effect less than 60 days at the time the notice of cancellation is mailed or delivered. No cancellation under this subsection is effective until 10 days after the notice is delivered or mailed to the insured.

(4) If a policy has been issued for a term longer than 1 year and if either the premium is prepaid or an agreed term is guaranteed for additional premium consideration, the insurer may not cancel the policy except:

- (a) for reasons specifically allowed by statute;
- (b) for failure to pay a premium when due; or
- (c) on grounds stated in the policy which pertain to those grounds listed in subsection (1)(c).

**Section 4. Anniversary cancellation — anniversary rate increases.** (1) An insurer may issue a policy for a term longer than 1 year or for an indefinite term if the policy contains a clause that allows cancellation by the insurer if the insurer gives notice 30 days prior to an anniversary date.

(2) If a policy has been issued for a term longer than 1 year and for additional premium consideration an annual premium has been guaranteed, the insurer may not increase the annual premium for the term of that policy.

**Section 5. Nonrenewal — renewal premium.** (1) An insured has a right to reasonable notice of nonrenewal. Unless otherwise provided by statute or unless a longer term is provided in the policy, at least 30 days prior to the expiration date provided in the policy, an insurer who does not

intend to renew a policy beyond the agreed expiration date shall mail or deliver to the insured a notice of such intention. The insurer shall also mail or deliver a copy to the insured's agent.

(2) An insurer shall give notice of premium due not more than 60 days or less than 10 days before the due date of a renewal premium. The notice must clearly state the effect of nonpayment of the premium on or before the due date.

(3) Subsections (1) and (2) do not apply if:

(a) the insured has obtained insurance elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal; or

(b) the policy is expressly designated as nonrenewable.

**Section 6. Renewal with altered terms.** (1) If an insurer offers or purports to renew a policy but on less favorable terms, at a higher rate, or at a higher rating plan, the new terms, rates, or rating plan take effect on the policy renewal date only if the insurer has mailed or delivered notice of the new terms, rates, or rating plan to the insured at least 30 days before the expiration date. If the insured has not been so notified, he may cancel the renewal policy within 30 days after receiving the notice. The insurer shall continue coverage for a period of not less than 30 days after mailing or delivery of the notice. If the insured terminates the policy within the 30-day period, the insurer shall calculate earned premium pro rata based upon the prior policy's rate. The new rate is effective only after the required 30-day notification period has been met. If the insured does not terminate the policy, the premium increase and other changes are effective the day following the prior policy's expiration or anniversary date.

(2) This section does not apply if:

(a) the change is a rate or rating plan filed with the commissioner and applicable to the entire classification or classification system to which the policy belongs; or

(b) the increase in the rate or the rating plan, or both, results from a classification change based on the altered nature or extent of the risk insured against.

**Section 7. Information about grounds of nonrenewal.** (1) If an insured questions the facts upon which an insurer's decision to cancel or not renew is based, the insurer shall mail or deliver such information to the insured within 15 working days of receiving a written request from the insured. A notice is not effective unless it contains adequate information about the insured's right to make the request.

(2) This section does not apply if the grounds for cancellation or nonrenewal is nonpayment of the premium and the notice so states.

**Section 8. Homeowners insurance not affected by day-care operations.** (1) No insurer writing homeowners insurance in this state may deny an applicant homeowners insurance or cancel or refuse to renew a homeowners insurance policy covering a dwelling located in this state for the principal reason that an insured under the policy operates at the

insured location a day-care facility, as defined in 53-4-501, that satisfies the requirements of 53-4-508 or 53-4-509.

(2) This section does not prevent an insurer from excluding or limiting coverage with respect to liability or property losses arising out of an insured's business pursuits, including those related to the operation of a day-care facility.

**Section 9. Unfair trade practices.** (1) The failure of an insurer to comply with [sections 3 through 8] constitutes an unfair trade practice under 33-18-1003.

(2) Midterm premium increases and policy coverage reductions not in compliance with [sections 1 through 8] that are attempted or executed constitute unfair trade practices under 33-18-1003.

**Section 10. Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 11. Codification instruction.** Sections 1 through 9 are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to sections 1 through 9.

**Section 12. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 17, 1987.

## CHAPTER NO. 121

[HB 278]

**AN ACT TO REQUIRE AN INSURER WHO CANCELS A MOTOR VEHICLE POLICY FOR NONPAYMENT OF A PREMIUM TO PROCESS THE CANCELLATION ON A PRO RATA BASIS AND TO RETURN THE GROSS UNEARNED PREMIUM TO THE INSURED.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Return of unearned premiums.** If an insurer cancels a motor vehicle policy covering a commercial or private motor vehicle for nonpayment of a premium, the insurer shall process the cancellation on a pro rata basis. The insurer shall return whatever gross unearned premium is due under the motor vehicle policy to the insured. For purposes of this section, the term "unearned premium" means that part of the original premium, including deposits, not yet earned by the insurer and therefore due the insured if the policy is canceled.

Section 2. **Extension of authority.** Any existing authority of the department of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 33, chapter 23, part 2, and the provisions of Title 33, chapter 23, part 2, apply to section 1.

Approved March 17, 1987.

## CHAPTER NO. 122

[HB 440]

AN ACT AUTHORIZING THE COMMISSIONER OF INSURANCE TO DISAPPROVE A CASUALTY INSURANCE FORM IF THE FORM CONTAINS A PROVISION PERMITTING DEFENSE COSTS WITHIN LIMITS; AUTHORIZING THE COMMISSIONER OF INSURANCE, IN HIS DISCRETION, TO PERMIT DEFENSE COSTS WITHIN LIMITS; AND AMENDING SECTION 33-1-502, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-1-502, MCA, is amended to read:

**"33-1-502. Grounds for disapproval.** The commissioner shall disapprove any form filed under 33-1-501 or withdraw any previous approval thereof only if the form:

- (1) is in any respect in violation of or does not comply with this code;
- (2) contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract, *including a provision in a casualty insurance form permitting defense costs within limits, except as permitted by the commissioner in his discretion;*
- (3) has any title, heading, or other indication of its provisions which is misleading;
- (4) is printed or otherwise reproduced in such manner as to render any provision of the form substantially illegible."

Section 2. **Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 17, 1987.



**CHAPTER NO. 123**

[HB 441]

AN ACT' REQUIRING AN INSURER TO PROCESS CANCELLATION OF A FINANCED INSURANCE CONTRACT ON A PRO RATA BASIS; AND AMENDING SECTIONS 33-14-102 AND 33-14-305, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-14-102, MCA, is amended to read:

**"33-14-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Insurance premium finance company" means a person engaged in the business of entering into premium finance agreements with insureds or of acquiring such premium finance agreements from insurance agents, brokers, or other premium finance companies.

(2) "Licensee" means a premium finance company holding a license issued by the commissioner under this chapter.

(3) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance contract, together with a finance charge as authorized by this chapter, and as security therefor the insurance premium finance company receives an assignment of the unearned premium.

(4) "*Unearned premium*" means that part of the original premium, including a deposit, not yet earned by the insurer and therefore due the insured if a policy is canceled."

Section 2. Section 33-14-305, MCA, is amended to read:

**"33-14-305. Return of unearned premiums.** (1) Whenever a financed insurance contract is canceled, the insurer shall *process cancellation of the financed insurance policy on a pro rata basis. The insurer shall* return whatever gross unearned premiums are due under the insurance contract to the premium finance company for the account of the insured or insureds.

(2) If the crediting of the return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund the excess to the insured, except that no refund is required if such excess amounts to less than \$1."

**Section 3. Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 17, 1987.

**CHAPTER NO. 124**

[SB 110]

AN ACT TO AMEND THE MONTANA IN-STATE INVESTMENT ACT OF 1983 TO PROVIDE FOR INVESTMENT IN MONTANA CAPITAL COMPANIES; AND AMENDING SECTIONS 17-6-302, 17-6-310 THROUGH 17-6-313, 90-8-102, AND 90-8-303, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-6-302, MCA, is amended to read:

**"17-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the Montana economic development board established in 2-15-1805.

(2) "*Capital company*" means a Montana capital company created pursuant to Title 90, chapter 8.

(3) "Clean and healthful environment" means an environment that is relatively free from pollution which threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(4) "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

(5) "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

(6) "Loan participation" means loans or portions thereof bought from a financial institution and does not include the purchase of debentures issued by a capital company.

(7) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests are owned and controlled by residents of Montana.

(8) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenues in the future to the people of Montana, either directly or indirectly.

(9) "Montana economy" means any business activity in the state of Montana, including those which continue existing jobs or create new jobs in Montana.

(10) "Montana in-state investment fund" means the fund established by 17-6-305.

(11) "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund."

Section 2. Section 17-6-310, MCA, is amended to read:

**"17-6-310. No direct loans.** (1) The state may not use this revenue to make direct loans.

(2) No money from the Montana in-state investment fund may be used to make direct loans to individual borrowers. *The purchase of debentures issued by a capital company and loans or portions thereof originated by a financial institution that are sold to the trust are not direct loans.*"

Section 3. Section 17-6-311, MCA, is amended to read:

**"17-6-311. Limitation on size of investments.** (1) Except as provided in subsections (2) and (3), no investment may be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the Montana in-state investment fund the total current accumulated amount of which exceeds 10% of the prior fiscal year's coal severance tax revenue deposited in the Montana in-state investment fund.

(2) Subsection (1) does not limit the board's authority to guarantee loans or bonds or make loans to the capital reserve account and guaranty fund as provided in 17-6-308(2) and (3).

(3) *Subsection (1) does not apply to the purchase of debentures issued by a capital company; however, the total amount of such debentures purchased by the board may not exceed 10% of the Montana in-state investment fund at the time of purchase.*"

Section 4. Section 17-6-312, MCA, is amended to read:

**"17-6-312. State participation in loans.** (1) State participation in any loan to a business enterprise, except for a loan guaranteed by a federal agency, must be limited to 80% of the outstanding loan. The state shall participate in the security for a loan in the same proportion as the loan participation amount.

(2) *The purchase of debentures issued by a capital company is not a loan participation and is not subject to subsection (1).*"

Section 5. Section 17-6-313, MCA, is amended to read:

**"17-6-313. Prior commitment of funds.** The board may authorize the commitment of funds to financial institutions and capital companies pursuant to rules adopted by the board, but the determination as to credit with respect to individual investments must be made by the financial institution and the board or the capital company and the board."

Section 6. Section 90-8-102, MCA, is amended to read:

**"90-8-102. Declaration of policy.** (1) The legislature finds and declares that:

(a) economic insecurity due to unemployment is a serious menace to the health, safety, and general welfare of not only the affected people but of the people of the entire state;

(b) involuntary unemployment, with its resulting burden of indigency, falls with crushing force upon unemployed workers and ultimately on the state itself in the form of public assistance and unemployment compensation payments; and

(c) unemployment causes a migration of Montana workers and families seeking jobs and establishing homes elsewhere, which deprives the state of its most valuable resource, its people, and reduces the tax base of local governments, impairing their ability to provide basic services.

(2) (a) The legislature further finds that the best method of combating unemployment and protecting Montana against the loss of its people is by promoting, stimulating, developing, rehabilitating, and revitalizing the business prosperity and economic welfare of the state and its citizens.

(b) To accomplish this goal, the legislature seeks to encourage the formation of venture and equity capital in Montana for use in diversifying, strengthening, and stabilizing the Montana economy by increasing Montana employment and business opportunities while protecting the people's constitutional right to a clean and healthful environment.

(3) The legislature further finds that:

(a) private investment of venture and equity capital in the Montana economy will be encouraged and promoted by making tax credits available to taxpayers investing in Montana capital companies;

(b) demands on state revenues restrict the financial ability of the state to make unlimited tax credits available for investment purposes and require that the state place reasonable limits on the total amount of tax credits to be made available for investment incentive;

(c) establishment of a rational tax credit program which gives priority to investments in capital companies in the order in which they are qualified will encourage prompt private investment in Montana businesses.

(4) *The legislature further finds that use of money from the Montana in-state investment fund established by 17-6-305 to purchase debentures issued by a capital company will promote the business prosperity and economic welfare of the state and its citizens."*

Section 7. Section 90-8-303, MCA, is amended to read:

**"90-8-303. Conflict of interest.** (1) (a) The members of the board, the commissioner of financial institutions, or a bank examiner may not have a monetary interest in or be a borrower from any Montana capital company, either directly or indirectly.

(b) *These restrictions do not prohibit the board, acting as a whole, from purchasing debentures issued by a Montana capital company.*

(2) A member of the investment committee of a Montana capital company who has an interest in a venture that comes before the committee for a vote shall disclose such interest and abstain from voting on investment in the venture."

**Section 8. Extension of authority.** Any existing authority of the Montana economic development board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 19, 1987.

## CHAPTER NO. 125

[SB 218]

### AN ACT REGULATING THE DISCONTINUANCE, NONRENEWAL, OR REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Discontinuance or nonrenewal — alternate policy — same insurer.** (1) If a disability insurer discontinues or does not renew a medicare supplement policy product and offers an alternate medicare supplement policy to its insureds within this state, it may not deny benefits under the replacing policy to an insured who receives treatment for a condition that was a covered expense under the replaced policy and is a covered expense under the replacing policy if the insured enrolls in and pays the premium for the replacing policy within 31 days after the termination of the replaced policy.

(2) A disability insurer who discontinues or does not renew a medicare supplement policy product and offers an alternate medicare supplement policy shall base its premium for the alternate policy on the rates currently in place for that policy.

(3) If the insured has not satisfied the preexisting condition limitation under the replaced medicare supplement policy, any period of time that was covered by that policy must be credited toward the preexisting condition limitation period of the replacing policy.

**Section 2. Discontinuance or nonrenewal — alternate policy — unauthorized bulk reinsurance.** (1) Alternate medicare supplement coverage as provided in [section 1] must be offered to its insureds by a disability insurer that:

(a) bulk cedes its medicare supplement policy business to an insurer that does not meet the requirements of chapter 2;

(b) authorizes the bulk reinsurer to administer the medicare supplement policies on its behalf; and

(c) discontinues or does not renew a medicare supplement policy product.

(2) The premium for the alternate policy referred to in subsection (1) must be based on actuarially justified rates.

**Section 3. Replacement policy — different insurer.** (1) If a disability insurer replaces a medicare supplement policy, it may not deny benefits under the replacing policy to an insured who receives treatment for a condition that was a covered expense under the replaced policy and is a covered expense under the replacing policy if the insured pays the premium for the replacing policy when due or within 31 days after the termination of the replaced policy.

(2) An insurer who replaces a medicare supplement policy shall base its premium for the replacement policy on the rates currently in place for that policy.

(3) If the insured has not satisfied the preexisting condition limitation under the replaced medicare supplement policy, any period of time that was covered by that policy must be credited toward the preexisting condition limitation period of the replacing policy.

(4) To receive the benefits of subsections (1) through (3), a person shall submit to the replacing insurer proof of prior coverage, evidence of benefits provided under the previous policy, and the effective date and the date of termination of coverage under the previous policy.

**Section 4. Renewal requirement.** (1) If a person pays a renewal premium on the date it is due or within 31 days after it is due, an insurer may not refuse to renew a medicare supplement policy unless the insurer:

(a) refuses to renew all policies in this state that are of the same form and issued to persons of the same class; and

(b) offers a replacement policy at actuarially justified rates.

(2) If an insurer refuses to renew all policies in this state that are of the same form and issued to persons of the same class, the policies will remain in force during the grace period stated in the replaced policy. An insurer's refusal to renew a policy may not affect a claim that arose under the replaced policy during the period in which an insured was confined without interruption to a medical care facility for treatment.

**Section 5. Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 6. Codification instruction.** Sections 1 through 4 are intended to be codified as an integral part of Title 33, chapter 22, part 9, and the provisions of Title 33, chapter 22, part 9, apply to sections 1 through 4.

Approved March 19, 1987.

**CHAPTER NO. 126**

[SB 236]

AN ACT STANDARDIZING THE NUMBERING FOR OPTIONAL RETIREMENT ALLOWANCES AVAILABLE UNDER CERTAIN RETIREMENT SYSTEMS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD; AMENDING SECTIONS 19-5-701, 19-7-701, AND 19-8-801, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-5-701, MCA, is amended to read:

**"19-5-701. Optional retirement allowance.** (1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A member or a beneficiary may elect or, prior to the approval of a previous election, revoke or change the previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 2—upon his death, his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(b) Option 3—upon his death, one-half of his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(c) Option 4—such other benefits will be paid, either to his beneficiary or to any other person that he nominated, as together with the lesser retirement allowance are the actuarial equivalent of his retirement allowance and have been approved by the board."

Section 2. Section 19-7-701, MCA, is amended to read:

**"19-7-701. Optional retirement allowance.** (1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A member or beneficiary may elect or, prior to the approval of a previous election, revoke or change a previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 2—upon his death, the lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of retirement.

(b) Option 3—upon his death, one-half of the lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of retirement.

(c) Option 4—such other benefits will be paid, either to the beneficiary or to any other person that he nominated, as, together with the lesser retirement allowance, are the actuarial equivalent of his retirement allowance and have been approved by the board.”

Section 3. Section 19-8-801, MCA, is amended to read:

**“19-8-801. Optional retirement allowance.** (1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A member or beneficiary may elect or, prior to the approval of a previous election, revoke or change a previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 2—upon his death, his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(b) Option 3—upon his death, one-half of his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(c) Option 4—such other benefits will be paid, either to the beneficiary or to any other person that he nominated, as together with the lesser retirement allowance are the actuarial equivalent of his retirement allowance and have been approved by the board.”



Section 4. **Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Effective date.** This act is effective July 1, 1987.

Approved March 19, 1987.

## CHAPTER NO. 127

[HB 58]

AN ACT TO AUTHORIZE LICENSED CLINICAL PSYCHOLOGISTS TO HAVE THE SAME AUTHORITY AS PSYCHIATRISTS TO EXAMINE PERSONS RELYING ON MENTAL DISEASE OR DEFECT AS AN ISSUE IN CRIMINAL ACTIONS; AND AMENDING SECTIONS 46-14-202, 46-14-212, 46-14-213, 46-14-221, AND 46-14-302, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-14-202, MCA, is amended to read:

**"46-14-202. Psychiatric examination of defendant.** (1) If the defendant or his counsel files a written notice of his intent to rely on a mental disease or defect under 46-14-201 or raises the issue of his fitness to proceed, the court shall appoint at least one qualified psychiatrist or *licensed clinical psychologist* or shall request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist or *licensed clinical psychologist*, which designation may be or include himself, to examine and report upon the mental condition of the defendant.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period of not exceeding 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist or *licensed clinical psychologist* retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(4) The cost of the examination must be paid by the county or the state, or both, according to procedures established under 3-5-902(1)."

Section 2. Section 46-14-212, MCA, is amended to read:

**"46-14-212. Examination by expert chosen by state or defendant.** If either the defendant or the state wishes the defendant to be examined by a qualified psychiatrist, *licensed clinical psychologist*, or other expert selected by the one proposing the examination in order to determine the defendant's fitness to proceed or whether he had, at the time the

offense was committed, a particular state of mind which is an essential element of the offense, the examiner shall be permitted to have reasonable access to the defendant for the purpose of the examination."

Section 3. Section 46-14-213, MCA, is amended to read:

**"46-14-213. Psychiatric testimony upon trial.** (1) Upon the trial, any psychiatrist or *licensed clinical psychologist* who reported under 46-14-202 and 46-14-203 may be called as a witness by the prosecution or by the defense. If the issue is being tried before a jury, the jury may not be informed that the psychiatrist or *licensed clinical psychologist* was designated by the court or by the superintendent of the Montana state hospital. Both the prosecution and the defense may summon any other qualified psychiatrist, *licensed clinical psychologist*, or other expert to testify, but no one who has not examined the defendant is competent to testify to an expert opinion with respect to the mental condition of the defendant, as distinguished from the validity of the procedure followed by or the general scientific propositions stated by another witness.

(2) When a psychiatrist, *licensed clinical psychologist*, or other expert who has examined the defendant testifies concerning the defendant's mental condition, he may make a statement as to the nature of his examination, his diagnosis of the mental condition of the defendant at the time of the commission of the offense charged, and his opinion as to the ability of the defendant to have a particular state of mind which is an element of the offense charged. The expert may make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion."

Section 4. Section 46-14-221, MCA, is amended to read:

**"46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses.** (1) The issue of the defendant's fitness to proceed may be raised by the defendant or his counsel or by the county attorney. When the issue is raised, it shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed under 46-14-203, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to summon and cross-examine the psychiatrists or *licensed clinical psychologists* who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (4) of this section, and the court shall commit him to the custody of the director of the department of institutions to be placed in an appropriate institution of the department of institutions for so long as the unfitness endures. The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that he is still unfit to proceed and that it does not appear that he will become fit to proceed within the reasonably foreseeable future, the proceeding against him shall be dismissed, except as provided in subsection (4) of this section, and

the county attorney shall petition the court in the manner provided in chapter 20 or 21 of Title 53, whichever is appropriate, to determine the disposition of the defendant pursuant to those provisions.

(3) If the court determines that the defendant lacks fitness to proceed because he is developmentally disabled as provided in 53-20-102(4), the proceeding against him shall be dismissed and the county attorney shall petition the court in the manner provided in chapter 20 of Title 53.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible to fair determination prior to trial and without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of institutions to be placed in an appropriate institution of the state department of institutions, of keeping him there, and of bringing him back are chargeable to the state and payable according to procedures established under 3-5-902(1)."

Section 5. Section 46-14-302, MCA, is amended to read:

**"46-14-302. Discharge or release upon motion of superintendent.** (1) If the superintendent of the Montana state hospital believes that a person committed to his custody under 46-14-301 may be discharged or released on condition without danger to himself or others, he shall make application for the discharge or release of the person in a report to the court by which the person was committed and shall send a copy of the application and report to the county attorney of the county from which the defendant was committed.

(2) The court shall then appoint at least two *persons who are qualified psychiatrists or licensed clinical psychologists* to examine the person and to report their opinion as to his mental condition within 60 days or a longer period which the court determines to be necessary for the purpose. To facilitate the examinations and the proceedings thereon, the court may have the person confined in any institution located near the place where the court sits which may hereafter be designated by the superintendent of the Montana state hospital as suitable for the temporary detention of irresponsible persons.

(3) If the court is satisfied by the report filed under subsection (1) of this section and the testimony of the reporting *psychiatrists or licensed clinical psychologists* which the court considers necessary that the committed person may be discharged or released on condition without danger to himself or others, the court shall order his discharge or his release on conditions which the court determines to be necessary.

(4) If the court is not satisfied, it shall promptly order a hearing to determine whether the person may safely be discharged or released. A hearing is considered a civil proceeding, and the burden is upon the committed person to prove by a preponderance of the evidence that he may safely be

discharged or released. According to the determination of the court upon the hearing, the committed person shall then be discharged or released on conditions which the court determines to be necessary or shall be recommitted to the custody of the superintendent of the Montana state hospital, subject to discharge or release only in accordance with the procedures prescribed in this section and 46-14-303."

Approved March 19, 1987.

## CHAPTER NO. 128

[HB 65]

AN ACT COMPUTING TIME OF OFFENDERS SERVING OUT TRAFFIC FINES AT \$10 A DAY; AND AMENDING SECTION 61-8-711, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-8-711, MCA, is amended to read:

**"61-8-711. Violation of chapter — penalty.** (1) It is a misdemeanor for any person to violate any of the provisions of this chapter unless the violation is declared to be a felony by this chapter or other law of this state.

(2) Every person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall for a first conviction thereof be punished by a fine of not less than \$10 or more than \$100 or by imprisonment for not more than 10 days. For a second conviction within 1 year thereafter, the person shall be punished by a fine of not less than \$25 or more than \$200 or by imprisonment for not more than 20 days or by both such fine and imprisonment. Upon a third or subsequent conviction within 1 year after the first conviction, the person shall be punished by a fine of not less than \$50 or more than \$500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

(3) On failure of payment of a fine, the offender in case of a misdemeanor shall be imprisoned in the county jail in the county in which the offense was committed, and the imprisonment shall be computed upon the basis of one day's incarceration for each \$10 of the fine.

(4) Upon conviction, the court costs or any part thereof may be assessed against the defendant in the discretion of the court."

Approved March 19, 1987.

**CHAPTER NO. 129**

[HB 77]

AN ACT ALLOWING A PATERNITY ACTION TO BE BROUGHT BY A STATE AGENCY UNTIL THE CHILD ATTAINS THE AGE OF MAJORITY; LIMITING RECOUPMENT OF PUBLIC ASSISTANCE PAYMENTS; AMENDING SECTION 40-6-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-6-108, MCA, is amended to read:

**"40-6-108. Statute of limitations.** (1) An action may be commenced:

(a) at any time for the purpose of declaring the existence of the father and child relationship presumed under subsection (a), (b), or (c) of 40-6-105(1);

(b) for the purpose of declaring the nonexistence of the father and child relationship presumed under subsection (a), (b), or (c) of 40-6-105(1), only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but not later than 5 years after the child's birth.

(2) After the presumption has been rebutted, paternity of the child by another man may be determined in the same action if he has been made a party.

(3) An action to determine the existence or nonexistence of the father and child relationship as to a child who has no presumed father under 40-6-105:

(a) may not be brought by the child later than 2 years after the child attains the age of majority;

(b) *may be brought* by a state agency *at any time* after the first application is made under Title IV-D of the Social Security Act for services to the child *and before the child attains the age of majority.*

(4) *The father's liability for a statutory debt created by the payment of public assistance is limited to the amount of assistance paid during the 2-year period preceding commencement of the action. This subsection does not limit the subsequent accrual of a statutory debt.*

(5) Sections 40-6-107 and 40-6-108 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship or otherwise.

(6) After the conclusion of an adoption proceeding under chapter 8, Title 40, no further action to declare the existence or nonexistence of the

father and child relationship of the adopted child may be commenced, except as provided in 40-8-112."

**Section 2. Effective date.** This act is effective on passage and approval.

Approved March 19, 1987.

## CHAPTER NO. 130

[HB 79]

AN ACT AUTHORIZING THE DEPARTMENT OF REVENUE TO ADMINISTRATIVELY ESTABLISH AND ENFORCE HEALTH INSURANCE COVERAGE IN CASES WHEN CHILD SUPPORT IS BEING ENFORCED BY THE DEPARTMENT.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Medical support obligation enforcement.** (1) In all proceedings initiated pursuant to this part, the department shall require parents obligated to pay child support to secure and maintain health insurance coverage for each dependent child, at a cost not to exceed 5% of net income, whenever such health insurance is available through their employment. However, if a court of competent jurisdiction has entered an order establishing a current support obligation and has ordered the obligated parent to secure and maintain health insurance coverage for each dependent child, the department shall enforce the obligation as ordered by the court.

(2) If the department determines that an obligated parent has failed to maintain health insurance coverage required by the order of a court of competent jurisdiction or an administrative agency empowered to enter such order, it may issue a notice commanding the parent to appear at a hearing held by the department and show cause why a sum of not more than \$100 should not be assessed for each month health insurance coverage is not secured or maintained. If the department finds, after hearing or failure to appear, that health insurance coverage has not been secured or maintained in accordance with the court or administrative order, the department may assess against the obligated parent not more than \$100 for each month health insurance coverage has not been secured or maintained. Such amounts may be enforced by warrant for distraint provided for in 40-5-241.

(3) Whenever an obligated parent who has been served with notice under this section appears before the department and shows that health insurance coverage in accordance with the court or administrative order:

(a) has been secured and maintained continuously since the date of the order, the department shall dismiss the pending action; or

(b) has not been secured or continuously maintained but such coverage is presently in effect, the department shall suspend the pending action for a period of 12 months.

(4) At the end of the suspension period, the department may schedule a hearing. If at this hearing the department finds that during the suspension period health insurance coverage:

(a) has been continuously maintained, the department shall dismiss the pending action and the obligated parent will not be assessed under this section; or

(b) has not been continuously maintained, the department may enter a final order requiring the obligated parent to pay the sum assessed in accordance with this section for each month coverage was not maintained.

(5) Any amounts collected pursuant to this section must be returned to the general fund to help offset expenditures for medicaid.

**Section 2. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 40, chapter 5, part 2, and the provisions of Title 40, chapter 5, part 2, apply to section 1.

Approved March 19, 1987.

## CHAPTER NO. 131

[HB 82]

AN ACT TO CONFORM SECTION 53-2-613, MCA, WITH FEDERAL LAW, TO CLARIFY THE RESPECTIVE RIGHTS OF THE DEPARTMENT OF REVENUE AND RECIPIENTS AND FORMER RECIPIENTS OF PUBLIC ASSISTANCE WITH REGARD TO ASSIGNED SUPPORT RIGHTS, AND TO ASSURE PROPER DISTRIBUTION OF ASSIGNED SUPPORT MONEY BY CLERKS OF COURT; AND AMENDING SECTION 53-2-613, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-2-613, MCA, is amended to read:

**"53-2-613. Application for assistance — assignment of support rights.** (1) Applications for public assistance, including but not limited to aid to dependent children and medical assistance, must be made to the county department of public welfare in the county in which the person is residing. The application shall be submitted, the manner and form prescribed by the department of *social and rehabilitation services*, and shall contain information required by the department of *social and rehabilitation services*.

(2) A person by signing an application for public assistance, assigns to the state, the department of *social and rehabilitation services*, and to the county welfare department all rights the applicant may have to support and

medical payments from any other person in his own behalf or in behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance;

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

(4) *Whenever a support obligation assigned to the department of social and rehabilitation services pursuant to this section is referred to the department of revenue pursuant to 40-5-202, the following provisions apply:*

(a) *If such support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department of revenue may retain assigned support amounts in an amount sufficient to reimburse public assistance money expended.*

(b) *No recipient or former recipient of public assistance may commence or maintain an action to recover a delinquent support obligation without notifying the department of revenue. The department of social and rehabilitation services may then release or relinquish its assigned interest or enter the proceeding. This subsection (4)(b) does not limit the right of any person to recover money not assigned.*

(c) *If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department of revenue has filed a written notice that:*

(i) *the assignment of current support amounts has been terminated; and*

(ii) *all assigned support delinquencies, if any, are satisfied or released.*

(d) *No recipient or former recipient of public assistance may take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department of revenue is given written notice and an opportunity to participate. Any modifications or agreements entered into without the participation of the department of revenue are void with respect to the state, the department of social and rehabilitation services, the department of revenue, and the county welfare department."*

**Section 2. Extension of authority.** Any existing authority of the department of revenue or the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 19, 1987.



**CHAPTER NO. 132**

[HB 118]

**AN ACT TO ALLOW THE TRUSTEES OF A SCHOOL DISTRICT TO ESTABLISH A DEBT SERVICE FUND LIMITED CASH RESERVE; AND AMENDING SECTIONS 20-9-438 AND 20-9-439, MCA.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-9-438, MCA, is amended to read:

**"20-9-438. Preparation of debt service fund budget — cash reserve.** (1) The trustees of each school district having outstanding bonds shall include in the debt service fund of the preliminary budget adopted in accordance with 20-9-113 an amount of money that is necessary to pay the interest and the principal amount becoming due during the ensuing school fiscal year for each series or installment of bonds, according to the terms and conditions of such bonds and the redemption plans of the trustees.

(2) The trustees shall also include in the debt service fund of the preliminary budget:

(a) the amount of money necessary to pay the special improvement district assessments levied against the school district which become due during the ensuing school fiscal year; and

(b) a limited cash reserve for the school fiscal year following the ensuing school fiscal year as provided in subsection (3).

(3) At the end of each school fiscal year, the trustees of a school district may designate a portion of the end-of-the-year cash balance of the debt service fund to be earmarked as a limited cash reserve for the purpose of paying, whenever a cash flow shortage occurs, debt service fund warrants and bond obligations which must be paid from July 1 through November 30 of the school fiscal year following the ensuing school fiscal year. Any portion of the debt service fund end-of-the-year cash balance not earmarked for limited cash reserve purposes must be reappropriated to be used for property tax reduction as provided in 20-9-439.

(4) The county superintendent shall compare the preliminary budgeted amount for the debt service fund with the bond retirement and interest requirement and the special improvement district assessments for the school fiscal year just beginning as reported by the county treasurer in his statement supplied under the provisions of 20-9-121. If the county superintendent finds that the requirement stated by the county treasurer is more than the preliminary budget amount, the county superintendent shall increase the budgeted amount for interest or principal in the debt service fund of the preliminary budget. The amount confirmed or revised by the county superintendent shall be the final budget expenditure amount for the debt service fund of such school district."

Section 2. Section 20-9-439, MCA, is amended to read:

**"20-9-439. Computation of net levy requirement — procedure when levy inadequate.** (1) The county superintendent shall compute the levy requirement for each school district's debt service fund on the basis of the following procedure:

(a) determine the total moneys available in the debt service fund for the reduction of the property tax on the district by totaling:

(i) the end-of-the-year cash balance, less any outstanding warrants in the debt service fund *and less any limited cash reserve as provided in 20-9-438;*

(ii) anticipated interest to be earned by the investment of debt service cash in accordance with the provisions of 20-9-213(4) or by the investment of bond proceeds under the provisions of 20-9-435; and

(iii) any other moneys anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from such sources as legally authorized money transfers into the debt service fund or from rental income;

(b) the total amount available to reduce the property tax, determined in subsection (1)(a), shall be subtracted from the final budget expenditure amount for the debt service fund as established in 20-9-438;

(c) the net debt service fund levy requirement determined in subsection (1)(b) shall be reported to the county commissioners on the second Monday of August by the county superintendent as the net debt service fund levy requirement for the district, and a levy shall be made by the county commissioners in accordance with 20-9-142.

(2) If the board of county commissioners shall fail in any school fiscal year to make a levy for any issue or series of bonds of any school district sufficient to raise the moneys necessary for payment of interest and principal becoming due during the next ensuing school fiscal year, in such amounts as are established under the provisions of this section, the holder of any bond of such issue or series or any taxpayer of the district may apply to the district court of the county in which such school district is located for a writ of mandate to compel the board of county commissioners of such county to make a sufficient levy for such purposes. If, upon the hearing of such application, it shall appear to the satisfaction of the court that the board of county commissioners of such county has failed to make a levy or has made a levy that is insufficient to raise the amount required to be raised as established in the manner provided in this section, the court shall determine the amount of such deficiency and shall issue a writ of mandate directed to and requiring the board of county commissioners, at the next meeting for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in such school district that is sufficient to raise the amount of such deficiency. Such levy shall be in addition to any levy required to be made at that time for the then-ensuing school fiscal year. Any costs which may be allowed or awarded the petitioner in any such proceeding shall be paid by the members of the board of county commissioners and shall not be a charge against the school district or the county."

Approved March 19, 1987.

**CHAPTER NO. 133**

[HB 139]

AN ACT CHANGING THE YEARLY COMPENSATION PROVISIO OF THE GOOD SAMARITAN LAW RELATING TO AMBULANCE DRIVERS AND PERSONS GIVING EMERGENCY MEDICAL TREATMENT; AND AMENDING SECTION 27-1-714, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 27-1-714, MCA, is amended to read:

**"27-1-714. Limits on liability for emergency care rendered at scene of accident or emergency.** (1) Any person licensed as a physician and surgeon under the laws of the state of Montana, any volunteer fire-fighter or officer of any nonprofit volunteer fire company, or any other person who in good faith renders emergency care or assistance without compensation except as provided in subsection (2) at the scene of an emergency or accident is not liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care or assistance.

(2) Subsection (1) includes a person properly trained under the laws of this state who operates an ambulance to and from the scene of an emergency or renders emergency medical treatment on a volunteer basis so long as the total reimbursement received for such volunteer services does not exceed 25% of his gross annual income or \$3,000 a calendar year, whichever is greater.

(3) If a nonprofit subscription fire company refuses to fight a fire on nonsubscriber property, such refusal does not constitute gross negligence or a willful or wanton act or omission."

Approved March 19, 1987.

**CHAPTER NO. 134**

[HB 162]

AN ACT TO PROVIDE THAT MONEY DESIGNATED FOR THE GUARANTEED STUDENT LOAN PROGRAM BE DEPOSITED IN THE STATE TREASURY OTHER SPECIAL REVENUE FUND; AND AMENDING SECTION 20-26-1105, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-26-1105, MCA, is amended to read:

**"20-26-1105. Guaranteed student loan account.** (1) There is a guaranteed student loan account within the other special revenue funds provided for in 17-2-102.

(2) The board shall credit to the account established in subsection (1) all money designated for the guaranteed student loan program by the United States or by any other public or private source. All expenses incurred by the board in connection with the guaranteed student loan program, including principal and interest payments required because of loan defaults, must be charged against the account.

(3) Money in the account not needed to meet current obligations of the board in the exercise of its responsibilities as guarantor, as provided for in this part, must be invested in accordance with the provisions of Title 17, chapter 6. Interest proceeds must be credited to the account.

(4) Money on deposit in the guaranteed student loan account shall not revert to the general fund at the close of any fiscal year."

Approved March 19, 1987.

## CHAPTER NO. 135

[HB 186]

AN ACT CHANGING THE NAME OF THE HOUSING AND DORMITORY FUND TO THE LEASE OR RENTAL AGREEMENT FUND; AND AMENDING SECTIONS 20-3-324, 20-9-201, AND 20-9-509, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-9-509, MCA, is amended to read:

**"20-9-509. Lease or rental agreement fund.** (1) The trustees of any district that provides pupil or teacher housing in district-owned buildings under a lease or rental agreement with pupils or teachers or receives moneys under the provision of 20-6-607 may establish a *lease or rental agreement* fund. All moneys received from such lease or rental agreements may be deposited with the county treasurer to the credit of the *lease or rental agreement* fund, general fund, the debt service fund, or any other appropriate fund. Whenever the end-of-the-year cash balance of a *lease or rental agreement* fund is more than \$10,000, such cash balance in excess of \$10,000 shall be transferred to the general fund of the district.

(2) Any expenditure of moneys from a *lease or rental agreement* fund shall be made for the maintenance and operation of the district-owned buildings to which the lease or rental agreements apply or for the acquisition of additional housing or dormitory facilities. The financial administration of the *lease or rental agreement* fund shall be in accordance with the financial administration provisions of this title for a nonbudgeted fund."

Section 2. Section 20-3-324, MCA, is amended to read:

**"20-3-324. Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall have the power and it shall be their duty to perform the following duties or acts:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board may deem necessary, accepting or rejecting such recommendation as the trustees shall in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel deemed necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and otherwise govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or an emergency budget of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, foundation program, permissive levy, additional levy, cash reserve, and state impact aid amount for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous federal programs fund, building fund, *lease or rental agreement* fund, traffic education fund, and interlocal cooperative agreement fund in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, vocational education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make such reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when deemed advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to his child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs;

(22) procure and display outside daily in suitable weather at each school of the district an American flag which shall be not less than 4 feet by 6 feet; and

(23) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Section 3. Section 20-9-201, MCA, is amended to read:

**"20-9-201. Definitions and application.** (1) As used in this title, unless the context clearly indicates otherwise, "fund" means a separate detailed account of receipts and expenditures for a specific purpose as authorized by law. Funds are classified as follows:

(a) A "budgeted fund" means any fund for which a budget must be adopted in order to expend any money from such fund. The general fund, transportation fund, bus depreciation reserve fund, elementary tuition fund, retirement fund, debt service fund, leased facilities fund, building reserve fund, adult education fund, nonoperating fund, postsecondary vocational-technical center fund, and any other funds so designated by the legislature shall be budgeted funds.

(b) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend any money on deposit in such fund. The school food services fund, miscellaneous federal programs fund, building fund,

*lease or rental agreement* fund, traffic education fund, interlocal cooperative fund, and any other funds so designated by the legislature shall be non-budgeted funds.

(2) The school financial administration provisions of this title apply to all money of any elementary or high school district except the extracurricular money realized from pupil activities. The superintendent of public instruction has general supervisory authority over the school financial administration provisions, as they relate to elementary and high school districts, as prescribed by law and shall establish such rules as are necessary to secure compliance with the law."

Approved March 19, 1987.

## CHAPTER NO. 136

[HB 208]

AN ACT ALLOWING STATE OIL LESSEES TO DEDUCT PROPORTIONALLY THE COSTS OF TRANSPORTING OIL TO MARKET; AMENDING SECTION 77-3-432, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 77-3-432, MCA, is amended to read:

**"77-3-432. Royalty.** In every oil and gas lease granted by the state under this part and acts amendatory thereto, there shall be reserved to the state as consideration therefor, in addition to the rentals as hereinbefore provided, a royalty in all oil and gas produced and saved from all lands covered thereby and not used for light, fuel, and operation purposes on the leased premises, which shall be equivalent to the full market value, as ascertained by the board at the date of such lease, of the estate or interest of the state in the lands and oil and gas deposits disposed of under such lease. Such royalty reservation shall be set by the board but may not be less than 12 ½% on gas and not less than 12 ½% on that portion of the average production of oil or casinghead gasoline for each producing well not exceeding 3,000 barrels for the calendar month. *The state may share the expense of transporting the oil to the nearest market on a basis proportional to the state's royalty interest in such oil, and at a rate per mile acceptable to the department.*"

**Section 2. Applicability to existing and new leases.** Section 1 is applicable to state oil and gas leases existing on [the effective date of this act] and to state oil and gas leases entered into after [the effective date of this act]; however, transportation charges paid before [the effective date] shall not be refunded.

**Section 3. Extension of authority.** Any existing authority of the department of state lands and the board of land commissioners to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 19, 1987.

## CHAPTER NO. 137

[HB 239]

AN ACT AUTHORIZING THE USE OF THE NATIONAL GEODETIC SURVEY 1983 COORDINATE SYSTEM FOR DEFINING AND STATING POINTS ON THE FACE OF THE EARTH WITHIN MONTANA; REQUIRING USE OF THE 1983 COORDINATE SYSTEM AFTER JULY 1, 1993; AND AMENDING SECTIONS 70-22-201 THROUGH 70-22-209, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 70-22-201, MCA, is amended to read:

**"70-22-201. Coordinate systems adopted — designation — division of state into zones.** (1) *The North American datum systems of plane coordinates that have been established by the national ocean survey/national geodetic survey (formerly the United States coast and geodetic survey) or a successor for defining and stating the positions or locations of points on the surface of the earth within the state of Montana are hereafter to be known and designated as the "Montana coordinate system NAD 27" and the "Montana coordinate system NAD 83".*

(2) *For the purpose of the use of the Montana coordinate system NAD 27, the state is divided into a north zone and a central zone and a south zone as provided in subsections (3) through (5).*

(3) *The area now included in the following counties shall constitute the north zone: Blaine, Chouteau, Daniels, Flathead, Glacier, Hill, Liberty, Lincoln, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, and Valley.*

(4) *The area now included in the following counties shall constitute the central zone: Cascade, Dawson, Fergus, Garfield, Judith Basin, Lake, Lewis and Clark, McCone, Meagher, Mineral, Missoula, Petroleum, Powell, Prairie, Richland, Sanders, and Wibaux.*

(5) *The area now included in the following counties shall constitute the south zone: Beaverhead, Big Horn, Broadwater, Carbon, Carter, Custer, Deer Lodge, Fallon, Gallatin, Golden Valley, Granite, Jefferson, Madison, Musselshell, Park, Powder River, Ravalli, Rosebud, Silver Bow, Stillwater, Sweet Grass, Treasure, Wheatland, and Yellowstone.*

(6) *For the purpose of the use of the Montana coordinate system NAD 83, the state is a single zone."*



Section 2. Section 70-22-202, MCA, is amended to read:

**"70-22-202. Designation of system by zone.** (1) As established for use in the north zone, the Montana coordinate system *NAD 27* shall be named and in any land description in which it is used it shall be designated the "Montana coordinate system *NAD 27*, north zone".

(2) As established for use in the central zone, the Montana coordinate system *NAD 27* shall be named and in any land description in which it is used it shall be designated the "Montana coordinate system *NAD 27*, central zone".

(3) As established for use in the south zone, the Montana coordinate system *NAD 27* shall be named and in any land description in which it is used it shall be designated the "Montana coordinate system *NAD 27*, south zone".

Section 3. Section 70-22-203, MCA, is amended to read:

**"70-22-203. Use of x- and y-coordinates.** (1) *For the Montana coordinate system NAD 27, the plane coordinate values for a point on the earth's surface used to express the geographic position or location of such point in the appropriate zone of this system shall consist of two distances expressed in terms of a United States survey foot and decimals of a foot.*

(2) *For the Montana coordinate system NAD 83, the plane coordinate values for a point on the earth's surface used to express the geographic position or location of such point in the zone shall consist of two distances expressed in either meters and decimals of a meter or in feet and decimals of a foot. The international conversion value (1 foot equals 0.3048 meters exactly) shall be used. The unit of measure shall be clearly stated when the coordinate values are expressed.*

(3) *One of the distances used to express a position or location, to be known as the "x-coordinate", shall give the position in an east-and-west direction; the other, to be known as the "y-coordinate", shall give the position in a north-and-south direction. These coordinates shall be made to depend upon and conform to plane rectangular coordinate values for the monumented points of the North American horizontal geodetic control network as published by the national ocean survey/national geodetic survey or its successors and whose plane coordinates have been computed on the systems designated by this part. Any such station may be used for establishing a survey connection to either Montana coordinate system."*

Section 4. Section 70-22-204, MCA, is amended to read:

**"70-22-204. Description of location.** (1) *For the purposes of describing the location of any survey station in Montana, it is considered a complete, legal, and satisfactory description of such location to give the position of the survey station on the system of plane coordinates designated in this part.*

(2) *When any tract of land to be defined by a single description extends from one into another of the NAD 27 coordinate zones, the positions of all points on its boundaries may be referred to either of such zones, the zone which is used being specifically named in the description."*

Section 5. Section 70-22-205, MCA, is amended to read:

**"70-22-205. Technical description of zones.** For purposes of more precisely defining the Montana coordinate systems *NAD 27* and *NAD 83*, the following description by the national ocean survey/national geodetic survey (formerly the United States coast and geodetic survey) is adopted:

(1) The Montana coordinate system *NAD 27*, north zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 47° 51' and 48° 43', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 109° 30' west of Greenwich and the parallel 47° 00' north latitude. This origin is given the coordinates:  $x = 2,000,000$  feet and  $y = 0$  feet.

(2) The Montana coordinate system *NAD 27*, central zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 46° 27' and 47° 53', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 109° 30' west of Greenwich and the parallel 45° 50' north latitude. This origin is given the coordinates:  $x = 2,000,000$  feet and  $y = 0$  feet.

(3) The Montana coordinate system *NAD 27*, south zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 44° 52' and 46° 24', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 109° 30' west of Greenwich and the parallel 44° 00' north latitude. This origin is given the coordinates:  $x = 2,000,000$  feet and  $y = 0$  feet.

(4) The Montana coordinate system *NAD 83* is a Lambert conformal conic projection of the GRS 80 (Geodetic Reference System 1980) ellipsoid, having standard parallels of north latitudes 45° 00' and 49° 00', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 109° 30' west of Greenwich and the parallel 44° 15' north latitude. This origin is given the coordinates:  $x = 600,000$  meters and  $y = 0$  meters."

Section 6. Section 70-22-206, MCA, is amended to read:

**"70-22-206. Conformity to standards required for use of coordinates in recorded instrument.** No coordinates based on the Montana coordinate systems *NAD 27* and *NAD 83* purporting to define the position of a point on a land boundary shall be presented to be recorded in any public land records or deed records unless the coordinates have been established in conformity with the national prescribed standards for third-order class II horizontal control surveys and provided that these surveys have been tied to or originated from monumented first- or second-order horizontal control stations that are adjusted to and published in the national network of geodetic control and are within 3 miles of said land boundaries. Standards of accuracy and specifications apply for first-, second-, and third-order geodetic surveying as prepared and published by the federal geodetic control committee (FGCC) of the United States department of commerce or its successors. Publication of the existing control stations or acceptance with intent to publish newly established control stations by the national ocean survey/national geodetic survey constitutes evidence of adherence to FGCC specifications."

Section 7. Section 70-22-207, MCA, is amended to read:

**"70-22-207. Use of term Montana coordinate system limited.** The use of the term "Montana coordinate system NAD 27 north, central, or south zone" or "Montana coordinate system NAD 83" on any map, report of survey, or other document shall be limited to coordinates based on the Montana coordinate systems as defined in this part."

Section 8. Section 70-22-208, MCA, is amended to read:

**"70-22-208. Public land survey description to prevail.** Whenever coordinates based on the Montana coordinate system are used to describe any tract of land which in the same document is also described by reference to any subdivision, line, or corner of the United States public land surveys, the description by coordinates shall be construed as supplemental to the basic description of such subdivision, line, or corner contained in the official plats and field notes filed of record."

Section 9. Section 70-22-209, MCA, is amended to read:

**"70-22-209. Purchaser or mortgagee not required to rely on description using systems.** Nothing contained in this part shall require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Montana coordinate systems."

Section 10. **Limit on use of Montana coordinate system NAD 27.** The Montana coordinate system NAD 27 north, central, and south zone may not be used after July 1, 1993; the Montana coordinate system NAD 83 is the sole system to be used after this date.

Section 11. **Codification instruction.** Section 10 is intended to be codified as an integral part of Title 70, chapter 22, part 2, and the provisions of Title 70, chapter 22, part 2, apply to section 10.

Approved March 19, 1987.

## CHAPTER NO. 138

[HB 290]

AN ACT AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ISSUE TWO PERMITS FOR THE APPROPRIATION OF GROUND WATER IN CARBON COUNTY PURSUANT TO SECTION 85-2-317, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, hydropower is a beneficial use of water that provides benefits to many Montana citizens; and

WHEREAS, applicants propose to use ground water from an existing well and from a new well located in Carbon County for generating hydropower; and

WHEREAS, the source of water for the wells is the Tensleep formation, a major aquifer with commonly reported flows in excess of 8 cubic feet per second; and

WHEREAS, the applicants and the Department of Fish, Wildlife, and Parks have agreed to a provisional permit under conditions that ensure adequate flows for the nearby Bluewater Fish Hatchery; and

WHEREAS, the Department of Natural Resources and Conservation has reviewed the applications and recommends approval of the applications; and

WHEREAS, the ground water applied for exceeds 3,000 acre-feet per year for each well and therefore requires legislative approvals pursuant to section 85-2-317, MCA.

THEREFORE, the Legislature of the State of Montana finds it appropriate to authorize the Department of Natural Resources and Conservation to issue two permits to the applicants for ground water appropriations in excess of 3,000 acre-feet per year.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Authorization to issue permits to appropriate ground water.** Pursuant to 85-2-317(1), the department of natural resources and conservation may issue two permits to appropriate ground water exceeding 3,000 acre-feet per year according to application numbers 54092-g43D and 54124-g43D. The applications are subject to the remaining provisions of Title 85, chapter 2, part 3.

**Section 2. Coordination instruction.** If House Bill No. 642, including the section repealing 85-2-317, is passed and approved, this act is void.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved March 19, 1987.

## CHAPTER NO. 139

[HB 433]

AN ACT TO GENERALLY REVISE LAWS RELATING TO INSURANCE; AND AMENDING SECTIONS 33-2-117, 33-7-101, 33-10-101, 33-22-301, 33-22-703, 33-23-201 THROUGH 33-23-203, AND 33-23-211 THROUGH 33-23-216, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-2-117, MCA, is amended to read:

**"33-2-117. Continuance, expiration, reinstatement, and amendment of certificate of authority.** (1) Certificates of authority issued or

renewed under this code shall continue in force as long as the insurer is entitled thereto under this code and until suspended or revoked or otherwise terminated; subject, however, to continuance of the certificate by the insurer each year by payment prior to May 15 of the continuation fee provided in 33-2-708.

(2) If not so continued by the insurer, its certificate of authority shall expire at midnight on May 31 next following such failure of the insurer so to continue it in force. The commissioner shall promptly notify the insurer of the occurrence of any such failure resulting in impending expiration of its certificate of authority.

(3) The commissioner may, in his discretion, reinstate a certificate of authority which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in such expiration and upon payment by the insurer of the fee for reinstatement in addition to the current continuation fee, as provided in 33-2-708. Otherwise, the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.

(4) The commissioner may amend a certificate of authority at any time to accord with changes in the insurer's charter of insuring powers."

Section 2. Section 33-7-101, MCA, is amended to read:

**"33-7-101. Scope of chapter — provisions applicable.** (1) Except as herein provided, societies shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this state, not only in governmental relations with the state but for every other purpose. No law hereafter enacted shall apply to them unless they be expressly designated therein.

(2) In addition to the provisions contained in this chapter, other chapters and provisions of this title shall apply to fraternal benefit societies to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications thereof, as follows: parts 1, 2, 3, 4, and 7 of chapter 1; 33-2-104; 33-2-107; 33-2-112; chapter 2, part 13; 33-3-308; 33-15-502; chapter 18; *chapter 20; and chapter 22.*"

Section 3. Section 33-10-101, MCA, is amended to read:

**"33-10-101. Short title, purpose, scope, and construction.** (1) This part shall be known and may be cited as the "Montana Insurance Guaranty Association Act".

(2) The purpose of this part is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.

(3) This part shall apply to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage guaranty, and ocean marine insurance.

(4) This part shall be liberally construed to effect the purpose under subsection (2) which shall constitute an aid and guide to interpretation."

Section 4. Section 33-22-301, MCA, is amended to read:

**"33-22-301. Coverage of newborn under disability policy.** (1) Each policy of disability insurance or certificate issued thereunder shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured.

(2) The coverage for newborn infants *must* be the same as provided by the policy for the other covered persons; provided, however, that for newborn infants there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.

(3) No policy or certificate of insurance may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an insured from and after the moment of birth.

(4) If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within 31 days after the date of birth in order to have the coverage continue beyond such 31-day period."

Section 5. Section 33-22-703, MCA, is amended to read:

**"33-22-703. Coverage for mental illness, alcoholism, and drug addiction.** Insurers and health service corporations transacting group health insurance or group health plans in this state shall provide, under hospital and medical expenses incurred insurance group policies and under hospital and medical service plan group contracts, the level of benefits specified in this section for the necessary care and treatment of mental illness, alcoholism, and drug addiction subject to the right of the applicant to select any alternative level of benefits above the minimum level of benefits described in subsections (1)(b), (2)(a), (2)(b), and (2)(d) as may be offered by the insurer or *health* service corporation:

(1) under basic inpatient expense policies or contracts, inpatient hospital benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) benefits may be limited to not less than 30 calendar days per year as defined in the policy or contract;

(b) the aggregate maximum benefit for alcoholism and drug addiction of inpatient expenses under basic inpatient policies and contracts plus inpatient expenses under major medical policies and contracts may be limited to no less than:

(i) \$4,000 in any 24-month period; and

(ii) \$8,000 in lifetime benefits;

(2) under major medical policies or contracts, inpatient benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient benefits may be limited to no less than 30 calendar days per year as defined in the policy or contract. If inpatient benefits are provided beyond 30 calendar days per year, the durational limits, dollar limits, deductibles, and coinsurance factors applicable thereto need not be the same as applicable to physical illness generally.

(b) for outpatient benefits, the coinsurance factor may not exceed 50% or the coinsurance factor applicable for physical illness generally, whichever is greater, and the maximum benefit for mental illness, alcoholism, and drug addiction in the aggregate during any applicable benefit period may be limited to not less than \$1,000;

(c) maximum lifetime benefits shall, for mental illness in the aggregate, be no less than those applicable to physical illness generally;

(d) the aggregate maximum benefit for alcoholism and drug addiction of inpatient expenses under basic inpatient policies and contracts plus inpatient expenses under major medical policies and contracts may be limited to no less than:

(i) \$4,000 in any 24-month period; and

(ii) \$8,000 in lifetime benefits."

**Section 6. Definitions.** As used in 33-23-201 through 33-23-203 and 33-23-211 through 33-23-216, the following definitions apply:

(1) "Motor vehicle" means every vehicle propelled by its own power and designed primarily to transport persons or property upon the highways of the state. The term does not include a bicycle as defined in 61-1-123.

(2) "Motor vehicle liability policy" means any policy of automobile or motor vehicle insurance against liability now or hereafter required under Title 61, chapter 6, parts 1 and 3.

**Section 7.** Section 33-23-201, MCA, is amended to read:

**"33-23-201. Motor vehicle liability policies to include uninsured motorist coverage — rejection by insured.** (1) No motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle *may* be delivered or issued for delivery in this state, with respect to any motor vehicle registered *and* principally garaged in this state, unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in 61-6-103, under provisions filed with and approved by the commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting

therefrom, *caused by an accident arising out of the operation or use of such vehicle. An uninsured motor vehicle is a land motor vehicle, neither the ownership, nor the maintenance, nor the use of which is insured or bonded for bodily injury liability at the time of the accident.*

(2) The named insured shall have the right to reject such coverage. Unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with the policy previously issued to him by the same insurer."

Section 8. Section 33-23-202, MCA, is amended to read:

**"33-23-202. Reimbursement for total loss of motor vehicle based on actual replacement value.** Each *motor vehicle* insurance policy need not be provided to residents of this state which provides that reimbursement for total loss of a motor vehicle *must* be based on a "book" value rather than on the actual replacement value is void as to such provision, and reimbursement *must* be made for actual replacement value."

Section 9. Section 33-23-203, MCA, is amended to read:

**"33-23-203. Limitation of liability under motor vehicle liability policy.** (1) Unless a motor vehicle liability policy specifically provides otherwise, the limits of insurance coverage available under any such policy, including the limits of liability under uninsured motorist coverage, *must* be determined as follows, regardless of the number of *motor* vehicles insured under the policy:

(a) the limit of insurance coverage available for any one accident is the limit specified for the *motor* vehicle involved in the accident;

(b) if no *motor* vehicle insured under the policy is involved in the accident, the limit of insurance coverage available for any one accident is the highest limit of coverage specified for any one *motor* vehicle insured under the policy; and

(c) the limits of coverage specified for each *motor* vehicle insured under the policy *may* not be added together to determine the limit of insurance coverage available under the policy for any one accident.

(2) A motor vehicle liability policy may also provide for other reasonable limitations, exclusions, or reductions of coverage which are designed to prevent duplicate payments for the same element of loss."

Section 10. Section 33-23-211, MCA, is amended to read:

**"33-23-211. Limitations on basis for cancellation.** (1) A notice of cancellation of a *motor vehicle liability* policy is effective only if it is based on one or more of the following reasons:

(a) nonpayment of premium; or

(b) the driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates a *motor vehicle* insured under the policy has been under suspension or revocation during the policy period or, if the policy is



a renewal, during its policy period or the 180 days immediately preceding its effective date.

(2) This section *does not* apply to any policy or coverage which has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy.

(3) Modification of *motor vehicle* physical damage coverage by the inclusion of a deductible not exceeding \$100 may not be deemed a cancellation of the coverage or of the policy.

(4) This section *does not* apply to nonrenewal of a *motor vehicle liability policy*."

Section 11. Section 33-23-212, MCA, is amended to read:

**"33-23-212. Notice required for cancellation — exception — statement that insurer will specify reason upon request — penalty.**

(1) Notwithstanding any other provision of this code, no cancellation by an insurer of a *motor vehicle* liability insurance policy may be effective prior to the mailing or delivery to the named insured at the address shown in the policy of a written notice of the cancellation stating when, not less than 30 days after the date of such mailing or delivery, the date the cancellation shall become effective.

(2) No notice of cancellation of a policy to which 33-23-211 applies may be effective unless mailed or delivered by the insurer to the named insured at least 30 days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium, at least 10 days' notice of cancellation accompanied by the reason therefor *must* be given. Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation *must* state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than 15 days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation.

(3) Subsection (2) *does not* apply to nonrenewal.

(4) Any insurer willfully violating any provisions of subsection (2) of this section is guilty of a misdemeanor and is punishable by a fine of not exceeding \$500 for each violation thereof."

Section 12. Section 33-23-213, MCA, is amended to read:

**"33-23-213. Notice to insured of ground for cancellation — commissioner to ensure compliance.** Whenever an insurer gives notice of cancellation of a *motor vehicle* liability policy, upon request of the insured, the insurer, within 15 days of receipt of the request, shall furnish to the insured a statement setting forth the ground or grounds upon which the notice of cancellation is based. If the insurer fails to comply with the provisions of this section, the insured may apply to the commissioner for a certificate of the facts or information desired. The commissioner shall exercise any power conferred upon him by law as may be necessary to ensure compliance with this section."

Section 13. Section 33-23-214, MCA, is amended to read:

**“33-23-214. Advance notice required for nonrenewal — exceptions — exemptions.** (1) No insurer *may* fail to renew a *motor vehicle liability* policy unless it *mails or delivers* to the named insured, at the address shown in the policy, at least 30 days’ advance notice of its intention not to renew. Such notice *must* contain or be accompanied by a statement that upon written request made not later than 1 month following the termination date of the policy of the named insured mailed or delivered to the insurer, the insurer will notify the insured in writing, within 15 days of his request, of the reason or reasons for such nonrenewal.

(2) Notwithstanding the failure of an insurer to comply with this section, the *motor vehicle liability* policy *must* terminate on the effective date of any other replacement or succeeding *motor vehicle liability* policy procured by the insured with respect to any *motor vehicle* designated in both policies.

(3) This section *does* not apply where the named insured has failed to discharge when due any of his obligations in connection with the payment of premiums for the policy or the renewal thereof or any installment payments therefor, whether payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

(4) This section *does* not apply in any of the following cases:

(a) if the insurer has manifested its willingness to renew;

(b) in case of nonpayment of premium; provided that, notwithstanding the failure of an insurer to comply with this section, the policy *must* terminate on the effective date of any other insurance policy with respect to any *motor vehicle* designated in both policies;

(c) if the insured’s agent or broker has secured other coverage acceptable to the insured at least 20 days prior to the anniversary date of the policy or termination of the policy period.

(5) Renewal of a *motor vehicle liability* policy *does* not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

(6) A notice of nonrenewal of a *motor vehicle liability* policy under this section, which policy has a term of less than 6 months, is effective only when based on one or more of the reasons listed in 33-23-211.”

Section 14. Section 33-23-215, MCA, is amended to read:

**“33-23-215. No liability for statements in connection with cancellation or nonrenewal.** There *may* be no liability on the part of and no cause of action of any nature *may* arise against the commissioner or against any insurer, its authorized representative, its agents, its employees, or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal for any statement made by any of them in any written notice of cancellation or nonrenewal or for statements made or evidence submitted at any hearings conducted in connection therewith.”

Section 15. Section 33-23-216, MCA, is amended to read:

**"33-23-216. Retention and proof of notice.** (1) A notice of cancellation or of intention not to renew or of reasons for cancellation of insurance issued under terms of this chapter *must* be retained for a period of 3 years by the insurer or his agent within this state and *must* be made available within this state for examination or inspection by the commissioner or his agents at any time within such 3-year period upon reasonable notice.

(2) Proof of mailing of notice of cancellation or of intention not to renew or of reasons for cancellation to the named insured at the address shown in the policy or to the named insured's latest known address *is* sufficient proof of notice."

Section 16. **Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 17. **Codification instruction.** Section 6 is intended to be codified as an integral part of Title 33, chapter 23, part 2, and the provisions of Title 33, chapter 23, part 2, apply to section 6.

Approved March 19, 1987.

## CHAPTER NO. 140

[HB 446]

AN ACT TO SUSPEND THE BEEF RESEARCH AND MARKETING ASSESSMENT; AMENDING SECTION 81-8-804, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICATION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 81-8-804, MCA, is amended to read:

**"81-8-804. Assessments — refunds.** (1) *Except as provided in subsection (5), there* is levied, in addition to the tax on livestock prescribed in Title 15, chapter 24, part 9, a per head tax of 25 cents on each head of cattle that is more than 9 months of age and is owned or possessed within a county for the support and maintenance of research into beef production as provided in this part. The tax shall be paid to the county treasurer of that county on or before March 1 of each year.

(2) The tax required in subsection (1) must be paid for each head of cattle that is more than 9 months of age and is brought into the county after March 1 and is subject to taxation and assessment under 15-24-301.

(3) Each county is entitled to receive \$250 annually as reimbursement for the administration of this section.

(4) A person who has paid the tax required by this section may obtain a refund of the tax upon submission of a written request to the department. The application must be made within 30 days after the payment of

the tax and on forms furnished by the department. The department shall, upon receipt of a timely and otherwise properly submitted refund request, refund the tax.

(5) *The levy imposed by this section is suspended for the taxable year January 1, 1987, through December 31, 1987. If the referendum required in the Beef Promotion and Research Act of 1985 (7 U.S.C. 2901 through 2918) to continue a national assessment on beef is approved in 1988, the levy imposed by this section is suspended for the taxable year January 1, 1988, through December 31, 1988. The board of livestock shall certify such approval to the governor, and the governor shall declare the levy imposed in this section to be suspended in accordance with this section.*

(6) *The department shall provide for automatic refund of any tax collected under this section for any year for which the levy is suspended."*

**Section 2. Effective date — applicability.** This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to the taxable year beginning January 1, 1987.

Approved March 19, 1987.

## CHAPTER NO. 141

[HB 620]

AN ACT TO REQUIRE NOTICE OF A LANDOWNER'S RIGHT TO A HEARING IN A DISPUTE OVER WEED CONTROL RESPONSIBILITY; TO PREVENT IMPLEMENTATION OF WEED CONTROL MEASURES BY THE COUNTY WEED BOARD IN SUCH A CASE, EXCEPT IN AN EMERGENCY; TO PROVIDE FOR DETERMINATION OF LIABILITY FOR THE COST OF EMERGENCY MEASURES; AND AMENDING SECTIONS 7-22-2123 AND 7-22-2124, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-22-2123, MCA, is amended to read:

**"7-22-2123. Procedure in case of noncompliance.** (1) Where complaint has been made or the board has reason to believe that noxious weeds described in this part are present upon a person's land within the district in violation of the law, that person must be notified by mail or telephone of the complaint and the board may request inspection of such land. The board or its authorized agent and the landowner or his representative shall inspect the land at an agreeable time, within 10 days of notification of the landowner. If after reasonable effort the board is unable to gain cooperation of the person, the board or its authorized agent may enter and inspect the land to determine if the complaint is valid.

(2) If noxious weeds are found, the board or supervisor shall notify the person or his representative and seek voluntary compliance with the district weed control program. If voluntary compliance is not possible, notice of noncompliance must be sent to the person by certified mail.

(3) The notice must specify:

- (a) the basis for the determination of noncompliance;
- (b) the geographic location of the area of noncompliance, by legal description or other reasonably identifiable description;
- (c) measures to be undertaken in order to comply with the district's management criteria;
- (d) a reasonable period of time, not less than 10 days, in which compliance measures must be initiated; and
- (e) *the right of the person to request, within the time specified in subsection (3)(d), an administrative hearing as provided by 7-22-2110.*

(4) A person is considered in compliance if he submits and the board accepts a proposal to undertake specified control measures and is in compliance for so long as he performs according to the terms of the proposal. If the measures proposed to be taken extend beyond the current growing season, the proposal and acceptance must be in writing.

(5) In accepting or rejecting a proposal, the board shall consider the economic impact on the person and his neighbors, practical biological and environmental limitations, and alternative control methods to be used."

Section 2. Section 7-22-2124, MCA, is amended to read:

**"7-22-2124. Destruction of weeds by board.** (1) If corrective action is not taken and no proposal is made and accepted or *no request for an administrative hearing is made* within the time specified in the notice, the board may forthwith enter upon the person's land and institute appropriate control measures. In such case the board shall submit a bill to the person, itemizing man-hours of labor, material, and equipment time, together with a penalty not exceeding 10% of the total cost incurred. Labor and equipment must be valued at the current rate paid for commercial management operations in the district. The bill must specify and order a payment due date of 30 days from the date the bill is sent.

(2) A copy of the bill must also be submitted by the board to the county clerk and recorder.

(3) *If a person receiving an order to take corrective action requests an administrative hearing, the board may not institute control measures until the matter is finally resolved, except in case of an emergency. In such a case, the person is liable for costs as provided in subsection (1) only to the extent determined appropriate by the board, commissioners, or court that finally resolves the matter."*

Approved March 19, 1987.

**CHAPTER NO. 142**

[HB 706]

AN ACT REQUIRING PUBLIC NOTICE OF VACANCIES ON CERTAIN COUNCILS, BOARDS, COMMISSIONS, AND COMMITTEES; AND AMENDING SECTIONS 2-15-201 AND 5-16-104, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-201, MCA, is amended to read:

**"2-15-201. Powers and duties of governor.** In addition to the duties prescribed by the constitution, the governor shall perform the following duties:

(1) He shall supervise the official conduct of all executive and ministerial officers.

(2) He shall see that all offices are filled and the duties thereof performed or, in default thereof, apply such remedy as the law allows. If the remedy is imperfect, he shall acquaint the legislature therewith at its next session.

(3) (a) He shall make the appointments and supply the vacancies as required by law. *When a vacancy in a position on a council, board, commission, or committee has occurred or is expected to occur and must be filled by gubernatorial appointment, the governor shall have posted in a conspicuous place in the state capitol a notice:*

(i) *announcing the actual or anticipated vacancy in the position;*

(ii) *describing the qualifications for the position, if any; and*

(iii) *describing the procedure for applying for appointment to the position.*

(b) *A copy of the notice required under subsection (3)(a) must be sent to the lieutenant governor who may publish the notice in an appropriate publication.*

(4) He is the sole official organ of communication between the government of this state and the government of any other state or of the United States.

(5) Whenever any suit or legal proceeding is pending against this state or which may affect the title of this state to any property or which may result in any claim against the state, he may direct the attorney general to appear on behalf of the state and may employ such additional counsel as he may judge expedient.

(6) He may require the attorney general or county attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

(7) He may require the attorney general to aid the county attorney in the discharge of his duties.

(8) He may offer rewards not exceeding \$1,000 each, payable out of the general fund, for the apprehension of any convict who has escaped from the state prison or any person who has committed or is charged with an offense punishable by death.

(9) He shall perform such duties respecting fugitives from justice as are prescribed by Title 46, chapter 30.

(10) He shall issue land warrants and patents, as prescribed in 77-2-342.

(11) He may require any officer or board to make special reports to him, upon demand, in writing.

(12) He shall discharge the duties of member of the board of examiners, of nonvoting ex officio member of the state board of education, and of member of the board of land commissioners.

(13) He has the other powers and must perform the other duties as are devolved upon him by this code or any other law of this state."

Section 2. Section 5-16-104, MCA, is amended to read:

**"5-16-104. Vacancies.** (1) A vacancy on the council of a member appointed under 5-16-101(2) occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the same method as the original appointment.

(2) (a) *When a vacancy on the council of a member appointed under 5-16-101(3) has occurred or is expected to occur, the appointing authority shall have posted in a conspicuous place in the state capitol a notice announcing the actual or anticipated vacancy and describing the procedure for applying for appointment.*

(b) *A copy of the notice required under subsection (2)(a) must be sent to the lieutenant governor who may publish the notice in an appropriate publication."*

Approved March 19, 1987.

## CHAPTER NO. 143

[HB 749]

AN ACT REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO MAKE UNANNOUNCED INSPECTIONS OF LICENSED HEALTH CARE FACILITIES; AMENDING SECTION 50-5-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-5-204, MCA, is amended to read:

**"50-5-204. Issuance and renewal of licenses — inspections.** (1) After receipt of a new or renewal application, the department or its authorized agent shall inspect the facility *without prior notice to the operator or staff.*

(2) If the department determines that the facility meets minimum standards and the proposed or existing staff is qualified, the department shall issue a license for 1 year.

(3) If minimum standards are not met, the department may issue a provisional license for less than 1 year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community.

(4) The minimum standards which home health agencies must meet in order to be licensed must be as outlined in 42 U.S.C. 1395 x(o), as amended, and in rules implementing it which add minimum standards.

(5) The department may inspect a licensed health care facility whenever it considers it necessary. The entire premises of a licensed facility must be open to inspection, and access to all records must be granted at all reasonable times."

**Section 2. Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective July 1, 1987.

Approved March 13, 1987.

## CHAPTER NO. 144

[SB 238]

AN ACT TO IMPOSE A SURCHARGE ON THE RETAIL SALE OF FIELD RODENTICIDES AND TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO EXPEND THESE FUNDS FOR VERTEBRATE PEST MANAGEMENT PURPOSES; TO ESTABLISH A VERTEBRATE PEST MANAGEMENT ADVISORY COUNCIL; AMENDING SECTION 80-7-1102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 80-7-1102, MCA, is amended to read:

**"80-7-1102. Expenditures authorized.** The department may make expenditures to:

(1) *purchase equipment, materials, supplies, and personal services which are necessary to execute the functions imposed on it by this part;*

(2) *obtain data on vertebrate pesticide registration and research information on alternative vertebrate pest management techniques;*

(3) *conduct research or evaluation studies;*

(4) *make grants to or enter contracts with individuals, universities, other states, state or federal agencies, or other entities it considers appropriate to conduct vertebrate pest management projects;*



(5) *maintain and support registration of current rodenticides such as compound 1080, strychnine, and zinc phosphide;*

(6) *seek registration of alternative rodenticides;*

(7) *develop and implement new vertebrate pest management methods and crop damage assessment techniques;*

(8) *support vertebrate pest management research and evaluation projects;*

(9) *educate the agricultural community regarding vertebrate pest management problems and needs;*

(10) *educate the general public regarding vertebrate pest concerns and the need for vertebrate pest management; and*

(11) *perform any other related activities."*

**Section 2. Vertebrate pest management advisory council.** (1) The director of agriculture may appoint a vertebrate pest management advisory council to provide advice to the department concerning the administration of this part.

(2) If appointed, the council must be composed of eight members as follows:

(a) the director of agriculture, who shall serve as chairman;

(b) one member representing agricultural interests from Montana west of the continental divide;

(c) one member representing agricultural interests from eastern Montana;

(d) one member representing agricultural interests from north central Montana;

(e) one member representing agricultural interests from south central Montana;

(f) one member from a sportsmen's or wildlife group;

(g) one member from the rodenticide industry; and

(h) one member representing public land interests.

(3) Technical advisers in vertebrate pest control from the department, the extension service, the university system, or the industry may serve as ex officio members at the request of the director of agriculture.

**Section 3. Rodenticide fund.** There is a rodenticide fund. The fund consists of money collected under [sections 4 and 5], which must be deposited in the state special revenue fund and must be spent for the purposes set forth in this part.

**Section 4. Surcharge imposed on retail sale of field rodenticides -- disposition of proceeds.** (1) There is imposed a surcharge of 5 cents per dollar of the retail sales price of all rodenticides registered for field

rodent control in the state. The volume of sales of each registered field rodenticide must be determined by the department from records required of dealers of field rodenticides and dealers selling government-manufactured field rodenticides.

(2) The surcharge must be collected by the department on an annual calendar basis from nongovernment registrants of field rodenticides and from pesticide dealers selling government-manufactured field rodenticides and is due and payable within 30 days after notice of the amount is given.

(3) A pesticide dealer selling government-manufactured rodenticides will not be licensed to sell field rodenticides if he has failed to pay in full the charge on the products from the previous year. No nongovernment registrant may be allowed to reregister a rodenticide under 80-8-201 if he has failed to pay in full the surcharge on his product.

**Section 5. Acceptance and expenditure of gifts, grants, and funds.** The department may accept gifts, grants, cost-share funds, or other funds designated for vertebrate pest management purposes. Such funds must be expended to support vertebrate pest management projects as specified in 80-7-1102.

**Section 6. Rules.** The department may adopt rules necessary to implement this part.

**Section 7. Codification instruction.** Sections 2 through 6 are intended to be codified as an integral part of Title 80, chapter 7, part 11, and the provisions of Title 80 apply to sections 2 through 6.

**Section 8. Effective date.** This act is effective on passage and approval.

Approved March 22, 1987.

## CHAPTER NO. 145

[SB 273]

AN ACT ALLOWING THE TRUSTEES FROM FIRST-CLASS SCHOOL DISTRICTS TO SHARE THE RESPONSIBILITY FOR VISITING EACH SCHOOL EACH YEAR; AND AMENDING SECTION 20-3-324, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-3-324, MCA, is amended to read:

**"20-3-324. Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall have the power and it shall be their duty to perform the following duties or acts:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board may deem necessary, accepting or

rejecting such recommendation as the trustees shall in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel deemed necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and otherwise govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or an emergency budget of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, foundation program, permissive levy, additional levy, cash reserve, and state impact aid amount for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous federal programs fund, building fund, housing and dormitory fund, traffic education fund, and interlocal cooperative agreement fund in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, vocational education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make such reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when deemed advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to his child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, *except trustees from a first-class school district may share the responsibility for visiting each school in the district*;

(22) procure and display outside daily in suitable weather at each school of the district an American flag which shall be not less than 4 feet by 6 feet; and

(23) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Approved March 22, 1987.

## CHAPTER NO. 146

[SB 281]

AN ACT TO CLARIFY THE STATE'S SUPERVISION OF COUNTY WELFARE DEPARTMENTS; TO SET FORTH WHO HAS THE DISMISSAL AUTHORITY FOR COUNTY WELFARE EMPLOYEES; TO REQUIRE THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO PROVIDE COUNTIES WITH CERTAIN BUDGETING INFORMATION; AMENDING SECTIONS 53-2-304 AND 53-2-322, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-2-304, MCA, is amended to read:

**"53-2-304. Staff personnel of county department.** (1) Each county board shall select and appoint from a list of qualified persons furnished by the department of social and rehabilitation services such staff

personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the department of social and rehabilitation services, may appoint some fully qualified person listed by the department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the department of social and rehabilitation services may supervise such county employees in respect to the efficient and proper performance of their duties. The county board of public welfare may not dismiss any member of the staff personnel without the approval of the department of social and rehabilitation services. *The department may request the county board to dismiss any member of the staff personnel for inefficiency, incompetence, or similar cause. The final authority for dismissal is the county board. In counties where the department has assumed the administration of welfare duties, the final authority for dismissal is the director of the department.*

(2) Public assistance staff personnel attached to the county board shall be paid from state public assistance funds both their salaries and their travel expenses as provided for in 2-18-501 through 2-18-503 when away from the county seat in the performance of their duties, but the county board of public welfare shall reimburse the department of social and rehabilitation services from county poor funds the full amount of the salaries and travel expenses not reimbursed to the department by the federal government and the full amount of the department's administrative costs which are allocated by the department to the county for the administration of county welfare programs and not reimbursed to the department by the federal government. Under circumstances prescribed by the department of social and rehabilitation services, the reimbursement by the county board of public welfare may be less than the county share as prescribed above. All other administrative costs of the county department shall also be paid from county poor funds.

(3) On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the department of social and rehabilitation services shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make such reimbursements within 20 days after the presentation of the claim, and the department of social and rehabilitation services shall credit (add) all such reimbursements to its account for administrative costs.

(4) If a county has transferred its public assistance and protective services responsibilities to the department of social and rehabilitation services under part 8 of this chapter, the department shall select, appoint, and supervise all necessary public assistance and protective services personnel, including if necessary a supervisor of staff personnel. All such personnel are directly responsible to the department."

Section 2. Section 53-2-322, MCA, is amended to read:

**"53-2-322. County to levy taxes, budget, and make expenditures for public assistance activities.** (1) The board of county commissioners in each county shall levy 13.5 mills for the county poor fund as

provided by law or so much thereof as may be necessary. Counties transferring public assistance and protective services responsibilities to the department of social and rehabilitation services under part 8 of this chapter may not levy more than the difference between 13.5 mills and the state levy pursuant to 53-2-813.

(2) The board shall budget and expend so much of the funds in the county poor fund for public assistance purposes as will enable the county welfare department to pay the general relief activities of the county and to reimburse the department of social and rehabilitation services for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

(3) The amounts set up in the budget for the reimbursements to the department of social and rehabilitation services shall be sufficient to make all of these reimbursements in full. The budget shall make separate provision for each one of these public assistance activities, and proper accounts shall be established for the funds for all such activities.

(4) *The department of social and rehabilitation services shall submit to the counties, no later than May 10, the most current county participation percentages that are necessary to establish preliminary county budgets. As soon as the county proposed budget provided for in 7-6-2315 has been agreed upon, a copy thereof shall without delay be mailed to the department of social and rehabilitation services, and at any time before the final adoption of the budget, the department shall make such recommendations with regard to changes in any part of the budget relating to the county poor fund as considered necessary in order to enable the county to discharge its obligations under the public assistance laws.*

(5) The department of social and rehabilitation services shall promptly examine the county proposed budget in order to ascertain if the amounts provided for reimbursements to the department are likely to be sufficient and shall notify the county clerk of its findings. The board shall make such changes in the amounts provided for reimbursements, if any are required, in order that the county will be able to make the reimbursements in full.

(6) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing the department of social and rehabilitation services without having first obtained a statement in writing from the department to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

(7) No part of the county poor fund, irrespective of the source of any part thereof, may be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor, except a county hospital or county nursing

home, may be made out of any moneys in the county poor fund, whether such moneys are produced by the 13.5-mill levy provided for in subsection (1) of this section or from any additional levy authorized or to be authorized by law. Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the department of health and environmental sciences and when such expenditure has been approved by the department of social and rehabilitation services."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1987.

## CHAPTER NO. 147

[HB 37]

AN ACT TO CLARIFY THAT A DEFENDANT'S RECORD IS  
EXPUNGED AFTER DEFERRED IMPOSITION; AND AMENDING  
SECTION 46-18-204, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-18-204, MCA, is amended to read:

**"46-18-204. Dismissal after deferred imposition.** Whenever the court has deferred the imposition of sentence and after termination of the time period during which imposition of sentence has been deferred, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw his plea of guilty or may strike the verdict of guilty from the record and order that the charge or charges against him be dismissed. *Upon dismissal of the charges, the court shall send an order directing the department of justice to expunge the defendant's record. The order must adequately identify the defendant, such as by sex, race, date of birth, and the current status of the charges to be expunged.*"

Approved March 22, 1987.

## CHAPTER NO. 148

[HB 80]

AN ACT TO PROVIDE THAT A NEWSPAPER CARRIER OR FREE-  
LANCE CORRESPONDENT IS NOT COVERED BY THE WORK-  
ERS' COMPENSATION ACT UNLESS THE EMPLOYER ELECTS  
COVERAGE; AND AMENDING SECTION 39-71-401, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-71-401, MCA, is amended to read:

**"39-71-401. Employments covered and employments exempted.**  
(1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all

employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

- (a) household and domestic employment;
- (b) casual employment as defined in 39-71-116(3) except employment of a volunteer under 67-2-105;
- (c) employment of members of an employer's family dwelling in the employer's household;
- (d) employment of sole proprietors or working members of a partnership other than those who consider themselves or hold themselves out as independent contractors and who are not contracting for agricultural services to be performed on a farm or ranch, or for broker or salesman services performed under a license issued by the board of realty regulation, or for services as a direct seller engaged in the sale of consumer products to customers primarily in the home;
- (e) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;
- (f) any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;
- (g) employment with any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter;
- (h) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;
- (i) *any person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection "newspaper carrier":*
  - (i) *is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but*
  - (ii) *does not include an employee of the paper who incidentally to his main duties, carries or delivers papers.*

(3) A sole proprietor or working member of a partnership who holds himself out or considers himself an independent contractor and who is not



contracting for agricultural services to be performed on a farm or ranch, or for broker or salesman services performed under a license issued by the board of realty regulation, or for services as a direct seller engaged in the sale of consumer products to customers primarily in the home must elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3, but he may apply to the division for an exemption from the Workers' Compensation Act for himself. The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor. When an application is approved by the division, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(4) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the division, distributed through insurers or directly by the division, and posted by employers in accordance with rules adopted by the division. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

**Section 2. Extension of authority.** Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 22, 1987.

## CHAPTER NO. 149

[HB 93]

**AN ACT TO ALLOW THE TAKING OF CATFISH AND NONGAME FISH WITH LONGBOW AND ARROW; AMENDING SECTION 87-3-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-3-204, MCA, is amended to read:

**"87-3-204. Restrictions on fishing methods.** (1) No game fish may be caught, captured, or taken or attempted to be caught, captured, or taken by the aid or with the use of any gun or trap, nor may any such set gun, trap, or other device to entrap game fish be used, made, or set.

(2) It is unlawful for a person to take or catch fish in any of the waters of this state, except with hook and line held in hand or line and hook

attached to rod or pole held in hand; to take or catch fish with hook baited with any poisonous substance or by means of the use of any poisonous substance, including fish berries; or to take or catch fish by means of the use of fishtraps, grabhooks, seines, nets, or other similar means for catching fish.

(3) The department may designate such waters within the state of Montana wherein, in the judgment of the department, spears or gigs may be used for taking walleyed pike, sauger, northern pike, and nongame fish and traps, seines, nets, and rubber or spring-propelled spears, when employed by sportsmen swimming or submerged in the water, may be used for the taking of designated species of fish. The waters so designated may be closed at the discretion of the department. The taking of all fish by such means in the waters, when so designated, is to be done under such rules as the department may prescribe with reference thereto and under the supervision of the department. All such nongame fish so taken may be possessed and sold in such manner and under such restrictions as the department may direct. All fish, other than those herein designated, so taken under department rules, when prescribed by the department, shall be returned uninjured to the waters from which they were taken.

(4) The taking of black bass in Flathead Lake may be permitted by the department.

(5) The department shall have the power to designate certain waters where setlines may be used to fish for certain species of game or nongame fish, and the department may designate the number of hooks and lines and the length of line or lines which may be used as setlines.

(6) Game fish shall be taken only by angling; that is, by hook and single line in hand or single rod in hand or within immediate control. This does not prevent, however:

(a) the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the department declares an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging;

(b) the taking of paddlefish, *channel catfish*, and *nongame fish* with longbow and arrow, *under such rules and regulations as the fish and game commission may prescribe*;

(c) the taking of walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear or gig when the department declares an open season for taking walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear or gig;

(d) the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified;

(e) the taking of minnows other than game fish variety by the use or aid of a net not to exceed 12 feet in length and 4 feet in width in such waters as may be designated by the department; or

(f) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under such rules and regulations as the fish and game commission may prescribe."

Section 2. **Extension of authority.** Any existing authority of the fish and game commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1987.

## CHAPTER NO. 150

[HB 117]

AN ACT TO REVISE THE PROCEDURE BY WHICH TRUSTEES OF A SCHOOL DISTRICT MAY SELL OR DISPOSE OF SCHOOL PROPERTY; AND AMENDING SECTION 20-6-604, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-6-604, MCA, is amended to read:

**"20-6-604. Sale of property when resolution passed after hearing — appeal procedure.** (1) Whenever the trustees of any district determine that a site, building, or any other real or personal property of the district is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of such district, the trustees may sell or otherwise dispose of such real or personal property in accordance with this section and without conforming to the provisions of 20-6-603. *If a decision to sell or dispose of property is made, the trustees shall adopt a resolution to sell or otherwise dispose of such district real or personal property because it is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district.*

(2) *The resolution may not become effective for 14 days after the notice required in subsection (3) is made.*

(3) *The trustees shall cause notices of the resolution to be published in a newspaper of general circulation in the district. If there is no newspaper of general circulation, the trustees shall cause notices of the resolution to be posted in the manner required for school elections in 20-20-204.*

(4) Any taxpayer may appeal the resolution of the trustees, at any time prior to the effective date of the resolution, to the district court by filing a verified petition with the clerk of such court and serving a copy of such petition upon the district. The petition shall set out in detail the objections of the petitioner to the adoption of the resolution or to the disposal of the property. The service and filing of the petition shall stay the resolution until final determination of the matter by the court. The court shall immediately fix the time for a hearing at the earliest convenient time. At the hearing, the court shall hear the matter de novo and may take testimony as it deems necessary. Its proceedings shall be summary and informal, and its decision shall be final.

(5) The trustees of a district that has adopted a resolution to sell or otherwise dispose of district real or personal property and, if appealed, has been upheld by the court shall sell or dispose of such real or personal property in any reasonable manner that they determine to be in the best interests of the district. The moneys realized from the sale or disposal shall be credited to the debt service fund, building fund, general fund, or any combination of these three funds, at the discretion of the trustees."

Approved March 22, 1987.

## CHAPTER NO. 151

[HB 129]

AN ACT TO REQUIRE VOCATIONALLY HANDICAPPED PERSONS TO BE CERTIFIED BY THE DIVISION OF WORKERS' COMPENSATION FOR PURPOSES OF THE SUBSEQUENT INJURY FUND; AND AMENDING SECTION 39-71-905, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-71-905, MCA, is amended to read:

**"39-71-905. Certification as vocationally handicapped.** A person who wishes to be certified as vocationally handicapped for purposes of this part *shall* apply to the division on forms furnished by the division. The division shall conduct an investigation and shall issue a certificate to a person who, in the division's discretion, meets the requirements for vocationally handicapped certification. An employee who is requesting reemployment may be certified as vocationally handicapped. An employee who is not employed at the time of application for certification must be certified as vocationally handicapped before entering new employment in order for the new employer to receive the benefits of this part."

Section 2. **Extension of authority.** Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 22, 1987.

## CHAPTER NO. 152

[HB 131]

AN ACT TO PROVIDE AUTHORITY FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO SELL EXCESS FISH EGGS; AND AMENDING SECTION 87-4-601, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-4-601, MCA, is amended to read:

**"87-4-601. Sale of fish or spawn unlawful — exceptions.** (1) Except as provided in subsection (2), no person may, for speculative purposes, for market, or for sale, in any way, catch any of the fish which in

this title are classified as game fish or remove or cause to be removed the eggs or spawn of any such fish. No person may sell or offer for sale any of the game fish of this state as defined in this title or the eggs or spawn therefrom.

(2) The restrictions of subsection (1) do not apply to:

- (a) the catching of fish in private ponds by the owners thereof;
- (b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for such purposes;
- (c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules and regulations of the department;
- (d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under such rules and regulations as the fish and game commission may prescribe; or
- (e) *the sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs."*

**Section 2. Extension of authority.** Any existing authority of the department of fish, wildlife, and parks or the fish and game commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 22, 1987.

## CHAPTER NO. 153

[HB 142]

AN ACT CHANGING UNEMPLOYMENT BENEFIT LAW BY INDEXING THE MINIMUM BASE PERIOD WAGES NECESSARY TO QUALIFY FOR BENEFITS AND ADOPTING A CONCEPT OF "MAXIMUM BENEFIT AMOUNT" RATHER THAN DURATION; AMENDING SECTIONS 39-51-2105, 39-51-2204, 39-51-2304, AND 39-51-2402, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-51-2105, MCA, is amended to read:

**"39-51-2105. Qualifying wages.** (1) To qualify for benefits, an individual must have had at least 20 weeks of work with an average of \$50 per week in subject employment in the base period.

(2) *On and after July 5, 1987, to qualify for benefits, an individual's total base period wages must be equal to or greater than 7% of the average*

*annual wage as described in 39-51-2201(2). To qualify for benefits, an individual's total base period wages must be \$1,000 or more."*

Section 2. Section 39-51-2204, MCA, is amended to read:

**"39-51-2204. Maximum benefit amount.** Any otherwise eligible individual is entitled during the individual's benefit year to a total amount of benefits equal to the individual's weekly benefit amount, as calculated according to 39-51-2201(1), times the number of full weeks of benefit entitlement appearing in the following table in the line which includes the individual's ratio of total base period earnings to the highest quarter of earnings in the base period:

| Ratio of Total Base<br>Period<br>Earnings to High Quarter<br>At Least | But Less Than | Full Weeks<br>of Benefits |
|-----------------------------------------------------------------------|---------------|---------------------------|
| 1.00                                                                  | 1.25          | 8                         |
| 1.25                                                                  | 1.50          | 10                        |
| 1.50                                                                  | 1.75          | 12                        |
| 1.75                                                                  | 2.00          | 14                        |
| 2.00                                                                  | 2.25          | 16                        |
| 2.25                                                                  | 2.50          | 18                        |
| 2.50                                                                  | 2.75          | 20                        |
| 2.75                                                                  | 3.00          | 22                        |
| 3.00                                                                  | 3.25          | 24                        |
| 3.25                                                                  | —             | 26"                       |

Section 3. Section 39-51-2304, MCA, is amended to read:

**"39-51-2304. Disqualification for failure to apply for or to accept suitable work.** (1) *An individual is disqualified for benefits if the individual fails without good cause either to apply for available and suitable work when so directed by the employment office or the department or to accept an offer of suitable work which the individual is physically able and mentally qualified to perform or to return to his customary self-employment, if any, when so directed by the department. Such disqualification continues for the week in which such failure occurs and until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of six times that individual's weekly benefit amount subsequent to the date the act causing the disqualification occurred, with a reduction in the individual's maximum benefit amount equal to six times the weekly benefit amount, as determined by the department, provided the individual has not left this work under disqualifying circumstances.*

(2) In determining whether or not any work is suitable for an individual, the department shall consider:

(a) the degree of risk involved to the individual's health, safety, and morals;

(b) the individual's physical fitness and prior training;

- (c) *the individual's* experience and previous earnings;
- (d) *the individual's* length of unemployment and prospects for securing local work in *the* customary occupation; and
- (e) the distance of the available work from *the individual's* residence.

(3) Notwithstanding any other provisions of this chapter, including subsection (4), no work may be considered suitable and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) Subject to subsection (3), after 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers 75% of the individual's earnings in previous insured work in *the individual's* customary occupation. No individual, however, is required to accept a job paying less than the federal minimum wage."

Section 4. Section 39-51-2402, MCA, is amended to read:

**"39-51-2402. Initial determination — redetermination.** (1) A representative designated by the department and hereinafter referred to as a deputy shall promptly examine the claim and, on the basis of the facts found by *the deputy*, shall either determine whether or not such claim is valid and, if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable, and the maximum *benefit amount* or shall refer such claim or any question involved therein to an appeals referee who shall make *the* decision with respect thereto in accordance with the procedure prescribed in 39-51-2403. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor.

(2) The deputy may for good cause reconsider *the* decision and shall promptly notify the claimant and such other interested parties of *the* amended decision and the reasons therefor.

(3) No determination or redetermination of an initial or additional claim shall be made under this section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party.

(4) A determination or redetermination shall be deemed final unless an interested party entitled to notice thereof applies for reconsideration of the determination or appeals therefrom within 10 days after such notification

was mailed to *the* last known address, provided that such period may be extended for good cause."

Section 5. **Effective date.** This act is effective July 1, 1987.

Approved March 22, 1987.

## CHAPTER NO. 154

[HB 189]

AN ACT TO TRANSFER ADMINISTRATION OF THE VIDEO DRAW POKER MACHINE CONTROL LAW OF 1985 TO THE DEPARTMENT OF COMMERCE FROM THE DEPARTMENT OF REVENUE; TO ALLOW THE DEPARTMENT TO RETAIN 5 PERCENT OF THE LICENSE FEE TO ADMINISTER THE LAW; AMENDING SECTIONS 23-5-602 AND 23-5-612, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-5-602, MCA, is amended to read:

**"23-5-602. Definitions.** As used in this part, the following definitions apply:

- (1) "Department" means the department of *commerce*.
- (2) "Licensed establishment" means an establishment that is licensed to sell alcoholic beverages for consumption on the premises.
- (3) "Licensee" means an individual, partnership, or corporation that has been issued a license by the department for the placement and operation of video draw poker machines in the licensed establishment of the individual, partnership, or corporation.
- (4) "Used video draw poker machine" means a video draw poker machine, as that term is defined in this section, which is owned or possessed by an applicant on the day he applies for a license for the used machine and which was owned or operated in the state prior to February 3, 1984.
- (5) "Video draw poker machine" means an electronic video game machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker, as provided in this part, utilizing a video display and microprocessors in which, by the skill of the player or by chance, or both, the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins, cash, tokens, or anything else of value."

Section 2. Section 23-5-612, MCA, is amended to read:

**"23-5-612. State license — fee — used video draw poker machines.** (1) (a) The department, upon payment of the fee provided in



subsection (1)(b) and in conformance with rules adopted under 23-5-605, shall issue to the licensee a license for each video draw poker machine.

(b) The department shall charge an annual license fee of \$1,500 for each machine. The department shall retain 5% of the total license fee collected for purposes of administering this part, except 23-5-615. The department shall deposit one-third of the remaining fee in the state general fund and forward two-thirds of the remaining fee to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from fees on licensed machines located in cities and towns. The license expires on June 30 of each year, and the fee is prorated. The two-thirds portion of the annual fee is statutorily appropriated to the department as provided in 17-7-502 for deposit to the county or municipal treasury.

(2) A used video draw poker machine may be licensed under subsection (1) without meeting the requirements of 23-5-606 (4)(j), (4)(k), and (4)(o) if the applicant for licensure can establish to the satisfaction of the department that, on the date of application, he owns or possesses a machine which was owned or operated in the state prior to February 3, 1984. A license issued under this subsection expires 1 year from the date of issuance or on July 1, 1987, whichever occurs first."

**Section 3. Extension of authority.** Any existing authority to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Name change.** In all provisions passed by the 50th legislature wherein reference is made to administration of the Video Draw Poker Machine Control Law of 1985 by the department of revenue, the code commissioner shall change the reference to reflect this act.

**Section 5. Effective date.** This act is effective on passage and approval.

Approved March 22, 1987.

## CHAPTER NO. 155

[HB 197]

AN ACT TO INCREASE THE PENALTIES FOR OPERATING A MOTOR VEHICLE WITHOUT A VALID LIABILITY INSURANCE POLICY; AND AMENDING SECTION 61-6-304, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-6-304, MCA, is amended to read:

**"61-6-304. Penalties.** It is unlawful for any person to operate a motor vehicle upon ways of this state open to the public without a valid

policy of liability insurance in effect in an amount not less than that provided in 61-6-301 or unless such person has been issued a certificate of self-insurance pursuant to 61-6-143 or has previously posted an indemnity bond with the department as provided by 61-6-301 or is operating a vehicle exempt under 61-6-303. A violation of 61-6-301 through 61-6-304 is a misdemeanor punishable by a fine of *not less than \$250 and not to exceed \$500* or by imprisonment in the county jail for not more than 10 days, or both."

Approved March 22, 1987.

## CHAPTER NO. 156

[HB 232]

AN ACT INCREASING FROM \$5 TO \$15 THE FEE FOR REVIVER OF A CORPORATION AFTER SUSPENSION OR FORFEITURE; PROVIDING FOR COLLECTION AND DISPOSITION OF FEES; AND AMENDING SECTIONS 15-31-524, 35-1-1201, 71-3-205, AND 71-3-206, MCA.

*Enacted by the Legislature of the State of Montana:*

Section 1. Section 15-31-524, MCA, is amended to read:

**"15-31-524. Reviver of corporation after suspension or forfeiture.** Any corporation which has suffered the suspension or forfeiture referred to in the preceding section may be relieved therefrom upon making application therefor in writing supported by a certificate from the department of revenue showing that the required return has been made and filed and/or that the tax and interest and penalties have been paid, for which the suspension or forfeiture occurred. Application for reviver may be made by any stockholder or creditor of the corporation or by a majority of the surviving trustees or directors; and the same shall be filed with the secretary of state, for which he shall receive a filing and recording fee of \$15. In case the application is made more than 1 year from the date the suspension or forfeiture occurred, the applicant shall pay twice the amount of the tax and penalties due the state for the taxable year with respect to which the suspension or forfeiture occurred. Upon such payment, the secretary of state shall issue a certificate of reviver for which he shall collect a fee of \$15 and thereupon the applicant shall be revived. The reviver shall be without prejudice to any action, defense, or right which has accrued by reason of the original suspension or forfeiture. The certificate of reviver shall be prima facie evidence of the reviver. Any certificate of reviver provided for in this section may be recorded in the office of the county clerk and recorder in any county of this state."

Section 2. Section 35-1-1201, MCA, is amended to read:

**"35-1-1201. Fees and charges to be collected by secretary of state.** (1) The secretary of state shall by *administrative rule* establish,

charge, and collect in accordance with the provisions of this chapter *and commensurate with costs*:

- (a) fees for filing documents and issuing certificates;
- (b) miscellaneous charges.

(2) *The secretary of state shall maintain records sufficient to support the fees and miscellaneous charges established under this part."*

Section 3. Section 71-3-205, MCA, is amended to read:

**"71-3-205. Duties of filing officer.** (1) If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in subsection (2) is presented to the filing officer and:

(a) he is the secretary of state, he shall cause the notice to be marked, held, and indexed in accordance with the provisions of 30-9-403(4) as if the notice were a financing statement within the meaning of the Uniform Commercial Code; or

(b) he is any other officer described in 71-3-204, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the official or entity certifying the lien, and the total amount appearing on the notice of lien.

(2) If a certificate of release, nonattachment, discharge, or subordination of any lien is presented to the secretary of state for filing, he shall:

(a) cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, except that the notice of lien to which the certificate relates shall not be removed from the files; and

(b) cause a certificate of discharge or subordination to be held, marked, and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code.

(3) If a refiled notice of federal lien referred to in subsection (1) or any of the certificates or notices referred to in subsection (2) is presented for filing with any other filing officer specified in 71-3-204, he shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate, with the date of filing, in any alphabetical lien index on the line where the original notice of lien is entered.

(4) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting the lien, filed on or after July 1, 1967, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate."

Section 4. Section 71-3-206, MCA, is amended to read:

**"71-3-206. Fees.** (1) The fee for filing and indexing each notice of lien or certificate or notice affecting the tax lien *must be established and deposited in accordance with the provisions of 30-9-403(12).*

(2) The officer shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents filed by them."

Approved March 23, 1987.

## CHAPTER NO. 157

[HB 235]

AN ACT RELATING TO PENALIZING FOR CONTEMPT A PERSON WHO DISOBEYS A SUBPOENA AFTER BEING GRANTED IMMUNITY FROM PROSECUTION; AND AMENDING SECTION 46-4-302, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-4-302, MCA, is amended to read:

**"46-4-302. Penalty for failure to obey.** (1) A person who, without just cause, fails to obey a subpoena served on him *under this part* is punishable for contempt of court.

(2) (a) A person who, after being granted immunity under 46-4-305, refuses to give testimony or produce evidence *under this part* must be brought without unnecessary delay before the judge issuing the subpoena, or in that judge's absence or inability to act, before the nearest or most accessible judge, who shall inform the person:

(i) *of the contents and requirements of the subpoena;*

(ii) *that he has been granted immunity and may not be excused from testifying or producing evidence on the grounds that his testimony may incriminate him; and*

(iii) *that a refusal to testify or produce evidence as commanded in the subpoena is punishable as a contempt of court under Title 3, chapter 1, part 5.*

(b) *In the presence of the judge, the person must be examined by the county attorney or produce evidence as commanded in the subpoena.*

(c) *A refusal to testify or produce evidence may be punished as a contempt under Title 3, chapter 1, part 5."*

Approved March 22, 1987.

**CHAPTER NO. 158**

[HB 248]

AN ACT TO RECOVER THE COST TO THE GENERAL FUND OF PROVIDING SERVICES TO CERTAIN PROGRAMS THAT ARE NOT FUNDED THROUGH THE GENERAL FUND; AMENDING SECTION 17-6-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-6-201, MCA, is amended to read:

**"17-6-201. Unified investment program — general provisions.**

(1) The unified investment program directed by Article VIII, section 13, of the 1972 Montana constitution to be provided for public funds shall be administered by the board of investments and the Montana economic development board in accordance with Article VIII, section 13, of the Montana constitution and the prudent expert principle which requires any investment manager to:

(a) discharge his duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so; and

(c) discharge his duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) Retirement funds may be invested in common stocks of any corporation provided that no investment may be made at any time which would cause the book value of such investments in any retirement fund to exceed 50% of the book value of such fund or would cause the stock of one corporation to exceed 2% of the book value of such retirement fund.

(3) Nothing contained in this section prevents the investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana, if the investment meets the standard of care required by this section. In discharging its duties, the board of investments and the Montana economic development board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(4) The board of investments has the sole authority to invest state funds other than the Montana in-state investment fund. No other agency may invest such state funds. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board of investments shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

- (c) determine the type of investment to be made;
- (d) prepare the claim to pay for the investment; and
- (e) keep an account of the total of each investment fund and of all the investments belonging to such fund and a record of the participation of each treasury fund account therein.

(6) The board of investments may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received therefor;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(7) The cost of administering and accounting for each investment fund shall be deducted from the income therefrom, except that such costs of the nonexpendable trust funds shall be paid from income otherwise receivable from the pooled investment fund, and the amounts required for this purpose shall be appropriated by the legislature from the respective investment funds.

(8) (a) *The director of the department of administration annually may prepare a statewide cost allocation plan to distribute program costs incurred by state agencies that are funded through the general fund to the programs served by the agencies. Except as provided in subsection (8)(b), the cost to an agency of providing services to a program funded through an account in the state special revenue fund as defined in 17-2-102 must be deducted by the board of investments from the account's investment earnings according to the statewide cost allocation plan. Amounts deducted by the board must be credited to the general fund.*

(b) *No deduction for program costs as provided in subsection (8)(a) may be made if an account's cash on hand is pooled for investment in the treasury cash account defined in 17-6-202."*

Section 2. **Effective date.** This act is effective July 1, 1987.

Approved March 22, 1987.

## CHAPTER NO. 159

[HB 308]

AN ACT TO EXEMPT FACILITIES CERTIFIED UNDER THE MONTANA MAJOR FACILITY SITING ACT FROM CERTAIN PROVISIONS OF THE MONTANA DAM SAFETY ACT; AMENDING SECTION 85-15-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-15-107, MCA, is amended to read:

**"85-15-107. Exemptions.** The provisions of 85-15-105, 85-15-106, 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305,

85-15-401, 85-15-501, and 85-15-502 do not apply to dams subject to a permit issued pursuant to 82-4-335 for the period during which the dam is subject to the permit. The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply to federal dams and reservoirs, or to dams and reservoirs licensed and subject to inspection by the federal energy regulatory commission. *The provisions of 85-15-105, 85-15-106, 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply to dams that are required to obtain a certificate of environmental compatibility and public need pursuant to 75-20-201 for the period during which the dam is subject to the certificate.* In addition, the provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply until July 1, 1990, to high-hazard dams that have been inspected by the U.S. army corps of engineers pursuant to P.L. 92-367 and for which resultant dam safety reports have been submitted to the owner."

**Section 2. Extension of authority.** Any existing authority of the department of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved March 22, 1987.

## CHAPTER NO. 160

[HB 343]

AN ACT PROVIDING A REBUTTABLE PRESUMPTION THAT DESIGNATIONS OF FLOODPLAINS AND FLOODWAYS MADE ACCORDING TO A FLOOD HAZARD BOUNDARY MAP ARE BASED ON REASONABLE HYDROLOGICAL CERTAINTY; AMENDING SECTION 76-5-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-5-202, MCA, is amended to read:

**"76-5-202. Designation of floodplains and floodways.** (1) When sufficient data has been acquired by the department, the board shall establish, by order after a public hearing, the designated floodplain within which a political subdivision may establish land use regulation.

(2) When sufficient data has been acquired, the board shall establish, by order after a public hearing, the designated floodway within which a political subdivision may establish land use regulation.

(3) These designations shall be based upon reasonable hydrological certainty. *Designations made according to a flood hazard boundary map prepared by the federal emergency management agency have a rebuttable presumption of reasonable hydrological certainty.*

(4) The department shall record all designated floodplains or designated floodways established by the board in the office of the county clerk and recorder of each county in which those floodplains or floodways are found."

**Section 2. Extension of authority.** Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved March 22, 1987.

## CHAPTER NO. 161

[HB 374]

AN ACT TO GENERALLY REVISE THE MONTANA STATE LOTTERY ACT OF 1985; TO ALLOW REGIONAL LOTTERY GAMES; TO PROVIDE FOR A LEGISLATIVE LIAISON COMMITTEE; TO PROVIDE THAT COMMISSIONS PAID TO LOTTERY TICKET AND CHANCE SALES AGENTS ARE NOT STATE LOTTERY OPERATING EXPENSES; TO CLARIFY USE OF THE TEMPORARY LINE OF CREDIT; TO PROVIDE FOR THE ASSISTANT DIRECTOR'S SALARY; TO INCREASE PRIZE INSTALLMENT PAYMENTS FROM 10 TO 20 YEARS; TO PROVIDE FOR CONFIDENTIALITY OF CERTAIN AUDIT FINDINGS; TO FURTHER CLARIFY SALES RESTRICTIONS; TO PROVIDE FOR STATUTORY APPROPRIATION OF OPERATING EXPENSES; AMENDING SECTIONS 5, 8, 10, 13, 16, 17, AND 24, CHAPTER 669, LAWS OF 1985, AND SECTIONS 2-18-103 AND 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 5, Chapter 669, Laws of 1985, is amended to read:

**"Section 5. Powers and duties of commission.** The commission shall:

(1) establish and operate a state lottery and may not become involved in any other gambling or gaming;

(2) determine policies for the operation of the state lottery, supervise the director and his staff, and meet with the director at least once every 3 months to make and consider recommendations, set policies, determine types and forms of lottery games to be operated by the state lottery, and transact other necessary business;

(3) determine the price of each ticket or chance and the number and size of prizes;

(4) provide for the conduct of drawings of winners of lottery games;



(5) carry out, with the director, a continuing study of the state lotteries of Montana and other states to make the state lottery more efficient, profitable, and secure from violations of the law;

(6) study and may enter into agreements with other lottery states to offer regional lottery games;

(7) prepare quarterly and annual reports on all aspects of the operation of the state lottery, including but not limited to types of games, gross revenue, prize money paid, operating expenses, net revenue to the state, contracts with gaming suppliers, and recommendations for changes to [sections 1 through 20], and deliver a copy of each report to the governor, the department of administration, the legislative auditor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house; and

(8) adopt rules necessary to carry out [sections 1 through 20]."

**Section 2. Legislative liaison committee — bipartisan — compensation from lottery fund.** (1) There is a legislative liaison committee.

(2) The liaison committee consists of four legislators. Two members must be from the senate and two members must be from the house of representatives. The speaker of the house and the senate committee on committees shall appoint the members of the liaison committee, and no more than two members may be of the same political party. No legislator who has any ownership interest in any gambling device or establishment may be appointed to the liaison committee.

(3) A member of the liaison committee is entitled to compensation and expenses as provided in 5-2-302, paid from any money in the allocation under [section 13(2), Chapter 669, Laws of 1985], while performing his duties as a member of the liaison committee, as provided in subsection (4) of this section.

(4) The liaison committee shall meet once each fiscal year with the commission at Helena and shall report to each legislature on the activities and operations of the state lottery.

**Section 3.** Section 8, Chapter 669, Laws of 1985, is amended to read:

**"Section 8. Assistant director for security — qualifications — duties — compensation.** (1) The director shall appoint an assistant director for security, *who serves at the pleasure of the director*.

(2) The assistant director for security must be qualified by training and experience, have at least 5 years of law enforcement experience, and be knowledgeable and experienced in computer security.

(3) The assistant director for security shall:

(a) be responsible for a security division to assure security, honesty, fairness, and integrity in the operation and administration of the lottery, including but not limited to an examination of the background of all prospective employees, ticket or chance sales agents, lottery vendors, and lottery contractors. The security division is designated a law enforcement agency for the purpose of administering [sections 1 through 20].

(b) in conjunction with the director, confer with the attorney general or his designee to promote and ensure security, honesty, fairness, and integrity of the operation and administration of the lottery; and

(c) in conjunction with the director, report any alleged violation of law to the attorney general, the legislative auditor, and any other appropriate law enforcement authority for further investigation and action.

(4) *The salary of the assistant director for security is equal to 90% of the salary of the director of the lottery."*

Section 4. Section 13, Chapter 669, Laws of 1985, is amended to read:

"Section 13. **Disposition of revenue.** (1) (a) As near as possible to 45% of the money paid for tickets or chances must be paid out as prize money, *except as provided in subsection (b).*

(b) *In the case of a regional lottery game, a maximum of 50% of the money paid for tickets or chances may be paid out as prize money.*

(2) Up to 15% of the gross revenue from the state lottery may be used by the director to pay the operating expenses of the state lottery. Commissions paid to lottery ticket or chance sales agents are *not* a state lottery operating expense.

(3) *Funds to pay the operating expenses of the lottery are statutorily appropriated as provided in 17-7-502.*

(4) That part of all gross revenue not used for the payment of prizes, commissions, and operating expenses is net revenue and must be paid quarterly from the enterprise fund established by [section 12] to the superintendent of public instruction for distribution as equalization aid to the retirement funds required by 20-9-501. The net revenue is statutorily appropriated, as provided in 17-7-502. The superintendent of public instruction shall establish the dollar amount per ANB by dividing the net lottery revenue for the school year by the total state ANB in the prior school year. He shall then notify each county superintendent by the fourth Monday of July of the total retirement fund equalization aid available to the county, as calculated separately for elementary and high school districts using the prior year's ANB and prorated as specified in 20-9-501(6) for any joint school district, and each county superintendent must use such amounts to reduce the total retirement fund levy requirement for elementary school districts and the total retirement fund levy requirement for high school districts. The superintendent of public instruction shall then distribute by state warrant the total amount of *net lottery revenue available that has been deposited in the superintendent of public instruction lottery account* for each county by October 1 of the school fiscal year."

Section 5. Section 16, Chapter 669, Laws of 1985, is amended to read:

"Section 16. **Drawings for and payment of prizes — unclaimed prizes.** (1) All drawings must be held in public. The selection of winning tickets may not be performed by an employee of the lottery or by a member of the commission. All drawings must be witnessed by a professional staff employee of the legislative auditor's office, and all lottery drawing equipment used in public drawings to select winning prizes or

participants for prizes must be examined by the director's staff and a professional staff employee of the legislative auditor's office prior to and after each public drawing.

(2) The commission may provide for the immediate payment of prizes by the ticket or chance sales agent who sold the winning ticket or chance whenever the amount of the prize is less than an amount set by commission rule. Payment may not be made directly by a machine or device or by a computer terminal.

(3) Prizes over \$100,000 may in the discretion of the commission be paid either in one lump sum or in equal yearly installments without interest over a period of not more than 20 years, except that each installment payment must be at least \$20,000.

(4) Prizes not claimed within 6 months are forfeited and must be paid into the state lottery fund. No interest is due on a prize when a claim is delayed but made within 6 months.

(5) The right to a prize is not assignable, but prizes may be paid to a deceased winner's estate or to a person designated by judicial order."

Section 6. Section 17, Chapter 669, Laws of 1985, is amended to read:

"Section 17. **Disclosures by gaming suppliers.** (1) Any person, firm, association, or corporation that submits a bid or proposal for a contract to supply lottery equipment, tickets, or other material or consultant services for use in the operation of the state lottery shall disclose at the time of such bid or proposal:

(a) the supplier's business name and address and the names and addresses of the following:

(i) if the supplier is a partnership, all of the general and limited partners;

(ii) if the supplier is a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(iii) if the supplier is an association, the members, officers, and directors;

(iv) if the supplier is a corporation, the officers, directors, and each owner or holder, directly or indirectly, of any equity security or other evidence of ownership of any interest in the corporation; except that, in the case of owners or holders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed;

(v) if the supplier is a subsidiary company, each intermediary company, holding company, or parent company involved therewith and the officers, directors, and stockholders of each; except that, in the case of owners or holders of publicly held securities of an intermediary company, holding company, or parent company which is a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed;

(b) if the supplier is a corporation, all the states in which the supplier is authorized to do business and the nature of that business;

(c) other jurisdictions in which the supplier has contracts to supply gaming materials, equipment, or consultant services;

(d) the details of any conviction, state or federal, of the supplier or any person whose name and address are required by subsection (1)(a) of a criminal offense punishable by imprisonment for more than 1 year and shall submit to the commission a full set of fingerprints of such person made at a law enforcement agency by an agent or officer of such agency on forms supplied by the agency;

(e) the details of any disciplinary action taken by any state against the supplier or any person whose name and address are required by subsection (1)(a) regarding any matter related to gaming consultant services or the selling, leasing, offering for sale or lease, buying, or servicing of gaming materials or equipment;

(f) audited annual financial statements for the preceding 5 years;

(g) a statement of the gross receipts realized in the preceding year from gaming consultant services and the sale, lease, or distribution of gaming materials or equipment to states operating lotteries and to private persons licensed to conduct gambling, differentiating that portion of the gross receipts attributable to transactions with states operating lotteries from that portion of the gross receipts attributable to transactions with private persons licensed to conduct gambling;

(h) the name and address of any source of gaming materials or equipment for the supplier;

(i) the number of years the supplier has been in the business of supplying gaming consultant services or gaming materials or equipment; and

(j) any other information, accompanied by any documents the commission by rule may reasonably require as being necessary or appropriate in the public interest to accomplish the purposes of [sections 1 through 20].

(2) No person, firm, association, or corporation contracting to supply gaming equipment or materials or consultant services to the state for use in the operation of the state lottery may have any financial interest in any person, firm, association, or corporation licensed as a ticket or chance sales agent.

(3) No contract for supplying consultant services or gaming materials or equipment for use in the operation of the state lottery is enforceable against the state unless the requirements of this section have been fulfilled."

Section 7. Section 24, Chapter 669, Laws of 1985, is amended to read:

**"Section 24. Temporary state treasury line of credit for expense of starting state lottery.** There is a temporary line of credit that may be drawn by the director of the state lottery from the state general fund and deposited in the state lottery fund, in the amount of \$1,500,000. This temporary line of credit may be drawn upon only during the first 12 months after the effective date of [sections 1 through 20] and only for the purpose of financing the initial expenses of starting the state lottery. The

director may draw upon all or part of this temporary line of credit. *This temporary line of credit must be available for expenditure regardless of fiscal or biennium yearend.* Any funds advanced under the temporary line of credit must be repaid out of the lottery's net revenue to the general fund within 1 year of the advance, and no net revenue may be paid out under [section 13(3)] until all advanced funds are repaid. Interest must be paid at an annual simple interest rate of 10% on funds advanced, commencing on the day funds are advanced and until the funds are repaid."

**Section 8. Certain audit findings confidential.** Specific audit findings relating to security invasion techniques are confidential and may be reported only to the legislative audit committee, the director of the lottery, the commission, the attorney general, and the governor.

**Section 9.** Section 10, Chapter 669, Laws of 1985, is amended to read:

**"Section 10. Sales restrictions.** (1) The price of each lottery game ticket or chance must be clearly stated thereon. The price of a lottery game chance vended by a machine or electronic device must be clearly stated on the machine or device.

(2) Tickets and chances may not be sold to or purchased by persons under 18 years of age.

(3) Tickets and chances must be paid for in cash.

(4) Tickets and chances may not be sold to or purchased by commissioners, the director, his staff, gaming suppliers doing business with the state lottery, suppliers' officers and employees, employees of any firm auditing or investigating the state lottery, governmental employees auditing or investigating the state lottery, or members of their families living with them.

(5) The names of elected officials may not appear on any ticket or chance."

**Section 10.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations:

(a) 2-9-202;

- (b) 2-17-105;
- (c) 2-18-812;
- (d) 10-3-203;
- (e) 10-3-312;
- (f) 10-3-314;
- (g) 10-4-301;
- (h) 13-37-304;
- (i) 15-31-702;
- (j) 15-36-112;
- (k) 15-70-101;
- (l) 16-1-404;
- (m) 16-1-410;
- (n) 16-1-411;
- (o) 17-3-212;
- (p) 17-5-404;
- (q) 17-5-424;
- (r) 17-5-804;
- (s) 19-8-504;
- (t) 19-9-702;
- (u) 19-9-1007;
- (v) 19-10-205;
- (w) 19-10-305;
- (x) 19-10-506;
- (y) 19-11-512;
- (z) 19-11-513;
- (aa) 19-11-606;
- (bb) 19-12-301;
- (cc) 19-13-604;
- (dd) 20-6-406;
- (ee) 20-8-111;
- (ff) 23-5-612;
- (gg) 37-51-501;
- (hh) 53-24-206;

- (ii) 75-1-1101;
- (jj) 75-7-305;
- (kk) 80-2-103;
- (ll) 80-2-228;
- (mm) 90-3-301;
- (nn) 90-3-302;
- (oo) 90-15-103;
- (pp) Sec. 13, HB 861, L. 1985; and
- (qq) [Sec. 13, Chapter 669, L. 1985, as amended by section 4].

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments."

Section 11. Section 2-18-103, MCA, is amended to read:

"2-18-103. **Officers and employees excepted.** Parts 1 and 2 do not apply to the following positions in state government:

- (1) elected officials;
- (2) county assessors and their chief deputy;
- (3) officers and employees of the legislative branch;
- (4) judges and employees of the judicial branch;
- (5) members of boards and commissions appointed by the governor, appointed by the legislature, or appointed by other elected state officials;
- (6) officers or members of the militia;
- (7) agency heads appointed by the governor;
- (8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;
- (10) teachers under the authority of the department of institutions;
- (11) investment officer and assistant investment officer of the board of investments;

(12) four professional staff positions under the board of oil and gas conservation; and

(13) *assistant director for security of the Montana state lottery.*"

**Section 12. Codification instruction.** Sections 2 and 8 are intended to be codified as an integral part of the Montana State Lottery Act of 1985, and the provisions of the Montana State Lottery Act of 1985 apply to sections 2 and 8.

**Section 13. Extension of authority.** Any existing authority of the state lottery commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 14. Effective date.** This act is effective on passage and approval.

Approved March 22, 1987.

## CHAPTER NO. 162

[HB 413]

AN ACT REMOVING THE AMOUNT OF MARIJUANA REQUIRED FOR COMMISSION OF THE OFFENSE OF CRIMINAL POSSESSION WITH INTENT TO SELL; AND AMENDING SECTION 45-9-103, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-9-103, MCA, is amended to read:

**"45-9-103. Criminal possession with intent to sell.** (1) A person commits the offense of criminal possession with intent to sell if he possesses with intent to sell any dangerous drug as defined in 50-32-101.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), with intent to sell shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal possession with intent to sell not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed \$50,000, or both.

(4) Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this section."

Approved March 22, 1987.



**CHAPTER NO. 163**

[HB 476]

**AN ACT PROVIDING FOR CONFIDENTIALITY OF VIDEO DRAW POKER MACHINE PAYBACK VERIFICATION STATISTICS; AND AMENDING SECTION 23-5-607, MCA.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-5-607, MCA, is amended to read:

**"23-5-607. Expected payback — verification.** The department shall prescribe the expected payback value of one credit played to be at least 80% of the value of a credit. Each machine must have an electronic accounting device that the department may use to verify the winning percentage. *The department may not publish or otherwise disseminate income figures and other statistics obtained in the payback verification process or contained in payback verification reports in a manner that allows or helps a person to identify a particular machine or to match a particular machine with a particular income or statistic.*"

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 22, 1987.

**CHAPTER NO. 164**

[HB 489]

**AN ACT TO CREATE A STATUTORY APPROPRIATION FOR PUBLIC AND PRIVATE FUNDS DONATED TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES FOR MEDICAL ASSISTANCE; AND AMENDING SECTION 17-7-502, MCA.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Statutory appropriation of donated funds.** (1) The department of social and rehabilitation services may receive private funds and nonfederal and nonstate public funds for its medical assistance programs. Donated funds must be matched with federal funds whenever possible.

(2) Funds donated to the department for its medical assistance programs are statutorily appropriated to the department as provided in 17-7-502.

Section 2. Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by

permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations:

- (a) 2-9-202;
- (b) 2-17-105;
- (c) 2-18-812;
- (d) 10-3-203;
- (e) 10-3-312;
- (f) 10-3-314;
- (g) 10-4-301;
- (h) 13-37-304;
- (i) 15-31-702;
- (j) 15-36-112;
- (k) 15-70-101;
- (l) 16-1-404;
- (m) 16-1-410;
- (n) 16-1-411;
- (o) 17-3-212;
- (p) 17-5-404;
- (q) 17-5-424;
- (r) 17-5-804;
- (s) 19-8-504;
- (t) 19-9-702;
- (u) 19-9-1007;
- (v) 19-10-205;
- (w) 19-10-305;
- (x) 19-10-506;

- (y) 19-11-512;
- (z) 19-11-513;
- (aa) 19-11-606;
- (bb) 19-12-301;
- (cc) 19-13-604;
- (dd) 20-6-406;
- (ee) 20-8-111;
- (ff) 23-5-612;
- (gg) 37-51-501;
- (hh) 53-24-206;
- (ii) 75-1-1101;
- (jj) 75-7-305;
- (kk) 80-2-103;
- (ll) 80-2-228;
- (mm) 90-3-301;
- (nn) 90-3-302;
- (oo) 90-15-103;
- (pp) Sec. 13, HB 861, L. 1985; *and*
- (qq) *[section 1]*.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments."

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply to section 1.

Approved March 22, 1987.

**CHAPTER NO. 165**

[HB 516]

AN ACT REVISING THE LIMITATION ON THE AMOUNT OF A PURCHASE OR RENTAL TO WHICH AN IRRIGATION DISTRICT BOARD MAY BIND A DISTRICT WITHOUT CONSENT OF THE LANDOWNERS; AND AMENDING SECTION 85-7-1904, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-7-1904, MCA, is amended to read:

**"85-7-1904. Acquisition of water and waterworks by board.** (1) The board shall have power and authority to:

- (a) appropriate water in the name of the district;
- (b) acquire, by purchase, lease, or contract, water and water rights; additional waters and supplies of water; canals, reservoirs, dams, and other works already constructed or in the course of construction; and
- (c) acquire by purchase, lease, contract, condemnation, or other legal means:
  - (i) lands and rights in lands for rights-of-way, for reservoirs, for the storage of needful waters, and for dam sites and necessary appurtenances; and
  - (ii) such other lands and property as may be necessary for the construction, use, maintenance, repair, improvement, enlargement, and operation of any district system of irrigation works.

(2) The board shall have the privilege, if desired, to contract with the owner or owners of such canals, reservoirs, dams, and other works so purchased and in the course of construction for the completion thereof.

(3) No purchase, lease, or contract for purchase of any water, water rights, canals, reservoirs, reservoir sites, dam sites, irrigation works, or other property of any nature or kind or for the making or purchasing of surveys, maps, plans, estimates, and specifications or for the purchase of machinery for pumping plants or for the erection of buildings, aqueducts, and other structures necessarily used in connection with such pumping plants, for a price or rental in excess of \$150,000 or 25% of the district's annual operation and maintenance budget, whichever is greater, is final or binding upon the district, and no sum may be paid for such purchase, lease, or contract without the written consent or petition of at least a majority in number and acreage of the holders of title or evidence of title to the lands within the district. Any splitting or division of such purchase, lease, or contract with the purpose or intention of avoiding or circumventing the provisions of this section shall render such divided or split contract or contracts void."

Approved March 22, 1987.

**CHAPTER NO. 166**

[HB 517]

AN ACT TO MAKE CONSISTENT THE INVESTMENT AUTHORITY OF AN IRRIGATION DISTRICT'S BOARD OF COMMISSIONERS CONCERNING CERTAIN FUNDS; TO PERMIT INVESTING OF THESE FUNDS IN INVESTMENTS BACKED, INSURED, OR GUARANTEED BY THE UNITED STATES OR THE STATE OF MONTANA; AND AMENDING SECTIONS 85-7-1951, 85-7-2027, 85-7-2133, AND 87-7-2140, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-7-1951, MCA, is amended to read:

**"85-7-1951. United States contracts — loans, sinking fund, and investment.** The board of commissioners of any irrigation district established and organized under and by virtue of the laws of Montana, whenever deemed advisable and to the interest of the district, shall have the power and authority to enter into any obligation or contract with the United States under any act of congress and the rules and regulations established thereunder, providing for or permitting such obligation or contract, for the purpose of obtaining from the United States a loan of money to be used by the district for the liquidation of bonded or other outstanding indebtedness of the district or for doing or causing to be done, under the supervision of the secretary of the interior of the United States, any construction, betterments, or repair work necessary to place the irrigation system of the district in good operating condition. The board shall also have the power and authority to create, by proper levy and collection of assessments, a sinking fund which shall be available for the construction of betterments to the irrigation system of the district, as may become necessary during the term of any contract made hereunder. Said sinking fund for said purpose, which shall be designated the "... District Sinking Fund for Betterments", shall be in such an amount and shall be created within such time as may be agreed upon between the district and the United States. The board shall also have the power and authority to invest any surplus in the sinking fund herein provided for in *legal investments backed, insured, or guaranteed by the United States or the state of Montana, including federal and state agency obligations.*"

Section 2. Section 85-7-2027, MCA, is amended to read:

**"85-7-2027. Disposition of bond proceeds.** The county treasurer shall place the proceeds of the sale to the credit of the district, and the proceeds shall be paid out by the county treasurer only upon the written order of the board of commissioners, signed by the president and secretary under the seal of the district. The proceeds shall be spent only for the purpose for which the bonds were issued. If any portion of the funds realized from the sale of bonds is not needed immediately for the purpose for which the bonds were issued, the board of commissioners may direct the investment of the funds and any other surplus funds of the district or any portion thereof in *legal investments backed, insured, or guaranteed by the*

United States or the state of Montana, *including federal and state agency obligations*. The county treasurer shall transfer to the credit of the district and place to the credit of the fund or funds, as the board of commissioners may direct, all interest received upon *investments* of the district entrusted to his care."

Section 3. Section 85-7-2133, MCA, is amended to read:

**"85-7-2133. Role of the county officers in collection of tax or assessment.** (1) A certified copy of such resolution shall be filed with the clerk of the board of county commissioners of each county in which the lands of the irrigation district lie, and the special tax or assessment therein provided for shall be levied and collected as prescribed and when so collected shall, by the county treasurer having custody of the funds of the district, be placed in a special fund and used solely for the payment of all bonds issued under the provisions of this chapter and interest thereon so long as any of the bonds or interest coupons remain outstanding and unpaid. Whenever the payments are made for amounts due or to become due to the United States under a contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 85-7-1906, the special fund shall be known as the United States contract fund.

(2) The county treasurer of the county where the office of an irrigation district is located is the custodian of all funds belonging to the district, and he shall pay out such funds upon the order of the board of commissioners, except payments on bonds and interest for which no order is necessary. If any portion of the funds belonging to a district has been collected for the purpose of establishing a reserve fund, the county treasurer shall pay such portion to the district on order of the district's board of commissioners who may invest the same in *legal investments backed, insured, or guaranteed by the United States or the state of Montana, including federal and state agency obligations*. Where moneys of a district in the United States contract fund established pursuant to subsection (1) are in excess of those needed to pay a district's next succeeding annual contract obligation or obligations to the United States, such excess or any part thereof may, upon order of the district's board of commissioners and with the consent of the United States officer administering the contract for which the contract fund has been established, be paid to the district for use in meeting other obligations of the district. Such orders of the board of commissioners shall be signed by the president and secretary of the board and shall bear the official seal of the district."

Section 4. Section 85-7-2140, MCA, is amended to read:

**"85-7-2140. Investment of funds.** The board of commissioners shall direct the investment of the funds in any bond sinking fund in *legal investments backed, insured, or guaranteed by the United States or the state of Montana, including federal and state agency obligations*, whenever in their judgment the investment may be to the best interest of the district. All such *investments* shall be converted into cash in time to meet the principal on the bonds payable from such sinking fund promptly at their maturity."

Approved March 22, 1987.

**CHAPTER NO. 167**

[HB 563]

**AN ACT TO PROVIDE A PROCEDURE FOR THE ISSUANCE OF DUPLICATE WARRANTS AND CHECKS BY A MUNICIPALITY TO REPLACE LOST OR DESTROYED WARRANTS AND CHECKS; PROVIDING CONDITIONS FOR THE ISSUANCE OF DUPLICATE WARRANTS AND CHECKS.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Issuance of duplicate warrants and checks.** (1) A duplicate warrant or check may be issued by the appropriate municipal officer whenever an instrument drawn by him upon the municipality is lost or destroyed. The duplicate warrant or check must be in the same form as the original except that it must have plainly printed across its face the word "duplicate". Except as provided in subsection (2), no duplicate warrant or check may be issued or delivered unless the person entitled to receive it deposits with the issuing municipal officer a bond in double the amount for which the duplicate warrant or check is issued, conditioned to hold the city and its officers harmless on account of the issuance of the duplicate warrant or check.

(2) No bond of indemnity is required when:

(a) the payee is the U.S. government, a state of the United States, an agency, instrumentality, or officer of the U.S. government or of a state, county, city, city and county, town, district, or other political subdivision of a state, or an officer thereof;

(b) the owner or custodian is the state of Montana or an agency or officer thereof;

(c) the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the U.S. government or by the state of Montana;

(d) the amount of the lost or destroyed warrant or check is less than \$100;

(e) it can be established that a crime has been committed and as a result of such crime the warrant or check was stolen or destroyed;

(f) it can be established that the warrant or check was mailed to an incorrect payee; or

(g) the payee is a vendor or contractor doing business with the municipality.

(3) Whenever the owner or custodian applies under the provisions of subsection (2)(e), (2)(f), or (2)(g), a stop-payment order must be placed on the original warrant or check by the municipality.

(4) Whenever the owner or custodian applies under the provisions of subsection (2)(c), (2)(d), (2)(e), (2)(f), or (2)(g), the application must

include an agreement to indemnify and hold harmless the municipality or its officers and employees from any loss resulting from the issuance of a duplicate warrant or check. Any loss incurred in connection with the issuance of a duplicate warrant or check must be charged against the account from which the payment was derived.

Approved March 22, 1987.

## CHAPTER NO. 168

[HB 585]

AN ACT REMOVING RESTRICTIONS ON AREAS THAT MAY BE SERVED BY TELEPHONE COOPERATIVES; AMENDING SECTIONS 35-18-102, 35-18-105, 35-18-106, AND 35-18-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. No area restriction — telephone cooperatives.** A telephone cooperative, regardless of when it was organized pursuant to 35-18-105, is not restricted by population of area served or other criteria to any area of service.

**Section 2.** Section 35-18-102, MCA, is amended to read:

**"35-18-102. Definitions.** (1) Corporations organized under this chapter and corporations which become subject to this chapter in the manner hereinafter provided are hereinafter referred to as "cooperatives".

(2) In this chapter, unless the context otherwise requires the following definitions apply:

(a) "Cable television system" means a system that receives and amplifies the signals broadcast by one or more television stations and redistributes the signals to subscribing members of the public for a fixed or periodic fee by wire, cable, microwave, or other means, whether such means are owned or leased.

(b) "Broadband" means transmission facilities capable of handling frequencies greater than those required for high grade voice communication (higher than 4 kilohertz).

(c) "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein and shall include a husband and wife admitted to joint membership.

(d) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof, or any body politic.

(e) "Rural area", as applied to all corporations organized under the provisions of 35-18-105(1), means any area not included within the boundaries of any incorporated or unincorporated city, town, village, or borough



having a population in excess of 3,500 persons on March 17, 1939, or subsequent thereto, and every incorporated municipality in which 95% or more of the premises are served by an electric cooperative on February 1, 1971."

Section 3. Section 35-18-105, MCA, is amended to read:

**"35-18-105. Permissible purposes for incorporation.** Cooperative nonprofit membership corporations may be organized under this chapter for the following purposes:

(1) for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas, as provided in this chapter;

(2) for the purposes of making generally available adequate telephone service, cable television service, or broadband facilities through the improvement and expansion of existing telephone, cable television, or broadband facilities and the construction and operation of such additional facilities as are required to assure the availability of such service to the widest practicable number of users thereof."

Section 4. Section 35-18-106, MCA, is amended to read:

**"35-18-106. Powers of cooperatives.** A cooperative shall have power to:

(1) sue and be sued in its corporate name;

(2) have perpetual existence;

(3) adopt a corporate seal and alter the same at pleasure;

(4) become a member in one or more other cooperatives or corporations or to own stock therein;

(5) construct, purchase, take, receive, lease as lessee, or otherwise acquire and to own, hold, use, equip, maintain, and operate and sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, telephone lines, facilities or systems (but not telegraph or radio broadcasting services or facilities) as defined by law, lands, buildings, structures, dams, plants and equipment, and any and all kinds or classes of real or personal property whatsoever, which shall be deemed necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;

(6) purchase or otherwise acquire and own, hold, use, and exercise and sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights-of-way, and easements;

(7) borrow money and otherwise contract indebtedness and issue notes, bonds, and other evidences of indebtedness therefor and secure the payment thereof by mortgage, pledge, deed of trust, or any other encumbrance upon any or all of its then owned or after-acquired real or personal property, assets, franchises, revenues, or income;

(8) construct, maintain, and operate electric transmission and distribution lines or telephone, cable television, or broadband lines, facilities, or systems along, upon, under, and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges, and causeways and upon, under, and across all publicly owned lands, subject, however, to the same requirements in respect of the use of such thoroughfares and lands as are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(9) exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(10) conduct its business and exercise any or all of its powers within or without this state;

(11) adopt, amend, and repeal bylaws;

(12) in the case of corporations organized under the provisions of 35-18-105(1):

(a) generate, manufacture, purchase, acquire, accumulate, and transmit electric energy and distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10% of the number of its members;

(b) make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of and otherwise to assist such persons in wiring their premises and installing therein electrical and plumbing fixtures, appliances, apparatus, and equipment of any and all kinds and character and, in connection therewith, purchase, acquire, lease, sell, distribute, install, and repair such electrical and plumbing fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and any and all types of security therefor;

(c) make loans to persons to whom electric energy is or will be supplied by the cooperatives for the purpose of and otherwise to assist such persons in constructing, maintaining, and operating electric refrigeration plants;

(13) in the case of corporations organized under the provisions of 35-18-105(2):

(a) improve and expand existing telephone lines, facilities, and systems and construct, acquire, operate, and furnish such additional telephone lines, facilities, and systems as are required to assure the availability of adequate telephone service to the widest practicable number of users thereof;

(b) make loans to persons to whom telephone service is or will be supplied by the cooperative for the purpose of and otherwise to assist such persons in wiring their premises for telephone service and installing therein telephone fixtures, appliances, apparatus, and equipment of any and all

kinds and character and, in connection therewith, purchase, acquire, lease, sell, distribute, install, and repair such telephone fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and any and all types of security therefor;

(14) do and perform any and all other acts and things and have and exercise any and all other powers which may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized."

Section 5. Section 35-18-206, MCA, is amended to read:

**"35-18-206. Existing corporations — reorganization under this chapter — articles of conversion.** Any corporation organized under the laws of this state for the purpose, among others, of supplying electric energy *in rural areas* or telephone service may become subject to this chapter with the same effect as if originally organized under this chapter by complying with the following requirements:

(1) The proposition for the conversion of such corporation into a cooperative under this chapter and proposed articles of conversion to give effect thereto shall be first approved by the board of trustees or the board of directors, as the case may be, of such corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the corporation prior to its conversion into a cooperative under this chapter;

(b) the address of the principal office of such corporation;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state;

(d) the statute or statutes under which such corporation was organized;

(e) the name assumed by such corporation;

(f) a statement that such corporation elects to become a cooperative, nonprofit, membership corporation subject to this chapter;

(g) the manner and basis of converting either memberships in or shares of stock of such corporation into memberships therein after completion of the conversion; and

(h) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) The proposition for the conversion of such corporation into a cooperative under this chapter and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of such corporation shall then be submitted to a vote of the members or stockholders, as the case may be, of such corporation at any duly held annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of

such corporation into a cooperative under this chapter and the proposed articles of conversion, with such amendments thereto as the members or stockholders of such corporation shall choose to make therein, shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of such corporation voting thereon at such meeting or, if such corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of such corporation represented at such meeting.

(3) Upon such approval by the members or stockholders of such corporation, articles of conversion in the form approved by such members or stockholders of such corporation shall be executed on behalf of such corporation by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The president or vice-president executing such articles of conversion on behalf of such corporation shall also make and annex thereto an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders of the proposition for the conversion of such corporation into a cooperative under this chapter and such articles of conversion were duly complied with.

(4) Such articles of conversion and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

(5) The term "articles of incorporation" as used in this chapter shall be deemed to include the articles of conversion of a converted corporation."

**Section 6. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 35, chapter 18, part 1, and the provisions of Title 35, chapter 18, part 1, apply to section 1.

**Section 7. Effective date.** This act is effective on passage and approval.

Approved March 22, 1987.

## CHAPTER NO. 169

[HB 624]

**AN ACT TO AUTHORIZE THE USE OF PUBLIC AUCTIONS FOR A PURCHASE NOT TO EXCEED \$25,000 UNDER MUNICIPAL PURCHASING LAWS; AND AMENDING SECTION 7-5-4302, MCA.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-5-4302, MCA, is amended to read:

**"7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts.** (1) Except as provided in 7-5-4303 or [section 2], all contracts for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, or equipment, for any materials or supplies of any kind, or for construction, repair, or maintenance for which must be paid a sum exceeding

\$10,000 must be let to the lowest responsible bidder after advertisement for bids.

(2) Such advertisement shall be made in the official newspaper of the city or town if there be such official newspaper, and if not, it shall be made in a daily newspaper of general circulation published in the city or town if there be such and, otherwise, by posting in three of the most public places in the city or town. Such advertisement, if by publication in a newspaper, shall be made once each week for 2 consecutive weeks, and the second publication shall be made not less than 5 days or more than 12 days before the consideration of bids. If such advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set for considering bids.

(3) The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement and may reject any and all bids and readvertise as provided herein."

**Section 2. Use of public auction to make purchase.** In lieu of soliciting bids, the council may purchase at public auction any vehicle, machinery, appliances, apparatus, building, or materials and supplies for which must be paid a sum less than \$25,000.

Approved March 22, 1987.

## CHAPTER NO. 170

[HB 635]

**AN ACT TO ALLOW THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO MAINTAIN POSITIVE CASH BALANCES IN THE FEDERAL SPECIAL REVENUE FUND BY BORROWING FROM THE GENERAL FUND WHEN FEDERAL MATCHING FUNDS ARE NOT YET RECEIVED; AMENDING SECTION 17-2-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-2-107, MCA, is amended to read:

**"17-2-107. Accurate accounting records and interaccount loans.**

(1) The department of administration shall record receipts and disbursements for treasury funds and for accounts within treasury funds and shall maintain records in such a manner as to reflect the total cash and invested balance of each fund and each account. The department of administration shall adopt the necessary procedures to insure that interdepartmental or intradepartmental transfers of money do not result in inflation of figures reflecting total governmental costs and revenues.

(2) When the expenditure of an appropriation is necessary and the cash balance in the account from which the appropriation was made is insufficient, the department of administration may authorize a transfer, as a

temporary loan bearing no interest, of unrestricted moneys from other accounts, provided that there is reasonable evidence that the income will be sufficient to restore the amount so transferred within 1 calendar year and provided the loan is recorded in the state accounting records. The loan must be repaid within 1 calendar year of the date the loan is approved unless it is extended under subsection (3) or by specific legislative authorization. No account shall be so impaired that all proper demands thereon cannot be met even if the loan is extended.

(3) Under unusual circumstances the director of the department of administration may grant one extension of a loan for up to 1 year. The department of administration shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the general fund or the current unrestricted subfund to funds designated in subsections (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) of 17-2-102 shall bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool. Except for investment earnings on restricted donations, all designated and restricted subfund investment earnings are credited to the state general fund.

(5) No accounting entity may have a negative cash balance at fiscal yearend. The department of administration may, however, allow any entity to carry a negative balance at any point during the fiscal year subject to the following restrictions:

(a) Accounting entity negative cash balances may not exist more than 7 working days in the funds provided in subsections (1)(a) through (1)(c) of 17-2-102.

(b) Units of the university system and postsecondary vocational-technical centers must maintain positive cash balances in the subfunds provided in subsections (1)(d)(i)(A) through (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) of 17-2-102.

(6) *Notwithstanding the provisions of subsections (2) through (4), the department of social and rehabilitation services may maintain positive cash balances in the federal special revenue fund with long-term repayment whenever necessary due to the timing for transmittal of obligated matching funds if it can be demonstrated to the satisfaction of the department of administration that the total loan balance does not exceed total receivables from federal and county governments and receivables have been billed on a timely basis. The loan must be repaid under such terms and conditions as may be determined by the department of administration or by specific legislative authorization."*

**Section 2. Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved March 22, 1987.

**CHAPTER NO. 171**

[HB 692]

**AN ACT TO PERMIT PUBLIC BODIES TO ISSUE CROSSOVER REFUNDING BONDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.***Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** As used in [this act], the following definitions apply:

- (1) "Bonds" means crossover refunding bonds.
- (2) "Crossover date" means the date the proceeds of crossover refunding bonds are pledged to the payment of the obligations to be refunded.
- (3) "Governing body" means the board or body that exercises the legislative power of the public body.
- (4) "Public body" means any political subdivision of the state and includes but is not limited to a county, city, town, or school district.

**Section 2. Crossover refunding bonds authorized.** (1) Any public body authorized to issue refunding obligations may issue bonds pursuant to [this act] without regard to the limitations contained in any other law relating to:

- (a) the establishment of an escrow account for the obligations to be refunded;
- (b) the giving of a notice of redemption for the obligations to be refunded and redeemed; or
- (c) the application of the proceeds of the refunding obligations.

(2) The proceeds of bonds, less any proceeds applied to payment of costs of issuance or refunding, must be deposited in a sinking fund account irrevocably appropriated to the payment of principal of and interest on the refunding obligations until the crossover date. The sinking fund account must be maintained as an escrow account with a suitable financial institution within or outside the state and amounts in it must be invested in securities that are direct obligations of the United States or on which the payment of the principal and interest is guaranteed by the United States. In the resolution authorizing the issuance of the bonds, the governing body may pledge to their payment any source of payment of the obligations to be refunded. In the case of general obligation bonds, property taxes must be levied and appropriated to the sinking fund account in the amounts needed, together with estimated investment income from money in the sinking fund account and any other revenues available upon discharge of the obligations to be refunded, to pay when due the principal of and interest on the bonds. Funds pledged to the credit of the sinking fund for the obligations to be refunded and not required on the crossover date for the payment of principal, premium, or interest on the obligations to be

refunded may be appropriated by the public body to the sinking fund account for the bonds.

(3) The public body may pay the reasonable costs and expenses of issuing bonds and of establishing and maintaining the escrow account.

(4) On the crossover date, obligations refunded pursuant to [this act] are no longer considered outstanding for purposes of any debt limitation if the provisions of subsection (5) are met.

(5) The securities in the escrow account must mature or be callable at the option of the holder on such date, bearing interest at such rate, and payable on such dates as necessary to provide sufficient funds, in addition to any cash retained in the escrow account, to pay when due:

(a) the interest that will accrue on each refunded obligation to its maturity or redemption date, if called for redemption;

(b) the principal of each refunded obligation at maturity or on the redemption date; and

(c) any redemption premium.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved March 22, 1987.

## CHAPTER NO. 172

[HB 717]

AN ACT PROVIDING FOR SIMILAR TAXATION OF BEER SOLD BY A WHOLESALER REGARDLESS OF WHERE IT IS BREWED; AMENDING SECTIONS 16-1-406 AND 16-1-408, MCA; REPEALING SECTION 16-1-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 16-1-406, MCA, is amended to read:

**"16-1-406. Tax on beer.** A tax of \$3 per barrel of 31 gallons is hereby levied and imposed on each and every barrel of beer sold *in Montana* by any wholesaler, which said tax shall be due at the end of each month from said wholesaler upon any such beer so sold by him during that month. As to any beer sold in containers other than barrels or in barrels of more or less capacity than 31 gallons, the quantity content shall be ascertained and computed by the department in determining the amount of tax due."

**Section 2.** Section 16-1-408, MCA, is amended to read:

**"16-1-408. Additional tax.** An additional tax of \$1.30 per barrel is levied and imposed as provided by 16-1-406. One dollar of this additional



tax is to be deposited, notwithstanding 16-1-306 and 16-1-410 or any other provision, with the state treasurer to the credit of the department of institutions each quarter for the treatment, rehabilitation, and prevention of alcoholism as approved by the state, and 30 cents of this additional tax is to be deposited in the general fund."

**Section 3. Repealer.** Section 16-1-407, MCA, is repealed.

**Section 4. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 5. Effective date.** This act is effective on passage and approval.

Approved March 22, 1987.

## CHAPTER NO. 173

[HB 734]

AN ACT TO STANDARDIZE THE TIME REQUIRED FOR THE PUBLICATION OF NOTICE IN ADVANCE OF A PUBLIC BOND SALE; AND AMENDING SECTIONS 7-7-2252, 7-7-4252, AND 20-9-431, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Notice of public bond sale.** Notwithstanding any other provision of state law relating to the publication of notice in advance of the sale of bonds, it is sufficient to publish the notice once a week for 2 consecutive weeks preceding the sale.

**Section 2.** Section 7-7-2252, MCA, is amended to read:

**"7-7-2252. Publication of notice of sale.** The board of county commissioners shall cause such notice to be published in the official newspaper of the county *as provided in [section 1]*. The board may in its discretion cause such notice to be published in some financial newspaper published in the city of New York or in the city of Chicago or in financial newspapers published in each of said cities."

**Section 3.** Section 7-7-4252, MCA, is amended to read:

**"7-7-4252. Publication of notice of sale.** The city or town council or commission shall cause such notice to be published *as provided in [section 1]* in a newspaper of general circulation printed and published in said city or town if there be one and, if not, then in a newspaper of general circulation printed and published in the county in which said city or town is located. The council or commission may in its discretion cause such notice to be published in such other newspaper or newspapers published

either within or without the state as in the opinion of the council or commission will be most likely to give notice of such sale to prospective bidders."

Section 4. Section 20-9-431, MCA, is amended to read:

**"20-9-431. Publication of notice of sale of school district bonds.**

(1) The trustees shall cause a copy of the notice of sale of the bonds to be published as *provided in [section 1]* in a newspaper as determined by the trustees.

(2) If the bond issue to be sold is \$10,000 or more, the trustees may cause a brief notice to be published in some newspaper in the city of New York."

Approved March 22, 1987.

## CHAPTER NO. 174

[SB 109]

AN ACT TO AUTHORIZE THE FISH AND GAME COMMISSION TO AUCTION ONE MALE SHIRAS MOOSE LICENSE EACH YEAR; AND TO PROVIDE THAT MONEY GENERATED BY SUCH AUCTION BE USED FOR THE BENEFIT OF MOOSE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Auction of Shiras moose license.** (1) The commission may issue one male Shiras moose license each year through a competitive auction. The commission shall promulgate rules for the use of the license and conduct of the auction. A wildlife conservation organization involved in the conservation of moose may be authorized by the commission to conduct the license auction, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction expenses.

(2) All proceeds remaining from the auction, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the substantial benefit of moose. The proceeds from the auction must be used in addition to any other funds the department uses for the management of moose. The department shall report to each legislature concerning the use or investment of auction proceeds.

**Section 2. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 87, chapter 2, part 7, and the provisions of Title 87, apply to section 1.

Approved March 24, 1987.

**CHAPTER NO. 175**

[SB 237]

**AN ACT EXCLUDING RADIO AND TELEVISION STATION ADVERTISING SALESMEN FROM THE OVERTIME COMPENSATION PROVISIONS OF THE STATE WAGE LAWS; AND AMENDING SECTION 39-3-406, MCA.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-3-406, MCA, is amended to read:

**“39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 shall not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores such as babysitting, mowing lawns, cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees thereof who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work which is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that such exclusion shall not exceed a period of 180 days from their initial date of employment and further provided that during this exclusion period wages paid such learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner;

(k) any individual employed by the United States of America.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesman, partsman, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers;

(e) a salesman primarily engaged in selling trailers, boats, or aircraft if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

*(f) a salesman paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;*

(g) an employee employed as a driver or driver's helper making local deliveries who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the commissioner finds that such plan has the general purpose and effect of reducing hours worked by such employees to or below the maximum workweek applicable to them under 39-3-405;

(h) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and which are used exclusively for supply and storing of water for agricultural purposes;

(i) an employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee is:

(i) primarily employed during his workweek in agriculture by such farmer; and

(ii) paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(j) an employee of an establishment commonly recognized as a country elevator, including an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(k) a driver employed by an employer engaged in the business of operating taxicabs;

(l) an employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children who are orphans or

one of whose natural parents is deceased or who are enrolled in such institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as such employee and his spouse reside in such facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than \$10,000;

(m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight;

(n) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(o) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee where no bargaining unit is recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 ½ times the hourly wage rate for the employee.

(p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee where no bargaining unit is recognized. Employment in excess of 8 hours per day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 ½ times the hourly wage rate for the employee.

(q) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(r) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(s) an employee of a department of public safety working under a work period established pursuant to 7-32-115."

**Section 2. Extension of authority.** Any existing authority of the commissioner of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 24, 1987.

**CHAPTER NO. 176**

[SB 287]

AN ACT REQUIRING THE DISTRICTING AND APPORTIONMENT COMMISSION TO BASE ITS PLANS FOR REAPPORTIONMENT AND REDISTRICTING ON THE NUMBER OF LEGISLATORS DESIGNATED IN THE LEGISLATIVE SESSION BEFORE THE FEDERAL POPULATION CENSUS; AND AMENDING SECTION 5-1-101, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 5-1-101, MCA, is amended to read:

**"5-1-101. Commission to redistrict and reapportion — number of legislators.** (1) In each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare the plans for redistricting and reapportioning the state into legislative and congressional districts.

(2) *The plans for redistricting and reapportionment of legislative districts must be based on the number of members in the house of representatives and the senate to be determined in the legislative session before the census."*

Approved March 24, 1987.

**CHAPTER NO. 177**

[SB 294]

AN ACT TO INCREASE THE CHARGES THAT A FARM MUTUAL INSURER MUST PAY FOR INVESTIGATION AND EXAMINATION OF HIS AFFAIRS BY THE COMMISSIONER OF INSURANCE; AMENDING SECTIONS 33-4-315 AND 33-4-409, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-4-315, MCA, is amended to read:

**"33-4-315. Examination by commissioner — expense.** (1) The commissioner has power, at any time, to investigate and examine the affairs and books of any insurer.

(2) *The insurer shall pay the costs of investigation and examination by the commissioner in the same manner as prescribed in 33-1-413."*

Section 2. Section 33-4-409, MCA, is amended to read:

**"33-4-409. Fees and taxes.** Except for the fees for filing articles of incorporation as provided in 33-4-202 and 33-4-203, for issuance and

renewal of certificate of authority as provided in 33-4-505, and for costs of examination by the commissioner as *provided* in 33-4-315(2), domestic farm mutual insurers shall not be subject to any other or additional fees or taxes of any kind except for the usual ad valorem taxes upon real estate and tangible personal property of the insurer."

**Section 3. Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Effective date.** This act is effective July 1, 1987.

Approved March 24, 1987.

## CHAPTER NO. 178

[SB 309]

AN ACT REVISING THE BASIS FOR ASSESSING PROPERTY IN STREET MAINTENANCE DISTRICTS; AND AMENDING SECTION 7-12-4422, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-12-4422, MCA, is amended to read:

**"7-12-4422. Assessment of costs — area, frontage, lot, and taxable valuation options.** (1) *For the purposes of this section, "assessable area" means the portion of a lot or parcel of land that is benefited by the maintenance district. The assessable area may be less than but may not exceed the actual area of the lot or parcel.*

(2) The city council shall assess the percentage of the cost of maintenance established in 7-12-4425 against the entire district as follows:

(a) each lot or parcel of land within such district may be assessed for that part of the cost which its *assessable* area bears to the *assessable* area of the entire district, exclusive of streets, avenues, alleys, and public places;

(b) each lot or parcel of land within such district abutting upon a street upon which maintenance is done may be assessed for that part of the cost which its street frontage bears to the street frontage of the entire district;

(c) if the city council determines that the benefits derived from the maintenance by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the district without regard to the *assessable* area of the lot or parcel;

(d) each lot or parcel of land, including the improvements thereon, may be assessed for that part of the cost of the district which its taxable valuation bears to the total taxable valuation of the property of the district; or

(e) any combination of the assessment options provided in subsections (2)(a) through (2)(d) may be used for the district as a whole or for any lot or parcel within the district."

Approved March 24, 1987.

## CHAPTER NO. 179

[SB 326]

AN ACT PROVIDING A COST-OF-LIVING INCREASE IN SERVICE AND DISABILITY RETIREMENT ALLOWANCES AND SURVIVORSHIP ALLOWANCES FOR CERTAIN RETIRED MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM OR THEIR BENEFICIARIES; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Cost-of-living increase.** Effective July 1, 1987, a member of the retirement system retired before July 1, 1986, or his beneficiary is entitled to receive a 5.5% increase in his monthly service or disability retirement allowance or survivorship allowance.

**Section 2. Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 19, chapter 3, and the provisions of Title 19, chapter 3, apply to section 1.

**Section 4. Effective date.** This act is effective July 1, 1987.

Approved March 23, 1987.

## CHAPTER NO. 180

[SB 364]

AN ACT TO ALLOW HOLDERS OF SPECIAL PERMITS OR CATERING ENDORSEMENTS TO SELL BEER IN THE GRANDSTAND AND BLEACHER AREA OF A COUNTY FAIRGROUND OR PUBLIC SPORTS ARENA; AMENDING SECTIONS 16-3-103, 16-4-301, AND 16-4-204, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 16-3-103, MCA, is amended to read:

**"16-3-103. Unlawful sales solicitation or advertising — exceptions.** (1) No person within the state shall:



(a) canvass for, receive, take, or solicit orders for the purchase or sale of any liquor or act as agent or intermediary for the sale or purchase of any liquor or hold himself out as such agent or intermediary unless permitted to do so under rules that shall be promulgated by the department to govern such activities;

(b) canvass for or solicit orders for the purchase or sale of any beer or malt liquor except in the case of beer proposed to be sold to beer licensees duly authorized to sell beer under the provisions of this code;

(c) exhibit, publish, or display or permit to be exhibited, published, or displayed any form of advertisement or any other announcement, publication, or price list of or concerning liquor or where or from whom the same may be had, obtained, or purchased unless permitted to do so by the rules of the department and then only in accordance with such rules.

(2) This section shall not apply to:

(a) the department, any act of the department, any state liquor store;

(b) the receipt or transmission of a telegram or letter by any telegraph agent or operator or post-office employee in the ordinary course of his employment as such agent, operator, or employee; or

(c) *the sale and serving of beer in the grandstand and bleacher area of a county fairground or public sports arena under a special permit issued pursuant to 16-4-301 or a catering endorsement issued pursuant to 16-4-204.*

Section 2. Section 16-4-301, MCA, is amended to read:

**"16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine — application and issuance.** (1) (a) Any association or corporation conducting a picnic, convention, fair, civic or community enterprise, or sporting event shall in the discretion of the liquor division be entitled to a special permit to sell beer and table wine to the patrons of such event to be consumed within the enclosure wherein the event is held, *except as provided in subsection (1)(d).*

(b) The application of any such association or corporation shall be presented 3 days in advance and shall describe the location of such enclosure where such event is to be held, the nature of the event, and the period when it is contemplated that the event will be held. The application shall be accompanied by the amount of the permit fee and a written statement of approval of the premises where the event is to be held issued by the department of health and environmental sciences and the local law enforcement agency that has jurisdiction over the premises where the event is to be held.

(c) The permit issued to such association or corporation is a special permit but shall not authorize the sale of beer and table wine except starting 1 day in advance of the regular period when events are being held upon such grounds and during the period described in the application and for 1 day thereafter.

(d) *A special permit issued under this subsection (1) for the purpose of selling and serving beer at an event conducted on the premises of a county*

*fairground or public sports arena authorizes the permitholder to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.*

(2) (a) A post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization not otherwise licensed under this code shall, in the discretion of the department, without notice or hearing as provided in 16-4-207, be entitled to a special permit to sell beer and table wine or a special permit to sell all alcoholic beverages at such post or lodge to members and their guests only, to be consumed within the hall or building of such post or lodge.

(b) The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization shall describe the location of the hall or building where the special permit will be used and the date it will be used.

(c) The special permit issued shall be for a 24-hour period only, ending at 2 a.m., and the department may not issue more than 12 such permits to any such post or lodge during a calendar year."

Section 3. Section 16-4-204, MCA, is amended to read:

**"16-4-204. Transfer — catering endorsement.** (1) (a) Except as provided in subsection (1)(b), a license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred, exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area's quota in the most recent census prescribed in 16-4-502:

(A) by more than 33%; or

(B) in an incorporated city of more than 10,000 inhabitants and within a distance of 5 miles from its corporate limits by more than 43%; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license within an incorporated quota area may be transferred to a new ownership and to a new unincorporated location within the same county on application to and with consent of the department when the quota of the all-beverages licenses in the original quota area, exclusive of those issued under 16-4-209(1)(a) and (1)(b), exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(c) For 5 years after the transfer of a license between quota areas under subsection (1)(a), the license may not be mortgaged or pledged as security

and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee.

(d) Once a license is transferred to a new quota area under subsection (1)(a), it may not be transferred to another quota area or back to the original quota area.

(e) A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

(2) (a) Any all-beverages licensee is, upon the approval and in the discretion of the liquor division, entitled to a catering endorsement to his all-beverages license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages, such beverages to be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of \$250 must be submitted to the department for its approval.

(c) A written application for each event for which the licensee intends to provide catering services, the written approval of the catering application by the sponsor of the special event, and a fee of \$35 must be filed with the department at least 3 days prior to the event and shall describe the location of the premises where the event is to be held, the nature of the event, and the period during which the event is to be held. An all-beverages licensee who holds an endorsement granted under this subsection (2) may not receive approval to cater an event of which he is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business. If obtained, the licensee shall display in a prominent place on those premises, the written approval from the department for each event which is catered pursuant to this subsection.

(d) The licensee shall file with each application for an event to be catered a written statement of approval of the premises where the event is to be held issued by the department of health and environmental sciences and the local law enforcement agency that has jurisdiction over the premises where the event is to be held.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(g) *A catering endorsement issued for the purpose of selling and serving beer at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises."*

Section 4. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 24, 1987.

## CHAPTER NO. 181

[SB 367]

AN ACT TO CLASSIFY FAMILY AND GROUP DAY-CARE HOMES AS A RESIDENTIAL USE OF PROPERTY FOR THE PURPOSE OF ALL LOCAL ORDINANCES; AMENDING SECTION 76-2-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 76-2-412, MCA, is amended to read:

**"76-2-412. Relationship of foster homes, youth group homes, community residential facilities, and day-care homes to zoning.** (1) A foster or youth group home operated under the provisions of 41-3-1141 through 41-3-1143 or a community residential facility serving eight or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) *A family day-care home or a group day-care home registered by the department of social and rehabilitation services under Title 53, chapter 4, part 5, is considered a residential use of property for purposes of zoning.*

(3) *The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department or any other agency of the state or a political subdivision thereof which is not applicable to residential occupancies in general may not be applied to a community residential facility serving eight or fewer persons or to a day-care home serving 12 or fewer children.*

(4) *Nothing in this section shall be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1), provided such home is licensed by the department of health and environmental sciences and the department of social and rehabilitation services. No city or county may require a conditional use permit in order to maintain a day-care home registered by the department of social and rehabilitation services."*

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 24, 1987.

**CHAPTER NO. 182**

[HB 450]

AN ACT TO LIMIT THE USE OF PROFESSIONAL SERVICE CONTRACTS BY MUNICIPALITIES BY SPECIFYING THAT THE OPERATION OF A PLANT PROVIDING WATER, SEWER, OR POWER DOES NOT CONSTITUTE SUCH A SERVICE; AMENDING SECTION 7-5-4301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-5-4301, MCA, is amended to read:

**"7-5-4301. Power to enter and execute contracts.** (1) The city or town council has power to make any and all contracts necessary to carry into effect the powers granted by this code and to provide for the manner of executing the same.

(2) (a) All necessary contracts for professional, technical, engineering, and legal services are excluded from the provisions of 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307. Provided, however, contracts wherein the value of the majority of the services to be rendered constitute services other than professional, technical, engineering, and legal services must be awarded under the bidding procedure provided for in 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307.

(b) *Supervision over or operation of a physical plant that provides water, sewer, or power services to a municipality does not constitute a service excluded under the provisions of subsection (2)(a)."*

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 23, 1987.

**CHAPTER NO. 183**

[SB 23]

AN ACT TO REQUIRE THAT MEETINGS OF CERTAIN ASSOCIATIONS OF PUBLIC AGENCIES MUST BE OPEN TO THE PUBLIC; AND AMENDING SECTIONS 2-3-202 AND 2-3-203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-3-203, MCA, is amended to read:

**"2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public — exceptions.** (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of

the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds *must* be open to the public.

(2) *All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.*

(3) Provided, however, the presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting shall be open.

(4) However, a meeting may be closed to discuss a strategy to be followed with respect to collective bargaining or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public agency.

(5) Any committee or subcommittee appointed by a public body *or an association described in subsection (2)* for the purpose of conducting business which is within the jurisdiction of that agency shall be subject to the requirements of this section."

Section 2. Section 2-3-202, MCA, is amended to read:

**"2-3-202. Meeting defined.** As used in this part, "meeting" means the convening of a quorum of the constituent membership of a public agency *or association described in 2-3-203*, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power."

Approved March 24, 1987.

## CHAPTER NO. 184

[SB 28]

AN ACT TO CLARIFY A PROPERTY OWNER'S FINANCIAL RESPONSIBILITY AND LIABILITY FOR MAINTENANCE OF PRIVATELY SUPPLIED WATER SERVICE PIPELINES; AND DIRECTING AN AMENDMENT TO RULE 38.5.2502, ADMINISTRATIVE RULES OF MONTANA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Financial responsibility and liability for water service pipeline.** (1) A property owner is responsible for the costs of constructing privately supplied water service pipelines from the main to his premises and for maintaining service pipelines from his property line to his premises. The private water service provider is responsible for the cost of maintaining water service pipelines from the main to the owner's property line,

except that the property owner shall pay for pipe and other supplies used in maintaining water service lines between the main and his property line.

(2) A property owner is not liable for any injury or property damage associated with excavation in maintaining water service pipelines if the excavation does not occur between his property line and his premises.

Section 2. The Public Service Commission shall amend Rule 38.5.2502, Administrative Rules of Montana, to read:

"38.5.2502 APPLICATION FOR WATER SERVICE (1) All consumers wanting water service must make an application with the utility. Except as provided in ARM 38.5.2502(2), the utility may require consumers make a service application at the utility office on printed application forms, which shall set forth all purposes for which the water will be used upon the premises, or the utility may allow the consumer to apply for service via the telephone. A copy of the utility's printed application form and any subsequent modifications shall be submitted to the Commission to become part of the utility's tariff. A deposit for guarantee of payment for water service may be required by the utility of the consumer applying for service pursuant to the deposit rules of the Commission, Title 38, Chapter 5, Subchapter 11.

(2) All applications for the original introduction of water service to any premises must be made on printed application forms furnished by the utility and described in ARM 38.5.2501(1) above, and must be signed by the property owner of those premises. When the ownership of the premises changes, the new property owner must make a new application for water service with the utility. A property owner is liable for payment for water service as a consumer, unless ARM 38.5.2502(3) applies.

(3) Where the consumer is a renter, a leasee, or is not the property owner, the application for water service shall be made in the consumer's own name, and that consumer shall be liable for payment for the water service. In such instances, the utility shall indicate the name of the consumer and the date that the consumer began to receive water service on the original written service application that was signed by the property owner of the premises.

(4) Upon the utility's acceptance of the application for water service, the consumer shall have the right to take and receive a supply of water for the particular premises for the purposes specified in the application subject to compliance by the consumer with these rules and any special rules promulgated by the utility.

(5) When an application for new water service has been accepted, the utility at its own expense will tap the main and furnish corporation cock, and clamp when necessary, and any other material used or labor furnished in connection with the tapping of the main. *The consumer of water service is responsible for the cost of constructing water service pipelines from the main to his premises and for maintaining water service pipelines from his property line to his premises. The private water service provider is responsible for the cost of maintaining water service pipelines from the main to the consumer's property line, except that the consumer shall pay for pipe and other supplies used in maintaining water service lines between the*

*main and his property line.* The utility shall assist consumers and/or excavation contractors in locating water service mains and lines prior to the consumer beginning excavation in order to avoid water service interruptions due to broken mains and lines. The service pipe must be laid below street grade, on the premises of the consumer and at a standard depth designated by the utility to prevent freezing. A curb cock and curb box of approved pattern must be installed by the consumer at a point designated by the utility. Whenever a tap is made through which regular service is not immediately desired, the consumer will bear the entire expense of tapping, subject to a refund whenever regular service is begun.

(6) No charge may be made for turning on the water to a new consumer during the regular working hours of the utility.

(7) Contractors, builders or owners are required to apply for permit for the use of water for building and other purposes in construction work. Consumers are warned not to allow the use of their water fixtures unless the contractors, the builders or the owners produce a permit issued by the utility specifying the premises on which the water is to be used. Water will not be turned on at any new building until all water used during construction has been paid for."

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 69, chapter 4, part 5, and the provisions of Title 69, chapter 4, part 5, apply to section 1.

Approved March 24, 1987.

## CHAPTER NO. 185

[SB 119]

AN ACT CLARIFYING THE APPLICATION OF THE PLAIN LANGUAGE IN CONTRACTS ACT TO INSURANCE POLICIES AND CONTRACTS; AMENDING SECTION 30-14-1104, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 30-14-1104, MCA, is amended to read:

**"30-14-1104. Scope.** (1) Except as provided in subsection (2), 30-14-1103 applies to any agreement in connection with a consumer contract entered into in this state between a consumer who is a resident of this state at the time of the transaction and a seller, lessor, or lender.

(2) Section 30-14-1103 does not apply to:

(a) consumer contracts in which the value of the money, property, or services bought, leased, or borrowed exceeds \$50,000 at the time of the contract;

(b) consumer contracts in which securities or commodities accounts are bought, leased, or borrowed;



(c) *an insurance policy or contract that is subject to the provisions of Title 33;*

(d) *a seller, lessor, or lender, if it is a government agency or instrumentality;*

(e) *the provision of public utility service under tariffs approved by the public service commission; or*

(f) *a transfer of real estate.*

(3) The use of specific language expressly required or authorized by a court decision, state or federal statute or administrative rule, or governmental agency is not a violation of this part; nor is a legal description of real property a violation of this part."

Section 2. **Applicability.** This act applies to consumer contracts, as defined in 30-14-1102, entered into after July 1, 1987.

Approved March 24, 1987.

## CHAPTER NO. 186

[SB 188]

AN ACT ALLOWING INFORMATION ON ELECTRONIC FUNDS TRANSACTIONS TO BE DISCLOSED WITHOUT CONSENT OF A CUSTOMER AFTER ISSUANCE OF A SUBPOENA BY A COURT; AMENDING SECTION 32-6-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-6-105, MCA, is amended to read:

**"32-6-105. Protection of privacy.** (1) No information relating to any transaction by electronic funds transfer, or application therefor, between a financial institution and its customer or prospective customer may be disclosed by the financial institution to any person or government entity without:

(a) *the consent of the customer; or*

(b) *a subpoena issued by a court of record directing the financial institution to disclose such information to the person or government entity.*

(2) *Compliance with such subpoena relieves a financial institution and its employees of liability to a customer or other person for such disclosure.*

(3) This section does not prevent:

(a) the examination of financial institutions by duly authorized regulatory authority or the transfer of information by a financial institution to a clearinghouse which administers transactions between financial institutions; or

(b) the access by a party to a transaction to information relating to a specific transaction.”

**Section 2. Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved March 24, 1987.

## CHAPTER NO. 187

[SB 195]

AN ACT TO SPECIFY THE PENALTY FOR ILLEGALLY PARKING IN A HANDICAPPED PARKING ZONE; EXTENDING THE SPECIAL PARKING PERMIT TO A LONG-TERM CARE FACILITY; AND AMENDING SECTIONS 49-4-302 AND 49-4-307, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 49-4-302, MCA, is amended to read:

**“49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for special parking spaces.** (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in special parking spaces reserved for handicapped persons whether on public property or on private property available for public use.

(2) No vehicle other than one lawfully displaying a parking permit issued under this part or one displaying a distinguishing handicapped person's license plate or placard issued by a foreign jurisdiction conferring the same parking privileges as conferred in subsection (1) and conveying a handicapped person or one displaying a specially inscribed license plate issued under 61-3-451 and conveying a 100% disabled veteran may be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by handicapped persons.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates issued under 61-3-451 and parked in public places along public streets from any time limitation imposed upon parking in such area except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) *In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for handicapped persons or permit holders on ways of this state open to the public as defined in 61-8-101:*

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheel-chairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for handicapped persons must be at least 13 feet wide.

(d) A parking space reserved for handicapped persons must be designated by a sign showing the international symbol of accessibility and indicating that a permit is required. The sign must be attached to a wall or post in such a way that it is not obscured by a vehicle parked in the space."

Section 2. Section 49-4-307, MCA, is amended to read:

**"49-4-307. Penalty.** A person who parks a motor vehicle in violation of 49-4-302(2) is guilty of a misdemeanor and is punishable by a fine of \$50. *However, no person charged with violating 49-4-302(2) may be convicted if within 24 hours he produces in court or the office of the arresting officer a special parking permit previously issued to him and valid at the time of his arrest.*"

Section 3. **Special parking permit for long-term care facility.** A long-term care facility, as defined in 37-9-101, may apply for a permit issued for special parking spaces under 49-4-302. If granted, the permit entitles the facility to the privileges granted in 49-4-302.

Section 4. **Codification instruction.** Section 3 is intended to be codified as an integral part of Title 49, chapter 4, part 3, and the provisions of Title 49, chapter 4, part 3, apply to section 3.

Approved March 24, 1987.

**CHAPTER NO. 188**

[SB 197]

AN ACT REQUIRING APPOINTMENT OF AT LEAST ONE RETIRED STATE EMPLOYEE TO THE STATE EMPLOYEE GROUP BENEFITS ADVISORY COUNCIL; AND AMENDING SECTION 2-15-1016, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-1016, MCA, is amended to read:

**"2-15-1016. State employee group benefits advisory council — composition.** (1) The department shall create a state employee group benefits advisory council under 2-15-122.

(2) The members of the advisory council shall be selected from a diverse group in order to adequately represent the interests of state employees and retirees. *At least one member of the advisory council must be a retired state employee.*"

Approved March 24, 1987.

**CHAPTER NO. 189**

[SB 225]

AN ACT TO ADOPT THE UNIFORM PREMARITAL AGREEMENT ACT; AMENDING SECTIONS 40-2-312, 40-2-314, AND 40-4-202, MCA; REPEALING SECTION 40-2-313, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [Sections 1 through 10] may be cited as the "Uniform Premarital Agreement Act".

Section 2. **Application and construction.** [Sections 1 through 10] must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of [sections 1 through 10] among the states enacting it.

Section 3. **Definitions.** As used in [sections 1 through 10], the following definitions apply:

(1) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(2) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

**Section 4. Formalities.** A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration.

**Section 5. Content.** (1) Parties to a premarital agreement may contract with respect to:

(a) the rights and obligations of each of the parties in any of the property of either or both of them, whenever and wherever acquired or located;

(b) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

(c) the disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

(d) the modification or elimination of spousal support;

(e) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;

(f) the ownership rights in and disposition of the death benefit from a life insurance policy;

(g) the choice of law governing the construction of the agreement; and

(h) any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(2) The right of a child to support may not be adversely affected by a premarital agreement.

**Section 6. When agreement becomes effective.** A premarital agreement becomes effective upon marriage.

**Section 7. Amendment — revocation.** After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by both parties. The amended agreement or the revocation is enforceable without consideration.

**Section 8. Enforcement.** (1) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(a) that party did not execute the agreement voluntarily; or

(b) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(iii) did not have or reasonably could not have had an adequate knowledge of the property or financial obligations of the other party.

(2) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to

the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

(3) An issue of unconscionability of a premarital agreement must be decided by the court as a matter of law.

**Section 9. Enforcement when marriage void.** If a marriage is declared invalid, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

**Section 10. Limitation of actions.** Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

**Section 11.** Section 40-2-312, MCA, is amended to read:

**"40-2-312. Marriage settlement contracts — how executed.** *Except as provided in [sections 1 through 10], all contracts for marriage settlements must be in writing and executed and acknowledged or proved in like manner as a grant of land is required to be executed and acknowledged or proved."*

**Section 12.** Section 40-2-314, MCA, is amended to read:

**"40-2-314. Effect of recording.** *Except as provided in [sections 1 through 10], the recording or nonrecording of such contract has a like effect as the recording or nonrecording of a grant of real property."*

**Section 13.** Section 40-4-202, MCA, is amended to read:

**"40-4-202. Division of property.** (1) In a proceeding for dissolution of a marriage, legal separation, or division of property following a decree of dissolution of marriage or legal separation by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to divide the property, the court, without regard to marital misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion between the parties the property and assets belonging to either or both, however and whenever acquired and whether the title thereto is in the name of the husband or wife or both. In making apportionment, the court shall consider the duration of the marriage and prior marriage of either party; the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties; custodial provisions; whether the apportionment is in lieu of or in addition to maintenance; and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of value of the respective estates and the contribution of a spouse as a homemaker or to the family unit. In dividing property acquired prior to the marriage; property acquired by gift, bequest, devise, or descent; property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent; the

increased value of property acquired prior to marriage; and property acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the other spouse to the marriage, including:

- (a) the nonmonetary contribution of a homemaker;
- (b) the extent to which such contributions have facilitated the maintenance of this property; and
- (c) whether or not the property division serves as an alternative to maintenance arrangements.

(2) In a proceeding, the court may protect and promote the best interests of the children by setting aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.

(3) Each spouse is considered to have a common ownership in marital property that vests immediately preceding the entry of the decree of dissolution or declaration of invalidity. The extent of the vested interest must be determined and made final by the court pursuant to this section.

(4) The division and apportionment of marital property caused by or incident to a decree of dissolution, a decree of legal separation, or a declaration of invalidity is not a sale, exchange, transfer, or disposition of or dealing in property but is a division of the common ownership of the parties for purposes of:

- (a) the property laws of this state;
- (b) the income tax laws of this state; and
- (c) the federal income tax laws.

(5) *Premarital agreements must be enforced as provided in [sections 1 through 10]."*

**Section 14. Repealer.** Section 40-2-313, MCA, is repealed.

**Section 15. Codification instruction.** Sections 1 through 10 are intended to be codified as an integral part of Title 40, chapter 2, and the provisions of Title 40, chapter 2, apply to sections 1 through 10.

**Section 16. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 17. Applicability.** This act applies to premarital agreements executed on or after October 1, 1987.

Approved March 24, 1987.

**CHAPTER NO. 190**

[SB 230]

AN ACT PROVIDING A FORMULA FOR ALLOCATING MONTANA'S UNIFIED VOLUME CAP FOR BONDS AMONG THE GOVERNMENTAL UNITS IN THE STATE HAVING AUTHORITY TO ISSUE SUCH BONDS; ESTABLISHING A FEE TO FUND A PORTION OF THE COMPREHENSIVE ANNUAL FINANCIAL REPORT AUDIT; REPEALING SECTIONS 17-5-1201, 17-5-1202, AND 17-5-1211 THROUGH 17-5-1220, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [This act] may be cited as "The Montana Unified Volume Cap Bond Allocation Plan Act".

Section 2. **Definitions.** As used in [this act], unless the context clearly requires otherwise, the following definitions apply:

(1) "Allocation" means an allocation of a part of the volume cap to an issuer pursuant to [this act].

(2) "Board" means the board of examiners.

(3) "Bonds" means bonds, notes, or other interest-bearing obligations of an issuer.

(4) "Cap bonds" means those private activity bonds and that portion of governmental bonds for which a part of the volume cap is required to be allocated pursuant to the tax act.

(5) "Department" means the department of administration.

(6) "Governmental bonds" means bonds other than private activity bonds.

(7) "Issuer" means a state issuer or local issuer.

(8) "Local issuer" means a city, town, county, or other political subdivision of the state authorized to issue private activity bonds or governmental bonds.

(9) "Local portion" means that portion of the volume cap reserved for local issuers.

(10) "Montana agricultural loan authority" (MALA) means the authority provided for in 2-15-3011.

(11) "Montana board of housing" (MBH) means the board created in 2-15-1814.

(12) "Montana economic development board" (MEDB) means the board provided for in 2-15-1805.



(13) "Montana higher education student assistance corporation" (MHESAC) means the nonprofit corporation established under Title 20, chapter 26, part 11.

(14) "Montana health facility authority" (MHFA) means the authority provided for in 2-15-1815.

(15) "Private activity bonds" (PABs) has the meaning prescribed under section 1301 of the tax act.

(16) "State issuer" means the state and any agency thereof authorized to issue private activity bonds. For [this act] only, the Montana higher education student assistance corporation is considered an agency of the state.

(17) "State portion" means that portion of the volume cap reserved for state issuers.

(18) "Tax act" means the Tax Reform Act of 1986 enacted by the United States congress.

(19) "Volume cap" means, with respect to each calendar year, the principal amount of cap bonds that may be issued in the state in a calendar year as determined under the provisions of the tax act.

**Section 3. Volume cap and reservations.** For each calendar year, the state's volume cap is \$150 million. In each calendar year, subject to the provisions established by [sections 4 and 5], \$105 million of the volume cap is the state portion and \$45 million is the local portion.

**Section 4. Allocation to state issuers.** (1) Except as provided in subsection (5), the state portion must be allocated to state issuers pursuant to [section 8].

(2) As a condition of receiving an allocation, each state issuer, upon issuance of the bonds, shall pay 30 cents per thousand of bonds to be deposited in the state general fund for the purpose of funding a portion of the comprehensive annual financial report audit.

(3) The following set-asides must be made in each calendar year for the following state issuers:

| <u>State Issuer</u> | <u>Percentage</u> | <u>Allocation Amount</u> |
|---------------------|-------------------|--------------------------|
| Board               | 4                 | \$4,200,000              |
| MALA                | 2                 | 2,100,000                |
| MBH                 | 40                | 42,000,000               |
| MEDB                | 25                | 26,250,000               |
| MHESAC              | 25                | 26,250,000               |
| MHFA                | 4                 | 4,200,000                |
| Total               | 100%              | \$105,000,000            |

(4) Each set-aside expires on the first Monday in September.

(5) Prior to the set-aside expiration date, allocations may be made by the department to each state issuer only from its respective set-aside pursuant to [section 8] and no state issuer is entitled to an allocation except from its set-aside unless otherwise provided by the governor.

(6) After the expiration date, the amount of the set-aside remaining unallocated is available for allocation by the department to issuers pursuant to [section 8] without preference or priority.

**Section 5. Allocation to local issuers.** (1) The local portion must be allocated by the department pursuant to [section 8], and no local issuer is entitled to an allocation except from the local portion set-aside.

(2) No more than \$20 million of the local portion may be allocated for a single project or purpose prior to the first Monday in September of each year.

(3) After the first Monday in September, the local portion must be allocated by the department to issuers pursuant to [section 8] without preference, priority, or limitation.

**Section 6. Authorization by the governor.** The governor may order an allocation different than that allocated by the department to state and local issuers pursuant to [sections 4 and 5].

**Section 7. Carryforward elections.** (1) Between the first Monday in December and the second Wednesday in December, each issuer shall file with the department an application for a carryforward election with respect to any unallocated portion of the volume cap for the calendar year.

(2) Applications for carryforward elections may be filed only with respect to carryforward purposes authorized by the tax act. Each application for a carryforward election must contain the information required of an application for allocation under [section 8] and any additional information required by either the tax act or the department.

(3) If, as of the second Wednesday in December, the aggregate amount of applications for carryforward elections does not exceed the amount of the unallocated and unused volume cap, each application constitutes a valid carryforward election within the meaning of the tax act.

(4) If, as of the second Wednesday in December, the aggregate amount of applications for carryforward elections exceeds the unallocated and unused volume cap, the department shall determine which applications constitute a valid carryforward election within the meaning of the tax act.

(5) After receipt of an application, the department shall notify the applicant in writing of either the approval of the carryforward election or the reason for disapproval.

**Section 8. Allocations by the department.** (1) The department shall administer the allocation of cap bonds to issuers in accordance with this section and [section 4]. Applications for an allocation for each issue of bonds must be made to the department in an acceptable form and, if applicable, must contain the following:

(a) the name of the issuer;

(b) a description of the purpose or purposes for which the proceeds of the cap bonds will be used, including, if appropriate, a description of the project or projects to be financed;

- (c) the location of the project or projects;
- (d) the name and address of each project owner and user;
- (e) a certified copy of the inducement resolution adopted or official action taken by the issuer, pursuant to the tax act, approving the project or the purpose and granting preliminary authorization for the issuance of the cap bonds;
- (f) the preliminary opinion of a qualified bond counsel stating that the proposed purpose for which the cap bonds are to be issued qualifies under applicable state law and the tax act and that the interest on the bonds is not taxable as gross income for purposes of federal income taxation;
- (g) evidence that all public hearing requirements concerning the proposed purpose and project have been met;
- (h) a copy of a letter from an underwriter, bank, or other financial institution certifying that in its opinion the proposed financing is feasible, that the cap bonds may be successfully sold under current market conditions, and that it has reviewed all of the information necessary to form its opinion;
- (i) the amount of allocation requested; and
- (j) such other information as the department considers necessary.

(2) The department shall issue allocations in chronological order of the receipt of completed applications. Completed applications received by the department on the same day must be ranked according to the earliest inducement resolution or official action date.

**Section 9. Notification of approval or disapproval by the department.** After receipt of an application for an allocation, the department shall notify the applicant in writing of either the approval of the allocation or the reasons for disapproval.

**Section 10. Terms of allocations.** (1) Unless terminated earlier by the issuer, an allocation is valid for 90 days from the date the department mails the notice of approval. Prior to the expiration of the 90-day period, the department may extend the period of validity for an additional 30 days upon presentation of evidence that an agreement to purchase the cap bonds for which the allocation was given has been obtained from an entity legally authorized to purchase them.

(2) If the cap bonds are not issued within the period of validity as determined under subsection (1), the allocation automatically expires.

(3) All allocations expire on December 31 of the year in which they were made. However, this subsection does not limit the term of an allocation for which a valid carryforward election has been made.

**Section 11. Allocations not transferable.** Allocations may not be transferred between projects or purposes.

**Section 12. Reapplication.** (1) If the department disapproves an application for an allocation or if an allocation expires under [section 10], the issuer may reapply for an allocation.

(2) A reapplication must be reviewed according to the chronological order of its receipt. Priority or preference may not be given to a reapplication.

**Section 13. Fee for issuance of bonds.** Except for issuers of general obligation bonds which are payable solely by general fund revenues, each state bond issuer shall, upon issuance of the bonds, pay 30 cents per thousand of bonds to be deposited in the state general fund for the purpose of funding a portion of the comprehensive annual financial report audit.

**Section 14. Recordkeeping.** The department shall maintain complete records of all applications for allocations to assure that the requirements of the tax act with respect to the volume cap are observed.

**Section 15. Repealer.** Sections 17-5-1201, 17-5-1202, and 17-5-1211 through 17-5-1220, MCA, are repealed.

**Section 16. Effective date.** This act is effective January 1, 1988.

Approved March 24, 1987.

## CHAPTER NO. 191

[SB 240]

AN ACT REQUIRING A PUBLIC EMPLOYER TO PICK UP A MEMBER'S CONTRIBUTION UNDER THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM; REQUIRING THE EMPLOYER TO DEDUCT FROM THE MEMBER'S COMPENSATION AN AMOUNT EQUAL TO THE AMOUNT OF THE MEMBER'S CONTRIBUTION PICKED UP BY THE EMPLOYER; REQUIRING A MEMBER TO PAY STATE AND LOCAL TAXES ON A REFUND OF CERTAIN CONTRIBUTIONS; AMENDING SECTIONS 19-13-304, 19-13-601, AND 19-13-1003, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 19-13-601, MCA, is amended to read:

**"19-13-601. Deduction remitted to firemen's association — member's contributions.** (1) Each employer shall retain from the monthly compensation of each active member a sum equal to 1% of his monthly compensation for his services as a firefighter and shall remit *this amount* on a monthly basis to the Montana state firemen's association for the payment of premiums on a group life and accidental death and dismemberment insurance policy for members and to defray expenses incurred by the association when representing members of the plan.

(2) *The member's contribution to the retirement system for each active member is 6% of his monthly compensation.*

(3) If a member receives compensation under the provisions of the Workers' Compensation Act, Title 39, chapter 71, the amount received

must be included as part of his monthly compensation for purposes of determining contributions and service credits under the retirement system. Contributions made under this section. 19-13-604, and 19-13-605 must be based on the total compensation received by the member from his employer and from the workers' compensation division during the period of disability.

(4) *Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, as amended and applicable on July 1, 1987, shall pick up and pay the contributions which would be payable by the member under subsection (2) for service rendered after June 30, 1987.*

(5) *The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.*

(6) *The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's monthly compensation as defined in 19-13-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."*

Section 2. Section 19-13-304, MCA, is amended to read:

**"19-13-304. Termination of employment prior to retirement.** (1) Except as provided in subsection (2), an active member may withdraw the amount of his *member's* contributions, plus regular interest as determined by the board, in lieu of all other benefits under the plan upon his termination of employment prior to his retirement. If an active member's employment terminates by reason of his death, his beneficiaries are entitled to the benefits prescribed in 19-13-902.

(2) If a member has 10 years or more of creditable service before termination, he may keep his contributions on deposit and be eligible for a service retirement at age 50."

Section 3. Section 19-13-1003, MCA, is amended to read:

**"19-13-1003. Exemption from taxes.** Any money paid in accordance with the provisions of this chapter is exempt from any state, county, or municipal tax *except refunds paid under 19-13-602 of the member's contributions picked up by an employer after June 30, 1987, as provided in 19-13-601.*"

Section 4. **Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Effective date.** This act is effective July 1, 1987.

Approved March 24, 1987.

**CHAPTER NO. 192**

[SB 262]

AN ACT TO REVISE THE DEFINITION OF NEW PRODUCTION OF NATURAL GAS, PETROLEUM, OR OTHER CRUDE OR MINERAL OIL TO REFLECT HOW LEASES THAT INCLUDE LAND BOTH INSIDE AND OUTSIDE OF A POOLED OR UNITIZED AREA MUST BE CONSIDERED FOR TAXATION PURPOSES; AMENDING SECTION 15-23-601, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-23-601, MCA, is amended to read:

**"15-23-601. Definitions.** As used in this part, the following definitions apply:

(1) "Excise tax" means the windfall profit tax on domestic crude oil imposed by Title I of the federal Crude Oil Windfall Profit Tax Act of 1980, as enacted or as amended.

(2) The term "new production" means the production of natural gas, petroleum, or other crude or mineral oil from any lease that has not produced natural gas, petroleum, or other crude or mineral oil during the 5 years immediately preceding the first month of qualified new production. *For purposes of defining new production:*

(a) *if a lease contains land that is partly within and partly outside of a pooled or unitized area, the land that is outside of the pooled or unitized area must be considered a separate lease; and*

(b) *a pooled or unitized area must be considered a separate lease.*

(3) The terms "operator" and "producer" mean any person who engages in the business of drilling for, extracting, or producing any natural gas, petroleum, or other crude or mineral oil.

(4) The term "well" includes each single well or group of wells, including dry wells, in one field or production unit and under the control of one operator or producer."

Section 2. **Applicability.** This act applies retroactively, within the meaning of 1-2-109, to occurrences after July 1, 1985.

Section 3. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 24, 1987.

**CHAPTER NO. 193**

[SB 327]

AN ACT TO AUTHORIZE IRRIGATION DISTRICTS TO ISSUE REVENUE BONDS TO FUND IRRIGATION PROJECTS AND SMALL POWER PRODUCTION FACILITIES; AMENDING SECTIONS 85-7-1603, 85-7-1612, AND 85-7-2001, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 20] may be cited as the "Irrigation District Revenue Bond Act".

**Section 2. Definitions.** As used in [sections 1 through 20], unless the context requires otherwise, the following definitions apply:

(1) "Irrigation district" means a district created pursuant to Title 85, chapter 7, part 1.

(2) "Issuer" means the board of commissioners of an irrigation district or a board of control created pursuant to Title 85, chapter 7, part 16.

(3) "Revenues" means any fees, charges, rates, rents, or lease payments.

(4) "Undertaking" means any one or a combination of the following:

(a) water sources, water rights, irrigation canals, irrigation systems, including pumping facilities or gravity measure systems, reservoirs, reservoir sites, or small power production facilities that are:

(i) certified as such by the federal energy regulatory commission; and

(ii) are associated with federal reclamation projects;

(b) any real or personal property or water rights related to or necessary to provide, operate, and maintain an undertaking listed in subsection (4)(a).

**Section 3. Interpretation.** (1) The powers conferred in [sections 1 through 20] are in addition to the powers conferred by any other general, special, or local law.

(2) An undertaking may be acquired, constructed, or improved, and bonds may be issued under [sections 1 through 20] for such purposes, notwithstanding the provisions of Title 85, chapter 7.

(3) If the provisions of [sections 1 through 20] are inconsistent with the provisions of Title 85, chapter 7, the provisions of [sections 1 through 20] control.

**Section 4. Authority to acquire, construct, maintain, operate, and lease various undertakings.** (1) An irrigation district may:

(a) construct, acquire by gift, purchase, lease, or improve any undertaking, within or outside the irrigation district and acquire by gift, purchase, or lease land or rights in land or water rights in connection with the undertaking;

(b) operate and maintain or enter into a contract for the operation and maintenance of any undertaking and furnish or enter into a contract for the furnishing of services, facilities, and commodities of the undertaking for its own use and for the use of public and private consumers within or outside the territorial boundaries of the irrigation district. However, an irrigation district may not furnish or enter into a contract for the furnishing of electrical energy or capacity except to a qualified purchaser under the Public Utility Regulatory Policy Act of 1978.

(c) lease any undertaking to a private or governmental entity.

(2) Nothing in this section may be construed to permit an irrigation district to condemn any property owned or controlled by a rural electric cooperative or a utility, whether publicly or privately owned. An irrigation district is expressly prohibited from condemning such property.

**Section 5. Joint undertakings.** Irrigation districts, through their respective boards of commissioners, may enter into contracts to jointly plan, acquire, construct, operate, maintain, and finance any undertaking in accordance with Title 85, chapter 7, part 16. The contract must specify, if an undertaking is financed under [sections 1 through 20]:

(1) that the contract cannot be terminated prior to the redemption or cancellation of any bonds issued under it; and

(2) the manner of disposing of the undertaking upon termination of the contract.

**Section 6. Authority to issue revenue bonds.** An irrigation district may:

(1) issue its bonds to finance in whole or in part the acquisition, construction, or improvement of any undertaking; and

(2) pledge to the punctual payment of bonds issued under [sections 1 through 20] and interest thereon an amount of the revenue of the undertaking (including subsequent improvements or extensions) or of any part of the revenue of such undertaking sufficient to pay the bonds and interest as they become due, with such amount consisting of all or any part of such revenue, and maintain reasonable reserves therefor.

**Section 7. Determination of cost.** An issuer, in determining costs for purposes of [section 6], may include:

(1) all costs and estimated costs of the issuance of the bonds;

(2) all engineering, inspection, fiscal, and legal expenses; and

(3) interest that it estimates will accrue during the construction period and for 6 months thereafter on money borrowed or that it estimates will be borrowed.

**Section 8. Nature of revenue bonds.** (1) No holder of any bonds issued under [sections 1 through 20] may compel the levy of any tax or assessment on property within the irrigation district to pay the bonds or interest thereon.



(2) Each bond issued under [sections 1 through 20] must recite in substance that:

(a) the bond, including interest thereon, is payable from the revenue pledged to the payment thereof or any other security pledged therefor, including a lien on the undertaking; and

(b) the bond does not constitute a debt of the irrigation district within the meaning of any constitutional or statutory limitation or provision.

**Section 9. Undertakings to be self-supporting.** (1) An issuer issuing bonds pursuant to [sections 1 through 20] shall collect reasonable fees for the services, facilities, and commodities of the undertaking and shall revise the fees from time to time so that the undertaking remains self-supporting.

(2) The fees prescribed must produce revenue at least sufficient to:

(a) pay when due all bonds and interest thereon for which the revenue is pledged, including reserves; and

(b) provide for all expenses of operation and maintenance of the undertaking, including reserves.

**Section 10. Use of revenue from undertaking.** (1) An issuer of bonds pursuant to [sections 1 through 20] for the acquisition, construction, or improvement of any undertaking may apply the revenue of the undertaking for the following purposes:

(a) to pay when due all bonds and interest thereon for which the revenue is pledged, including reserves;

(b) to provide for all expenses of operation and maintenance of the undertaking, including reserves;

(c) to pay and discharge notes, bonds, or other obligations and interest thereon not issued under [sections 1 through 20] for which the revenue of the undertaking is pledged;

(d) to pay and discharge notes, bonds, or other obligations and interest thereon that do not constitute a lien or encumbrance on the revenue of the undertaking and which were issued for the purpose of financing the acquisition, construction, or improvement of the undertaking; and

(e) to provide a reserve for improvements to the undertaking.

(2) Unless adequate provision has been made for the purposes listed in subsection (1), no irrigation district may transfer the revenue of the undertaking to its general fund.

**Section 11. Authorization for undertaking and issuance of bonds.**

(1) The acquisition, construction, or improvement of any undertaking may be authorized under [sections 1 through 20].

(2) Bonds may be authorized to be issued under [sections 1 through 20] by resolution of the governing body of the issuer without an election.

**Section 12. Covenants in resolution authorizing issuance of bonds.** A resolution authorizing the issuance of bonds under [sections 1 through 20] may contain covenants relating to:

(1) the purposes for which the proceeds of sale of the bonds may be applied and the use and disposition of the proceeds;

(2) the use and disposition of the revenue of the undertaking for which the bonds are to be issued, including the creation and maintenance of reserves;

(3) the issuance of other or additional bonds payable from the revenue of the undertaking;

(4) the operation and maintenance of the undertaking;

(5) the insurance to be carried on the undertaking and the use and disposition of insurance money;

(6) books of account and the inspection and audit of the books; and

(7) the terms and conditions upon which the holders of the bonds or any portion of them or any trustee is entitled to the appointment of a receiver by the district court, which court shall have jurisdiction in such proceedings and which receiver may:

(a) enter and take possession of the undertaking;

(b) operate and maintain the undertaking;

(c) prescribe fees, subject to the approval of the public service commission if such approval is required; and

(d) collect, receive, and apply all revenues in the same manner as the issuer itself might do.

**Section 13. Remedies.** The provisions of the resolution authorizing the bonds are enforceable by any bondholder in any court of competent jurisdiction by mandamus or other appropriate proceeding.

**Section 14. Presumptions of validity of bonds.** (1) Bonds bearing the signatures of officers in office on the date of the signing of the bonds are valid obligations, notwithstanding that before the delivery of the bonds and payment for the bonds, any of the persons whose signatures appear on the bonds have ceased to be officers.

(2) The validity of the bonds is not dependent on the validity or regularity of any proceedings relating to the acquisition, construction, or improvement of the undertaking for which the bonds are issued.

(3) The resolution authorizing the bonds may provide that the bonds must contain a recital that they are issued pursuant to [sections 1 through 20], which recital must be conclusive evidence of their validity and of the regularity of the issuance.

**Section 15. Liens arising from bonds.** The resolution authorizing the bonds must specify and define the revenues or portion of the undertaking's revenues that is appropriated and pledged for the security and payment of the bond principal and interest and the relative security of liens on the revenues in favor of bonds of one or more series or issues, whether issued concurrently or at different times.

**Section 16. Security interest in undertaking.** The issuer may, pursuant to a mortgage, trust indenture, or security agreement, grant a security interest in the real and personal property constituting the undertaking itself.

**Section 17. Details relating to revenue bonds.** Bonds authorized to be issued under [sections 1 through 20] shall bear interest at a rate not exceeding the limitation of 17-5-102, payable semiannually, and may be in one or more series; bear such date or dates; mature at such time or times, not exceeding 40 years from their respective dates of issuance; be payable in such place or places; carry such registration privileges; be subject to such terms of redemption; be executed in such manner; contain such terms, covenants, and conditions; and be in such form, either coupon or registered, as the resolution or subsequent resolutions may provide.

**Section 18. Sale of bonds.** (1) Bonds authorized to be issued may be sold at a price less than face value if the issuer determines that the sale is in the best interests of the irrigation district.

(2) (a) The bonds may be sold at private sale to the United States or the state of Montana or an agency, instrumentality, or corporation thereof.

(b) If not sold to the United States or the state of Montana or an agency, instrumentality, or corporation thereof, the bonds must be sold at public sale after notice as provided in [section 19].

**Section 19. Notice of sale of bonds.** (1) Except as provided in subsection (2), the notice of sale of bonds required by [section 18] must be published once at least 5 days prior to such sale:

(a) in a newspaper of general circulation in the county in which the office of the issuer is located; and

(b) in a financial newspaper in New York, Chicago, or San Francisco.

(2) If the bond issue is in an amount of less than \$150,000, the bond issue must be advertised at least 5 days prior to sale in a newspaper of general circulation throughout the state of Montana.

**Section 20. Interim receipts or certificates.** Pending the preparation of the definitive bonds, interim receipts or certificates, in a form and with provisions determined by the governing body, may be issued to the purchaser or purchasers of bonds sold pursuant to [sections 1 through 20]. The bonds and interim receipts or certificates are fully negotiable, as provided by Title 30, chapter 8.

**Section 21.** Section 85-7-1603, MCA, is amended to read:

**"85-7-1603. Withdrawal from joint operation.** Any district having entered into a written contract, as provided by this part, may withdraw from such contract upon submitting to the board of control, in writing, a 90-day notice of withdrawal, *except that if revenue bonds have been issued by the board of control under [sections 1 through 20], the district may not withdraw from such contract until such bonds are canceled or redeemed.*"

**Section 22.** Section 85-7-1612, MCA, is amended to read:

**"85-7-1612. Board of control — powers and duties.** (1) The board of control established by this part is the operating agent of the contracting districts for the operation and maintenance of irrigation and/or drainage works and the delivery of water therefrom.

(2) The board shall make and execute all necessary contracts; employ and appoint such agents, officers, and employees as may be required; and prescribe their duties.

(3) The board *may* institute and maintain any and all actions and proceedings and suits at law or in equity, necessary or proper in order to fully carry out the provisions of this chapter or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this part or acquired in pursuance thereof. In all courts, suits, or proceedings, the board may sue, appear, and defend in person or by its attorneys and in the name of such board of control.

(4) The board may adopt rules and bylaws governing the calling and holding of meetings of the board; the manner of transacting business thereat; and the publishing or posting of the orders, resolutions, and proceedings of the board. *The board shall* pass or adopt bylaws and rules for the apportionment and distribution of water to the lands of the contracting districts and for the protection and preservation of the works and other property of the districts. All orders and resolutions shall be passed or adopted by a majority of the members of the board of control by a "yea" and "nay" vote, to be entered upon the records of the board.

(5) The board of control *may* perform all other acts necessary or appropriate to fully carry out the purposes of this part.

(6) *The board of control may plan, acquire, construct, operate, maintain, lease, and finance an undertaking through the issuance of revenue bonds, as provided in [sections 1 through 20]."*

Section 23. Section 85-7-2001, MCA, is amended to read:

**"85-7-2001. Limitations on debt-incurring power.** (1) The board of commissioners or other officers of the district may not incur any debt or liability, either by issuing bonds or otherwise, except as provided in this chapter. No irrigation district may become indebted, in any manner or for any purpose in any one year, in an amount exceeding 18.75% of the assessed valuation of the district, except as provided in subsection (2).

(2) (a) For the purpose of organization; for any of the immediate purposes of this chapter; to make or purchase surveys, plans, and specifications; for stream gauging and gathering data; or to make any repairs occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one year, incur the indebtedness of as many dollars as there are acres in the district and may cause warrants of the district to issue therefor.

(b) For the purpose of organization, for any of the immediate purposes of this chapter, or to meet the expenses occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one

year, incur (in addition to the 18.75% limitation of subsection (1)) an additional indebtedness not exceeding 12.5% of the assessed valuation of the district and may cause warrants of the district to issue therefor.

(c) The limitation of subsection (1) does not apply to warrants issued for unpaid interest on the valid bonds of any irrigation district.

(d) The limitation of subsection (1) does not apply to any bonds issued under this chapter pursuant to a provision which expressly supersedes the limitation.

(3) Any debt or liability incurred in excess of the limitations provided by the irrigation district laws is void.

*(4) The limitation of subsection (1) does not apply to state or federal bonds used for a project authorized by the legislature."*

**Section 24. Codification instruction.** Sections 1 through 20 are intended to be codified as an integral part of Title 85, chapter 7, and the provisions of Title 85, chapter 7, apply to sections 1 through 20.

**Section 25. Effective date.** This act is effective on passage and approval.

Approved March 24, 1987.

## CHAPTER NO. 194

[SB 368]

AN ACT EXEMPTING MINES AND MINE BUILDINGS FROM THE STATE BUILDING CODES; AMENDING SECTION 50-60-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-60-102, MCA, is amended to read:

**"50-60-102. Applicability.** (1) The state building codes do not apply to:

(a) residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building, and any private garage or private storage structure used only for the owner's own use, located within the municipality's or county's jurisdictional area, unless the local legislative body or board of county commissioners by ordinance or resolution makes the state building code applicable to these structures; or

(b) *mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act.*

(2) The state may not enforce the state building code under 50-60-205 for the aforementioned buildings. Local governments that have made the

state building codes applicable to the aforementioned buildings may enforce within their jurisdictional areas the state building code as adopted by the respective local government. The state may not enforce the state building code under 50-60-205 for those buildings.

(3) Where good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(4) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based upon size, population density, special conditions prevailing therein, or other factors which make differentiation or separate classification or regulation necessary, proper, or desirable."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 24, 1987.

## CHAPTER NO. 195

[HB 196]

AN ACT TO EXTEND THE JURISDICTION OF THE MONTANA MEDICAL LEGAL PANEL TO CLAIMS AGAINST DENTISTS; AMENDING SECTIONS 27-6-103, 27-6-206, 27-6-302, 27-6-306 THROUGH 27-6-308, AND 27-6-401, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 27-6-103, MCA, is amended to read:

**"27-6-103. Definitions.** As used in this chapter, the following definitions apply:

(1) *"Dentist" means:*

(a) *for purposes of the assessment of the annual surcharge, an individual licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the assessment:*

(i) *has as his principal residence or place of dental practice the state of Montana;*

(ii) *is not employed full-time by any federal governmental agency or entity; and*

(iii) *is not fully retired from the practice of dentistry; or*

*(b) for all other purposes, a person licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the occurrence of the incident giving rise to the claim:*

*(i) was an individual who had as his principal residence or place of dental practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or*

*(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render dental services and whose shareholders, partners, or owners were individual dentists licensed to practice dentistry under the provisions of Title 37, chapter 4.*

(2) "Health care facility" means a facility (other than a university, college, or governmental infirmary) licensed as a health care facility under Title 50, chapter 5.

(3) "Health care provider" means a physician, a dentist, or a health care facility.

(4) "Hospital" means a hospital as defined in 50-5-101.

(5) "Malpractice claim" means any claim or potential claim of a claimant against a health care provider for medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted standards of health care which proximately results in damage to the claimant, whether the claimant's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(6) "Panel" means the Montana medical legal panel provided for in 27-6-104.

(7) "Physician" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the assessment:

(i) has as his principal residence or place of medical practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of medicine; or

(b) for all other purposes, a person licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as his principal residence or place of medical practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render medical services and whose shareholders, partners, or owners were individual physicians licensed to practice medicine under the provisions of Title 37, chapter 3."

Section 2. Section 27-6-206, MCA, is amended to read:

**"27-6-206. Funding.** (1) There is created a pretrial review fund to be administered by the director exclusively for the purposes stated in this chapter. The fund and any income from it shall be held in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to the general fund of this state but shall be open to auditing by the legislative auditor.

(2) To create the fund, an annual surcharge shall be levied on all health care providers. The amount of the assessment must be annually set by the director and must be apportioned among physicians, *dentists*, hospitals, and other health care providers by group. As to the group of all physicians, *the group of all dentists*, the group of all hospitals, and the group of all other health care facilities, the amount of the assessment must be proportionate to the respective percentage of total health care providers brought before the panel that each group constitutes. The total number and group of health care providers brought before the panel must be determined from the annual report of the panel for the years preceding the year of assessment, as to all claims closed since April 19, 1977. The amount of the assessment for the group of all hospitals must be proportionately assessed against each hospital on the basis of each hospital's total number of licensed hospital beds, whether used or not, as reflected in the most recent compilation of the department of health and environmental sciences. The amount of the assessment for the group of all physicians must be equally assessed against all physicians. *The amount of the assessment for the group of all dentists must be equally assessed against all dentists.* The amount of the assessment for the group of all other health care facilities must be equally assessed against all other health care facilities. Surplus funds, if any, over and above the amount required for the annual administration of the chapter shall be retained by the director and used to finance the administration of this chapter in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, commensurate with the proper administration of this chapter.

(3) The annual surcharge shall be paid on or before the date physicians' and dentists' annual registration or renewal fees are due under 37-3-313 and 37-4-307. All unpaid assessments bear a late charge fee equal to the judgment rate of interest. The late charge fee is part of the annual surcharge. The director has the same powers and duties in connection with the collection of and failure to pay the annual surcharge as the department of commerce has under 37-3-313 and 37-4-307 in connection with physicians' and dentists' annual registration or renewal fees."

Section 3. Section 27-6-302, MCA, is amended to read:

**"27-6-302. Contents of application — waiver of confidentiality of medical and dental records.** The application shall contain the following:

(1) a statement in reasonable detail of the elements of the health care provider's conduct which are believed to constitute a malpractice claim, the



dates the conduct occurred, and the names and addresses of all physicians, *dentists*, and hospitals having contact with the claimant and all witnesses;

(2) a statement authorizing the panel to obtain access to all medical, *dental*, and hospital records and information pertaining to the claim and, for the purposes of its consideration of this matter only, waiving any privilege as to the contents of those records. Nothing in that statement may in any way be construed as waiving that privilege for any other purpose or in any other context, in or out of court."

Section 4. Section 27-6-306, MCA, is amended to read:

**"27-6-306. Health care provider's appearance and answer — waiver of confidentiality of records.** (1) If a health care provider involved chooses to retain legal counsel, his attorney shall informally enter his appearance with the director.

(2) The health care provider shall answer the application for review and shall submit a statement authorizing the panel to inspect all medical, *dental*, and hospital records and information pertaining to the application and, for the purposes of such inspection only, waiving any privilege as to the contents of those records. Nothing in the statement waives that privilege for any other purpose."

Section 5. Section 27-6-307, MCA, is amended to read:

**"27-6-307. Assistance to claimant in obtaining expert consultation.** The panel director shall cooperate fully with the claimant in retaining, *to consult with the claimant, upon payment of a reasonable fee by the claimant, in claims involving:*

(1) *a physician, a physician qualified in the field of medicine involved;*  
or

(2) *a dentist, a dentist qualified in the field of dentistry involved."*

Section 6. Section 27-6-308, MCA, is amended to read:

**"27-6-308. Director to furnish panel members with documents.** At least 10 days prior to the hearing, the director shall furnish to each panel member copies of all claims, briefs, medical *or dental* records, and other documents the director considers necessary."

Section 7. Section 27-6-401, MCA, is amended to read:

**"27-6-401. Composition of panel.** (1) Those eligible to sit on the panel are health care providers licensed pursuant to Montana law and residing in Montana and the members of the state bar of Montana. Six panel members shall sit in review of each case. Three panel members who are physicians and three panel members who are attorneys shall sit in review of each case in which the claim is heard only against one or more physicians. *Three panel members who are dentists and three panel members who are attorneys shall sit in review of each case in which the claim is heard only against one or more dentists.* If the claim is heard only against one or more health care facilities, two of the panel members must be administrators of the same type of health care facility or facilities, one

panel member must be a physician, and three panel members must be attorneys.

(2) In all other cases, two of the panel members must be physicians, one panel member must be an administrator of the same type of health care facility, and three panel members must be attorneys, *except that when a claim is heard against a dentist, a dentist must be substituted for one of the physicians on the panel.*"

Section 8. **Applicability.** This act applies to malpractice claims occurring on or after the effective date of this act.

Approved March 24, 1987.

## CHAPTER NO. 196

[HB 301]

AN ACT TO CHANGE THE DEFINITION OF THE OFFENSE OF NEGLIGENT VEHICULAR ASSAULT AND TO CREATE THE OFFENSES OF NEGLIGENT ENDANGERMENT AND CRIMINAL ENDANGERMENT; AND AMENDING SECTION 45-5-205, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-5-205, MCA, is amended to read:

**"45-5-205. Negligent vehicular assault — penalty.** (1) If a person operates a motor vehicle in a negligent manner and he is driving while under the influence of alcohol or drugs, as provided for in 61-8-401(1), and his conduct is the cause of bodily injury to another, he commits the offense of negligent vehicular assault.

(2) A person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed \$1,000 or imprisoned in the county jail for a term not to exceed 1 year, or both."

**Section 2. Criminal endangerment — penalty.** (1) A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment.

(2) A person convicted of the offense of criminal endangerment shall be fined an amount not to exceed \$50,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.

**Section 3. Negligent endangerment — penalty.** (1) A person who negligently engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of negligent endangerment.

(2) A person convicted of the offense of negligent endangerment shall be fined an amount not to exceed \$1,000 or imprisoned in the county jail for a term not to exceed 1 year, or both.

Section 4. **Codification instruction.** Sections 2 and 3 are intended to be codified as an integral part of Title 45 and the provisions of Title 45 apply to sections 2 and 3.

Approved March 24, 1987.

## CHAPTER NO. 197

[HB 408]

AN ACT CLARIFYING THAT WATER MAY BE RESERVED FOR EXISTING OR FUTURE BENEFICIAL USES ONLY IN THE BASIN WHERE IT IS RESERVED UNLESS WATER PROPOSED FOR A BENEFICIAL USE OUTSIDE THE BASIN WHERE THE DIVERSION OCCURS IS NOT REASONABLY AVAILABLE UNDER THE WATER LEASING PROGRAM; AND AMENDING SECTION 85-2-316, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-2-316, MCA, is amended to read:

**"85-2-316. Reservation of waters.** (1) The state or any political subdivision or agency thereof or the United States or any agency thereof may apply to the board to reserve waters for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as described by the following basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) A water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).

(3) Upon receiving an application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided in 85-2-309, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental impact statement shall be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.

(4) (a) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

- (i) the purpose of the reservation;
- (ii) the need for the reservation;
- (iii) the amount of water necessary for the purpose of the reservation;
- (iv) that the reservation is in the public interest.

(b) In determining the public interest under subsection (4)(a)(iv), the board may not adopt an order reserving water for withdrawal and transport for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(ii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(i) and (4)(b)(ii) are met, the board shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a reservation to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, use, and reservation of water.

(5) If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and

accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(6) The board shall limit any reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams can be allocated at the discretion of the board.

(7) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may, with the approval of the board, issue the permit subject to such terms and conditions it considers necessary for the protection of the objectives of the reservation.

(8) Any person desiring to use water reserved to a conservation district for agricultural purposes shall make application for such use with the district, and the district upon approval of the application must inform the department of the approved use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible, when requested by the districts, for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the preparation and processing of such applications for the conservation districts. The department shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within 12 months of the time the request was made. The board shall extend the time allowed to develop a plan identifying projects for utilizing a district's reservation so long as the conservation district makes a good faith effort, within its staffing and budget limitations, to develop a plan.

(9) A reservation under this section shall date from the date the order reserving the water is adopted by the board and shall not adversely affect any rights in existence at that time.

(10) The board shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke, or modify the reservation.

(11) The board may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate such reservation or portion thereof to an applicant who is a qualified reservant under this section. Reallocation of reserved water may be made by the board following notice and hearing wherein the board finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water shall not adversely affect the priority date of the reservation, and the reservation shall retain its priority date despite reallocation to a different entity for a different use. The board may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(12) Nothing in this section vests the board with the authority to alter a water right that is not a reservation.

(13) The department shall undertake a program to educate the public, other state agencies, and political subdivisions of the state as to the benefits of the reservation process and the procedures to be followed to secure the reservation of water. The department shall provide technical assistance to other state agencies and political subdivisions in applying for reservations under this section.

(14) Water reserved under this section is not subject to the state water leasing program established under 85-2-141."

Section 2. **Extension of authority.** Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 24, 1987.

## CHAPTER NO. 198

[HB 461]

AN ACT TO GENERALLY REVISE THE LAWS PERTAINING TO APIARY ACTIVITIES BY INCREASING REGISTRATION FEES, PROVIDING FOR INSPECTION FEES, AND PROVIDING FOR THE DETECTION, QUARANTINE, AND DESTRUCTION OF DISEASED OR PEST HONEYBEES; AMENDING SECTIONS 80-6-101, 80-6-102, 80-6-104, 80-6-105, 80-6-111, 80-6-114, 80-6-201, AND 80-6-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 80-6-101, MCA, is amended to read:

**"80-6-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Apiary" means a place where one or more colonies of bees are kept or one or more hives containing honeycombs or bee combs are kept.

(2) "Bee diseases" means American or European foulbrood, sacbrood, bee paralysis, or other disease or abnormal condition of egg, larval, pupal, or adult stages of bees.

(3) "Bees" means any stage of the bees in the genus *Apis*.

(4) "Colony" means the hive and all equipment used in connection with the hive.

(5) "Department" means the department of agriculture, provided for in 2-15-3001.

(6) "Equipment" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives and includes containers of honey and

wax which may be used in an apiary or in transporting bees and their products and apiary supplies.

(7) "Family unit" means two or more persons living together or residing in the same dwelling, house, or other place of residence.

(8) "General apiary" means any apiary other than a pollination apiary, landowner apiary, or hobbyist apiary.

(9) "Hive" means a frame hive, box hive, box, barrel, log gum, skep, or other receptacle or container or a part of a container, natural or artificial, which may be used as a domicile for bees.

(10) "Hobbyist apiary" means an apiary owned by a hobbyist beekeeper.

(11) "Hobbyist beekeeper" means a person who owns a total of no more than five hives.

(12) "Landowner" means the person who has the actual use and exclusive possession of the land upon which a landowner apiary is to be registered. However, a person leasing or renting land for the primary purpose of locating or establishing an apiary thereon is not considered a landowner.

(13) "Landowner apiary" means an apiary owned by a landowner as defined in this section.

(14) "Persons" means individuals, associations, partnerships, or corporations.

(15) "*Pest*" means the African honeybee (*Apis mellifera scutellata*) and those honeybees Africanized by interbreeding with the African honeybee, as identified by rule of the department.

(16) "Pollination apiary" means an apiary operated for pollination of a commercial seed, fruit, or other commercial agricultural product as provided in 80-6-112.

(17) "Queen apiary" means an apiary or premises in which queen bees are reared or kept for sale or gift."

Section 2. Section 80-6-102, MCA, is amended to read:

**"80-6-102. Registration.** (1) A person who owns or possesses an apiary in the state shall, before April 1 each year, register the apiary. There are four classes of apiary registration. The conditions under which the department may issue certificates of registration for each class are specified in 80-6-111 through 80-6-115.

(2) Applications shall be made to the department for registration application blanks.

(3) Registration application blanks shall be furnished by the department. The applicant shall provide the following information:

(a) a statement of the name and place of residence;

(b) the number of colonies of bees, hives, and equipment in the apiary;

(c) the location of the apiary, setting forth specifically the location by sectional division to the nearest quarter section, and the township and

range and, if within the corporate limits of a town or city, the number of the lot and block in the town or city;

(d) the name of the owner, renter, or occupant of the land on which the apiary is located and, when the application is for a new apiary being registered for the first time, the application must also show that the owner, renter, or occupant of the land has consented to the apiary being located on his land;

(e) the date when the apiary was first established;

(f) the class of apiary registration for which application is being made; and

(g) other information the department may require under rules adopted by it for the protection, safety, and welfare of the public and the beekeeping industry.

(4) Upon receipt of the application and payment of the fees prescribed, the department may issue a certificate of registration for an apiary, setting forth the name of the owner, the specific location, the number of colonies of bees or size of the apiary authorized under the registration, and the class of apiary authorized by the registration.

(5) In issuing certificates of registration for apiaries, if there is a conflict between applicants with respect to location, the department shall give preference to the applicant having the oldest continuous registered apiary.

(6) Certificates of registration may not be issued for new apiaries which are within such close proximity to established registered apiaries that there is or may be danger of spread of disease or pests or that the proximity will or may interfere with the proper feeding and honey flow of established apiaries.

(7) Before registering new apiaries, the department shall give at least 10 days' notice by certified mail to all registered apiarists likely to be affected by the proposed new apiary so that any party affected may file written protests with the department against registering the new apiary. If a written protest is filed, the department may require a hearing. Notice of the time and place of the hearing shall be given all parties interested by certified mail at least 10 days before the date set for the hearing.

(8) Suitable evidence of registration furnished by the department shall be posted by the apiary registrant in a conspicuous place at or near the apiary. If an owner has more than one apiary, suitable evidence of registration furnished by the department shall be posted at each apiary.

(9) A registration not applied for by April 1 of each year is a late registration and incurs an added penalty of 10% of the regular registration fee or \$10, whichever is greater. Registrants who fail to apply for reregistration by April 1 of each year shall be notified of their delinquency by the department. The notification shall be by certified mail and is sufficient if deposited in a United States post office or mail box and addressed to the registrant at his last address appearing in the apiary registration files of the department at least 10 days before May 1. The registration of an apiary for



which application for reregistration is not made by May 1 of each year is forfeited and all rights under the registration terminate.

(10) Any person who owns or possesses any bees, hives, colonies, or bee-keeping equipment in this state or who owns or possesses an apiary in this state and who fails or refuses to register the same as provided in this part is guilty of a misdemeanor and upon conviction thereof is subject to the penalties set forth in 80-6-303.

(11) Nothing contained in this section or in 80-6-111 through 80-6-115 shall be construed as invalidating, canceling, amending, terminating, or extending any certificate of registration issued by the department prior to October 1, 1981. All such previously issued certificates of registration remain in effect for the period for which they were issued; subject, however, to forfeiture, lapse, abandonment, and termination in the manner provided by law."

Section 3. Section 80-6-104, MCA, is amended to read:

**"80-6-104. Apiaries — termination of rights — abandonment.**

(1) The registration of an apiary which is not stocked with bees during at least part of the normal build-up or honey-producing season is forfeited and all rights under the certificate of registration terminate.

(2) An apiary not regularly attended in accordance with good beekeeping practice, which comprises a hazard or threat to disease or *pest* control in the beekeeping industry or which by reason of its physical condition or construction cannot be inspected, or any apiary not registered in accordance with 80-6-102, may be considered an abandoned apiary and may be seized by the department. Any *pest-infected* or diseased equipment or equipment which by reason of its physical condition or construction cannot be inspected may be burned, and the remainder may be sold at public auction. Proceeds, after the cost of the sale is deducted, shall be returned to the former owner or his estate. Before burning or selling any equipment, the department shall give the owner or person in charge a written notice at least 5 days before the burning or sale. The notice shall be given by certified mail or personal service upon the owner or person in charge of the property. If the owner or person in charge cannot be located, a certified letter sent to the owner's last address registered with the department is sufficient notice under this section."

Section 4. Section 80-6-105, MCA, is amended to read:

**"80-6-105. Registration fees.** (1) Each year before a certificate of registration may be issued for an apiary, the owner or applicant for the certificate shall pay the department a registration fee in accordance with the following schedule of fees for the total number of colonies owned or possessed:

|          |                           |          |
|----------|---------------------------|----------|
| 1 to     | 10 colonies of bees ..... | \$ 10.00 |
| 11 to    | 200 colonies .....        | 25.00    |
| 201 to   | 500 colonies .....        | 40.00    |
| 501 to   | 1,000 colonies .....      | 70.00    |
| 1,001 to | 3,000 colonies .....      | 100.00   |

|                                 |        |
|---------------------------------|--------|
| 3,001 to 5,000 colonies .....   | 140.00 |
| 5,001 colonies and upward ..... | 200.00 |

(2) If, after registration, additional or new colonies are authorized for a registered apiary, fees shall be paid by the registrant in accordance with the schedule in subsection (1) for the total number of colonies for that year."

Section 5. Section 80-6-111, MCA, is amended to read:

**"80-6-111. General apiary registrations.** (1) In order to control, limit, and prevent the spread of bee diseases, *pests*, and other contagious or infectious diseases among bees, hives, and apiaries and to control, limit, and prevent interference with the proper feeding and honey flow of established apiaries, general apiaries registered to different persons on October 1, 1981, must be located 3 or more miles apart, except as otherwise provided in this part. The department shall not register or issue a certificate of registration for any general apiary that is located less than 3 miles from a general apiary registered to another person, except as otherwise provided in this section.

(2) A person may register a general apiary that is situated less than 3 miles from another general apiary he has registered so long as the location of the general apiary being applied for is 3 or more miles from general apiaries registered to other persons.

(3) A general apiary may be registered even though it is less than 3 miles from any registered pollination apiary, landowner apiary, or hobbyist apiary.

(4) A person with an existing apiary that is located less than 3 miles from an existing general apiary registered to another person may register his apiary as a general apiary under the following conditions:

(a) his apiary was established and registered with the department as a general apiary under the department's rules in effect prior to July 1, 1981;

(b) his apiary is registered with the department as a general apiary as of July 1, 1981; and

(c) the registration of his apiary has not been forfeited or abandoned under the provisions of 80-6-102(9) or 80-6-104."

Section 6. Section 80-6-114, MCA, is amended to read:

**"80-6-114. Hobbyist apiary registrations.** (1) The department may grant hobbyist apiary registrations to hobbyist beekeepers under the following conditions:

(a) The applicant must not own a total of more than five hives, and all of the hives must be placed on the hobbyist apiary.

(b) The applicant must own the bees and the hives and must personally manage and operate the bees and the hives.

(c) Only one hobbyist registration is allowed an applicant and only two hobbyist apiary registrations are allowed a family unit.

(d) If the department determines that too many hobbyist apiaries are being registered within too close proximity of each other or of other established apiaries so that there is or may be danger of the spread of bee diseases, *pests*, or other contagious or infectious diseases among bees or apiaries or that there will be interference with the proper feeding and honey flow of established apiaries, the department may refuse to grant any further hobbyist registrations in the locality and area of the danger, in accordance with 80-6-102(6).

(2) No certificate of registration of a hobbyist apiary may be leased, assigned, or transferred, and no person other than the hobbyist apiary registrant may exercise any rights or privileges, directly or indirectly, authorized by the certificate of registration."

Section 7. Section 80-6-201, MCA, is amended to read:

**"80-6-201. Apiaries — powers and duties of the department.**

(1) To prevent the spread of *pests* and contagious and infectious disease among bees and apiaries, the department may:

(a) order the transfer of colonies of bees from hives or containers which cannot be properly examined for brood or other diseases to other hives or containers;

(b) order disinfection of any bee, beehive, brood comb, or any other equipment which is infected or contaminated *with disease or pests* and burn any infected or contaminated bee, beehive, brood comb, or any other equipment if, in its judgment, disinfection will not remove the infection or contamination. Before burning any property, the department shall give the owner or person in charge a written notice at least 5 days before the date on which the property will be burned. The notice shall be given by certified mail or personal service upon the owner or person in charge of the property.

(c) quarantine any apiary where *pests*, foulbrood, or any contagious or infectious diseases are present and, during the quarantine, prevent the removal from the apiary of any bees or equipment except under a special permit issued by the department permitting the removal under conditions prescribed by it. A person may not sell or offer for sale any apiary, bees, or equipment which are under quarantine unless a permit authorizing the sale or removal is issued by the department. Written notice of quarantine shall be posted by the department, owner, or person in charge at the quarantined apiary at a conspicuous place, and a copy shall be personally served or sent by certified mail to the owner of the apiary or person in charge. The quarantine continues in effect until it is ordered removed and a copy of the removal order served in the same manner.

(d) *establish by rule interior and exterior quarantines to prevent the entry or spread of diseases or pests which are not known to occur in Montana;*

(e) inspect any apiary, hives, equipment, or premises for the presence of disease or *pests*;

(f) promulgate and enforce rules adopted pursuant to parts 1 through 3.

(2) Any person failing to comply with a rule, order, or provision of a quarantine pursuant to this section is subject to penalties provided for in 80-6-303.

(3) *The department may provide disease and pest inspection, sampling, and laboratory analysis services for a fee. The department shall adopt rules setting the fee commensurate with costs and establishing procedures for sampling and analysis.*"

Section 8. Section 80-6-202, MCA, is amended to read:

**"80-6-202. Inspection of bees or used beekeeping equipment transported interstate.** (1) A person may not transport or bring into the state any used beekeeping equipment or containers, including honey to be extracted, unless it is certified and duly marked as *being apparently pest- and disease-free* by an official responsible for apiary regulations of the state from which it is being moved. The department shall be advised in advance of the date of entry and the destination of the material. Used equipment transported into the state may be quarantined by the department, in accordance with 80-6-201(1)(c), from the time it enters the state until it has been *inspected and found to be apparently free of pests and diseases or until it has been* in use while under quarantine for a minimum of 90 days and at least until the following July 1. The beekeeping materials are also subject to quarantine as provided in this section. The department may also inspect and certify as *being apparently pest- and disease-free* bees or beekeeping equipment which is to be transported from Montana to a state which requires an inspection in the state of origin.

(2) The costs of making the inspections provided for in subsection (1) shall be paid in advance by the owner of the bees or equipment and shall include a per diem pursuant to Title 2, chapter 18, part 5, necessary traveling expenses, and a fee of \$50 for the issuance of a certificate of health. If inspection by an official of any other state is considered insufficient for the protection of the Montana bee industry by the department, the department shall so state by public statement. Importation of beekeeping materials, including honey for extracting, from that other state shall be denied unless the materials or honey are first inspected by the department and there is obtained from it a certificate of inspection showing that the materials or honey are apparently free from *pests and* contagious or infectious disease. The costs of making the inspection shall be paid by the person requesting it, and inspection may be made at any point outside this state convenient to the person making the inspection. The department may require that the costs of making the inspection be paid in advance, and the costs shall include per diem pursuant to Title 2, chapter 18, part 5, necessary traveling expenses, and a fee of \$50 for the issuance of the certificate of inspection."

**Section 9. Bee laboratory authorized.** The department or a party designated by the department may develop and maintain a laboratory to provide disease and pest analytical services required to carry out the provisions of this part. The laboratory may be authorized by the department to provide services to persons possessing any bees or equipment on a fee basis pursuant to 80-6-201(3).

Section 10. **Codification instruction.** Section 9 is intended to be codified as an integral part of Title 80, chapter 6, part 3, and the provisions of Title 80, chapter 6, apply to section 9.

Section 11. **Extension of authority.** Any existing authority of the department of agriculture to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 12. **Effective date.** This act is effective May 1, 1987.

Approved March 24, 1987.

## CHAPTER NO. 199

[HB 536]

AN ACT TO ELIMINATE THE LICENSE REQUIREMENT FOR OPERATION OF A FOOD ESTABLISHMENT BY A NONPROFIT ORGANIZATION; AMENDING SECTIONS 50-50-102, 50-50-201, AND 50-50-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-50-102, MCA, is amended to read:

**"50-50-102. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(3) "Establishment" means a food manufacturing establishment, meat market, food service establishment, frozen food plant, commercial food processor, or perishable food dealer.

(4) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(5) "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

(6) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge.

The term does not include establishments, vendors, or vending machines which sell or serve only packaged nonperishable foods in their unbroken original containers or a private organization serving food only to its members.

(7) "Frozen food plant" means a place used to freeze, process, or store food including facilities used in conjunction with the frozen food plant and a place where individual compartments are offered to the public on a rental or other basis.

(8) "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

(9) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

(10) "Perishable food dealer" means a person or commercial establishment which is in the business of purchasing and selling perishable food to the public.

(11) "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment."

Section 2. Section 50-50-201, MCA, is amended to read:

**"50-50-201. License required.** (1) *Except as provided in 50-50-202, a person operating an establishment shall procure an annual license from the department.*

(2) A separate license is required for each establishment, but if more than one type of establishment is operated on the same premises and under the same management, only one license is required.

(3) Only one license is required for a person owning and operating one or more vending machines.

(4) Before a license may be issued by the department it must be validated by the local health officer, or if there is no local health officer the sanitarian, in the county where the establishment is located."

Section 3. Section 50-50-202, MCA, is amended to read:

**"50-50-202. Establishments exempt from license requirement.** (1) Establishments owned or operated by the state or a political subdivision of the state are exempt from licensure but must comply with the requirements of this chapter and rules adopted by the department under this chapter.

(2) *No license is required to operate an establishment if it is operated by a nonprofit organization for a period of less than 14 days in 1 calendar year; but an establishment exempt from licensure under this subsection must be operated in compliance with the remaining provisions of this chapter and rules adopted by the department under this chapter, and, prior to each operation, must register with the local health officer or sanitarian on forms provided by the department."*

**Section 4. Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 5. Effective date.** This act is effective July 1, 1987.

Approved March 24, 1987.

## CHAPTER NO. 200

[HB 747]

AN ACT DIRECTING THE SECRETARY OF STATE TO ASSURE POLLING PLACE AND VOTING ACCESSIBILITY FOR HANDICAPPED AND ELDERLY VOTERS; GRANTING RULEMAKING AUTHORITY; ESTABLISHING PROCEDURES FOR DETERMINING POLLING PLACE ACCESSIBILITY; PROVIDING HANDICAPPED AND ELDERLY VOTERS AN ALTERNATIVE MEANS FOR CASTING A BALLOT ON ELECTION DAY IF THEIR POLLING PLACE IS INACCESSIBLE; AND AMENDING SECTIONS 13-2-601, 13-3-105, 13-13-112, AND 13-13-211, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Purpose.** The purpose of [sections 1 through 10] is to promote the fundamental right to vote by improving access for handicapped and elderly individuals to polling places. The provisions of [sections 1 through 10] acknowledge that, in certain cases, it may not be possible to locate a polling place that meets the standards for accessibility, either because no accessible polling place exists or, if it does, its location in the precinct would require undue travel for a majority of the electors. In those cases when an accessible polling place is not available, [sections 1 through 10] provide handicapped and elderly voters an alternative means for casting a ballot on election day.

**Section 2. Definitions.** As used in [sections 1 through 10], unless the context indicates otherwise, the following definitions apply:

(1) "Accessible" means accessible to handicapped and elderly individuals for purposes of voting as determined in accordance with standards established by the secretary of state under [section 5].

(2) "Elderly" means 65 years of age or older.

(3) "Election" means a general, special, or primary election held in an even-numbered year, as provided for in 13-1-104(1) and 13-1-107(1).

(4) "Handicapped" means having a temporary or permanent physical impairment such as:

(a) impaired vision;

(b) impaired hearing; or

(c) impaired mobility. Individuals having impaired mobility include those who require use of a wheelchair and those who are ambulatory but are physically impaired due to age, disability, or disease.

**Section 3. Duty of secretary of state — rulemaking.** (1) Except as provided in [section 4], the secretary of state shall assure that all polling places are accessible to handicapped and elderly electors on election day.

(2) The secretary of state shall adopt rules to establish standards that a polling place must meet in order to be designated accessible under [sections 1 through 10].

(3) The secretary of state may adopt any other rules necessary for implementation of [sections 1 through 10].

**Section 4. Exceptions.** [Section 3] does not apply to a polling place that:

- (1) is a rural polling place as defined in [section 7];
- (2) has been granted an emergency exemption as provided in [section 8]; or
- (3) is declared exempt under [section 9] because no accessible polling place is available.

**Section 5. Adoption of standards for polling place accessibility — rulemaking authority.** The secretary of state, with advice from election administrators and handicapped and elderly individuals, shall establish standards for accessibility of polling places. The standards, whenever possible, must be consistent with the standards for accessibility established by the American National Standards Institute and the Uniform Federal Accessibility Standards.

**Section 6. Survey of polling places to determine accessibility — procedures.** (1) Except as provided in [sections 7 and 8], the election administrator in each county shall conduct an onsite survey of each polling place used in an election to determine whether such polling place meets the standards for accessibility established under [section 5].

(2) Each election administrator shall conduct the survey in a manner that represents the path of travel an elector would reasonably be expected to take in order to reach the polling place on election day.

(3) A polling place that has been surveyed and designated as accessible need not be surveyed again so long as the conditions of accessibility remain unchanged.

**Section 7. Polling place classifications.** (1) As a result of the survey provided in [section 6], each polling place must be classified as:

- (a) accessible;
- (b) inaccessible;
- (c) technically inaccessible but usable; or
- (d) rural.



(2) An accessible polling place is one that meets the standards for accessibility established by the secretary of state under [section 5].

(3) An inaccessible polling place is one that does not meet the standards for accessibility and cannot be made accessible through safe, practical, and cost-effective methods.

(4) A technically inaccessible but usable polling place is one that does not meet all the standards for accessibility but has been surveyed, evaluated, and certified as being adequate for use as a polling place. Such certification is cause for the secretary of state to grant the polling place an exemption from the standards for accessibility. However, in a future election, the secretary of state may issue an objection to the criteria used for determining that the facility is usable as a polling place.

(5) A rural polling place is one that serves less than 200 registered electors and is:

(a) granted an exemption from the standards for accessibility established under [section 5]; and

(b) subject to review and redesignation 45 days prior to an election.

(6) A rural designation may not be construed as cause for denying handicapped or elderly electors at a polling place the right to choose an alternative means for casting a ballot on election day as provided in [section 10].

**Section 8. Emergency exemption.** (1) The secretary of state shall exempt a polling place from the requirements of [sections 1 through 10] if an emergency occurs within 10 days prior to an election. An emergency is considered to exist if a polling place becomes unavailable by reason of loss of lease, fire, snow, or natural disaster.

(2) If an emergency occurs, the election administrator in the county shall designate a new polling place in accordance with the procedure provided in 13-3-105. The new polling place must be considered temporary and must be exempt from the survey procedures established under [section 6]. However, such polling place may not be used in a subsequent election unless it is surveyed as required in [section 6].

**Section 9. Exemption if no accessible polling place is available.**

(1) If an existing polling place has been surveyed and designated as being inaccessible, the election administrator shall make a reasonable effort to locate and survey all potential sites with comparable utility as a polling place.

(2) The election administrator shall request in writing to the secretary of state that an inaccessible polling place be exempt from the standards for accessibility if:

(a) all potential polling places have been surveyed and it is determined that no accessible polling place is available; and

(b) the county cannot safely or reasonably make a polling place temporarily accessible in the area involved.

(3) Nothing in this section may require an election administrator to select an accessible facility as a polling place if its location requires excessive travel or imposes other hardships for the majority of qualified electors in the precinct.

**Section 10. Alternative means for casting ballot.** (1) The election administrator shall provide handicapped and elderly individuals an alternative means for casting a ballot on election day if they are assigned to an inaccessible polling place. These alternative means for casting a ballot include:

- (a) delivery of a ballot to the elector as provided in 13-13-118;
- (b) voting by absentee ballot as provided in 13-13-222; and
- (c) prearranged assignment to an accessible polling place within the county.

(2) Any handicapped or elderly elector assigned to an inaccessible polling place who desires to vote at an accessible polling place:

- (a) shall request assignment to an accessible polling place by notifying the election administrator in writing at least 7 days preceding the election;
- (b) must be assigned to the nearest accessible polling place or technically inaccessible polling place for the purpose of voting in the election;
- (c) shall sign his name on a special addendum to the official precinct register as required in 13-2-601; and
- (d) shall receive the same ballot to which he is otherwise entitled.

(3) For the purpose of subsection (2), the ballot cast at an alternative polling place must be processed and counted in the same manner as an absentee ballot.

**Section 11.** Section 13-2-601, MCA, is amended to read:

**"13-2-601. Name on precinct register prima facie evidence of right to vote.** (1) An elector may not vote at an election mentioned in this title unless his name appears on election day in the copy of the official precinct register furnished by the election administrator to the election judges. The fact that his name appears in the copy of the precinct register is prima facie evidence of his right to vote.

(2) *The name of an elector who has been assigned to vote in a precinct other than the precinct in which he is registered, as provided in [section 10], must be printed on a special addendum to the precinct register in a form prescribed by the secretary of state. The fact that an elector's name appears on a special addendum to the precinct register is prima facie evidence of his right to vote in the precinct.*"

**Section 12.** Section 13-3-105, MCA, is amended to read:

**"13-3-105. Designation of polling place.** (1) The county governing body shall designate the polling place for each precinct no later than 30 days before a primary election. The same polling place shall be used for both the primary and general election if at all possible. Changes may be

made by the governing body in designated polling places up to 10 days before an election if a designated polling place is not available. Polling places may be located outside the boundaries of a precinct.

(2) Not more than 10 or less than 2 days before an election, the election administrator shall publish in a newspaper of general circulation in the county, a statement of the locations of the precinct polling places. *The election administrator shall include in the published notice the accessibility designation for each polling place according to the classification in [section 7].* Notice may also be given as provided in 2-3-105 through 2-3-107.

(3) An election administrator may make changes in the location of a polling place if an emergency occurs 10 days or less before an election. Notice shall be posted at both the old and new polling places, and other notice may be given by whatever means available.

(4) Any publicly owned building may be used as a polling place. Such building must be furnished at no charge as long as no structural changes are required in order to use the building as a polling place."

Section 13. Section 13-13-112, MCA, is amended to read:

**"13-13-112. Display of instructions for electors.** (1) Instructions for electors on how to prepare their ballots or use machines or devices must be posted in each compartment provided for the preparation of ballots and elsewhere in the polling place.

(2) The instructions must be in easily read type, *18 point or larger*, and explain how to:

- (a) obtain ballots for voting;
- (b) prepare ballots for deposit in the ballot box; and
- (c) obtain a new ballot in place of one spoiled by accident.

(3) If the instructions for use of the machine or device are printed on the machine or device or are part of a ballot package given each elector, separate instructions need not be posted in the compartment.

(4) Official ballots for the precinct, clearly marked "sample" across the face, shall be posted in each booth or compartment and in conspicuous places about the polling place in all precincts where paper ballots are used. Diagrams showing the arrangement of the ballot for that precinct shall be posted in conspicuous places about the polling place in all precincts using machines or devices."

Section 14. Section 13-13-211, MCA, is amended to read:

**"13-13-211. Application of absentee, chronically ill, handicapped, elderly, or physically incapacitated elector for ballot — special absentee ballot application.** (1) Except as provided in 13-2-214, during a period beginning 75 days before the day of election and ending at noon on the day before the election, *an individual may apply to the election administrator for an absentee ballot if he is:*

(a) an elector expecting to be absent from the county in which his voting precinct is situated;

- (b) an elector who is chronically ill or in general ill health;
- (c) a handicapped or elderly elector who has been assigned to an inaccessible polling place; or
- (d) an elector who will be unable to go to the polls because of physical incapacity.

(2) A qualified elector who is prevented from voting at the polls as a result of an illness or health emergency occurring between 5 p.m. on the Friday preceding the election and noon on election day may request to vote by absentee ballot. The election administrator shall honor any such request received up to and including noon on election day. The election administrator is not required to comply with a request by an elector who is absent from the county."

Section 15. **Extension of authority.** Any existing authority of the secretary of state to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 24, 1987.

## CHAPTER NO. 201

[HB 755]

AN ACT TO PERMANENTLY ALLOW AGENCIES TO GRANT EMPLOYEE INCENTIVE AWARDS UP TO A \$3,000 MAXIMUM; AMENDING SECTION 2-18-1106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-18-1106, MCA, is amended to read:

**"2-18-1106. Agency head to grant award — amount and source of award.** (1) After an agency implements an employee's suggestion or invention and the monetary savings to the state is estimated, an agency head, upon written application to and approval from the department and the incentive awards advisory council, may grant an incentive award to an employee whose proposal meets the requirements enumerated in 2-18-1105.

(2) The incentive award *shall be* 10% of the savings resulting from implementing the employee's proposal for 1 year up to a maximum of \$3,000. Larger awards may be proposed and submitted to the legislature for consideration.

(3) The agency head shall pay the employee from the agency's budget in a single, lump-sum award. This award is in addition to the recipient's regular compensation."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 24, 1987.

**CHAPTER NO. 202**

[SB 20]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO MECHANICS' LIENS; AMENDING SECTIONS 70-23-607, 70-23-608, 71-3-512, AND 71-3-516, MCA; REPEALING SECTIONS 71-3-501 THROUGH 71-3-503, 71-3-511, AND 71-3-514, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Scope.** This part creates and provides for the attachment and enforceability of a construction lien against real estate in favor of a person furnishing services or materials under a real estate improvement contract. A nonconsensual lien against real estate for improvements made thereon may not arise except as provided in this part.

**Section 2. Definitions.** (1) "Commencement of work" means the date of the first visible change in the physical condition of the real estate caused by the first person furnishing services or materials pursuant to a particular real estate improvement contract.

(2) "Construction lien" or "lien" means a lien against real estate arising under this part.

(3) (a) "Contracting owner" means a person who owns an interest in real estate and who, personally or through an agent, enters into an express or implied contract for the improvement of the real estate.

(b) For the purpose of determining whether a person is a contracting owner, agency is presumed, in the absence of clear and convincing evidence to the contrary:

- (i) between employer and employee;
- (ii) between spouses;
- (iii) between joint tenants; and
- (iv) among tenants in common.

(4) (a) "Contract price" means the amount agreed upon by the contracting parties for performing services and furnishing materials covered by the contract, increased or diminished by:

- (i) the price of change orders or extras;
- (ii) any amounts attributable to altered specifications; or
- (iii) a breach of contract, including but not limited to defects in workmanship or materials.

(b) If no price is agreed upon by the contracting parties, the contract price means the reasonable value of all services or materials covered by the contract.

(5) (a) "Real estate improvement contract" means an agreement to perform services, including labor, or to furnish materials for the purpose of producing a change in the physical condition of the real estate, including:

(i) alteration of the surface by excavation, fill, change in grade, or change in a shore, bank, or flood plain of a stream, swamp, or body of water;

(ii) construction or installation on, above, or below the surface of land;

(iii) demolition, repair, remodeling, or removal of a structure previously constructed or installed;

(iv) seeding, sodding, or other landscape operation;

(v) surface or subsurface testing, boring, or analysis; and

(vi) preparation of plans, surveys, or architectural or engineering plans or drawings for any change in the physical condition of the real estate, regardless of whether they are used to produce a change in the physical condition of the real estate.

(b) For the purpose of claiming a construction lien, a real estate improvement contract does not include:

(i) a contract for the mining or removal of timber, minerals, gravel, soil, sod, or things growing on the land or a similar contract in which the activity is primarily for the purpose of making the materials available for sale or use; or

(ii) a contract for the planting, cultivation, or harvesting of crops or for the preparation of the soil for planting of crops.

**Section 3. Who may claim a construction lien — limitation.** A person who furnishes services or materials pursuant to a real estate improvement contract may claim a construction lien, only to the extent provided in this part, to secure the payment of his contract price.

**Section 4. Limitation of lien for materials supplied.** (1) A lien for furnishing materials arises only if:

(a) (i) the materials are supplied with the intent that they be used in the course of construction or incorporated into the improvement in connection with which the lien arises; and

(ii) the intent described in subsection (1)(a)(i) can be shown by a contract of sale, a delivery order, delivery to the site by the lien claimant or at his direction, or by other evidence; and

(b) the materials are:

(i) incorporated in the improvement or consumed as normal wastage in construction operations;

(ii) specifically fabricated for incorporation into the improvement and not readily resalable in the ordinary course of the fabricator's business, even though the materials are not actually incorporated into the improvement;

(iii) used for the construction or operation of machinery or equipment used in the course of construction and not remaining in the improvement, subject to diminution by the salvage value of those materials; or

(iv) tools, appliances, or machinery used on the particular improvement. However, a lien for supplying tools, appliances, or machinery used on the improvement is limited as provided by subsection (3).

(2) The delivery of materials to the site of the improvement, whether by the lien claimant or by another, creates a presumption that they were used in the course of construction or were incorporated into the improvement.

(3) A lien arising for the supplying of tools, appliances, or machinery under subsection (1)(b)(iv) is limited as follows:

(a) if they are rented, the lien is for the reasonable rental value for the period of actual use, including any reasonable periods of nonuse provided for in the rental contract; and

(b) if they are purchased, the lien is for the price but arises only if they were purchased for use in the course of the particular improvement and have no substantial value after the completion of the improvement on which they were used.

**Section 5. Extent of lien.** (1) A construction lien extends to the interest of the contracting owner in the real estate, as the interest exists at the commencement of work or is thereafter acquired in the real estate, subject to the provisions of this section.

(2) (a) If an improvement is located wholly on one or more platted lots belonging to the contracting owner, the lien applies to the improvement and to the lots on which the improvement is located.

(b) If an improvement is not located wholly on one or more platted lots, the lien applies to the improvement and to the smallest identifiable tract or parcel of land on which the improvement is located.

(3) If the improvement is to leased premises, the lien attaches to the improvement and to the leasehold term. Except as provided in subsection (4), it does not attach to the lessor's interest unless he contracted for or agreed to the improvement before it was begun.

(4) (a) A construction lien is not impaired to the extent of the value of the work or improvement that is severable from the real estate if the improvement is to premises held by:

(i) a contracting owner who owns less than a fee simple interest; or

(ii) a lessee and the lease is forfeited by the lessee.

(b) If the work or improvement may be removed without harm to the rest of the real estate, the lienholder may have the value determined, the work or improvement sold separately, and the proceeds delivered to him to satisfy the construction lien. The purchaser shall remove the work or improvement within 45 days of the sale.

(5) If a contracting owner contracts for improvements on real estate not owned by him as part of an improvement on his real estate or for the purpose of directly benefiting his real estate, there is a lien against the contracting owner's real estate being improved or directly benefited in favor of persons furnishing services or materials to the same extent as if the improvement had been on the contracting owner's real estate.

**Section 6. Amount of lien.** (1) A person who has furnished services or materials pursuant to a real estate improvement contract is entitled to a lien for the unpaid part of his contract price, subject to the provisions of [section 4].

(2) A person's lien is reduced by the sum of the liens of persons claiming construction liens through him.

**Section 7. Notice of right to claim a lien required — exceptions.** (1) The following are not required to give notice of a right to claim a lien as required by this section:

(a) a person who furnishes services or materials directly to the owner at his request;

(b) a wage earner or laborer who performs personal labor services for a person furnishing any service or material pursuant to a real estate improvement contract;

(c) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to a dwelling for five or more families; and

(d) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to an improvement that is partly or wholly commercial in character.

(2) A person who may claim a construction lien pursuant to this part shall give notice of his right to claim a lien to the contracting owner in order to claim a lien.

(3) This notice must be given no later than 20 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 20-day period before the date on which notice is given.

(4) The notice of the right to claim a lien must be sent to the contracting owner by certified mail or delivered personally to him. Notice by certified mail is effective on the date the notice is mailed.

(5) A person who may claim a lien shall also file with the clerk and recorder of the county in which the improved real estate is located a copy of the notice of the right to claim a lien, in the form required by [section 8]. This copy must be filed no later than 5 business days after the date on which the notice of the right to claim a lien is given to the contracting owner.

(6) At the request of any subcontractor or material supplier who may claim a lien through him, a person shall furnish to the requestor within 5 business days:



- (a) a description of the real estate being improved, sufficient to identify it; and
- (b) the name and address of the contracting owner.

**Section 8. Content of notice of right to claim a lien.** (1) The notice of the right to claim a lien must be in writing and state that it is a notice of a right to claim a lien against real estate for services or materials furnished in connection with improvement of the real estate.

(2) The notice must contain a description sufficient to identify the real estate against which the lien may be claimed.

(3) The notice must contain the following information and be in substantially the following form:

## NOTICE OF THE RIGHT TO CLAIM A LIEN

**WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM  
PAYING ANY CONTRACTOR OR SUPPLIER TWICE FOR THE  
SAME SERVICE.**

To: ..... Date of mailing: .....  
 (Owner)  
 .....  
 (Owner's address)

This is to inform you that ..... has begun to provide ..... (description of services or materials) ordered by ..... for improvements to property you own. The property is located at .....

A lien may be claimed for all services and materials furnished to you, if this notice is given to you within 20 days after the date on which the services or materials described are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within the 20-day period before the date on which the notice is given.

Even if you or your mortgage lender have made full payment to the contractor who ordered these services or materials, your property may still be subject to a lien unless the subcontractor or material supplier providing this notice is paid. **THIS IS NOT A LIEN.** It is a notice sent to you for your protection in compliance with the construction lien laws of the state of Montana.

**This notice has been sent to you by:**

NAME: ..... IF YOU HAVE ANY QUES-  
ADDRESS: ..... TIONS ABOUT THIS  
TELEPHONE: ..... NOTICE, PLEASE CALL  
US

### IMPORTANT INFORMATION ON REVERSE SIDE

### IMPORTANT INFORMATION FOR YOUR PROTECTION

Under Montana's laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, even if you have paid your contractor in full.

The law states that all people hired by a contractor to provide you with services or materials are required to give you a notice of the right to lien to let you know what they have provided.

### WAYS TO PROTECT YOURSELF ARE:

- **RECOGNIZE** that this notice of delivery of services or materials may result in a lien against your property unless all those supplying a notice of the right to lien have been paid.
- **LEARN** more about the construction lien laws and the meaning of this notice by contacting an attorney or the firm sending this notice.
- **WHEN PAYING** your contractor for services or materials, you may make checks payable jointly to the contractor and the firm furnishing services or materials for which you have received a notice of the right to lien.
- **OBTAIN EVIDENCE** that all firms from whom you have received a notice of the right to lien have been paid or have waived the right to claim a lien against your property.
- **CONSULT** an attorney, a professional escrow company, or your mortgage lender.

**Section 9. Attachment of lien — filing.** (1) A person's lien does not attach and may not be enforced unless, after entering into the contract under which the lien arises, he has filed a lien not later than 90 days after:

- (a) his final furnishing of services or materials; or
  - (b) the owner files a notice of completion pursuant to 71-3-512.
- (2) (a) The lien must be filed with the county clerk and recorder of the county in which the improved real estate is located.
- (b) The person claiming the lien must certify to the county clerk and recorder that a copy of the lien has been served on the owner of record as provided in 71-3-513(2).
- (3) The lien statement must contain:
- (a) the name and address of the person claiming the lien;
  - (b) a description of the real property against which the lien is claimed sufficient to identify it;
  - (c) the name of the contracting owner;

(d) the name and address of the party with whom the person claiming the lien contracted to furnish services or materials;

(e) a description of the services or materials provided;

(f) the amount unpaid for services or materials or, if no amount is fixed by the contract, a good faith estimate of the amount unpaid, designated as an estimate;

(g) (i) the date on which the services or materials were first furnished; and

(ii) the date on which the services or materials were last furnished; and

(h) a declaration that a notice of a right to claim a lien was given to the contracting owner or an explanation of why such notice was not required.

(4) A lien notice that is filed pursuant to this section before the person claiming the lien has substantially furnished services or materials pursuant to a real estate improvement contract is not effective to create a construction lien unless the lien claimant is prevented from fulfilling his obligation because of the fault of another person.

(5) Except as provided in subsection (6), a lien attaches at the commencement of work as defined in [section 2].

(6) A lien attaches when it is filed if it is for the preparation of plans, surveys, or architectural or engineering plans or drawings for any change in the physical condition of land or structures that are not used incident to producing a change in the physical condition of the real estate.

**Section 10. Content of lien notice.** The notice for the lien provided for in [section 9] may be filed in substantially this form:

#### Construction Lien

I, . . . . (insert name and address of person claiming the construction lien), claim a construction lien pursuant to Title 71, chapter 3, of the Montana Code Annotated.

I claim this lien against . . . . (give description of the real property against which the lien is claimed sufficient to identify it). The contracting owner is . . . . (insert name of the person who owns the real estate and name of the person who entered into the contract to improve it).

At the request of . . . . (give name and address of party with whom person claiming the lien contracted to furnish services or materials), I provided the following: . . . . (give description of the services or materials provided). The amount remaining unpaid is . . . . (insert the amount unpaid; if no amount was fixed by the contract, give your good faith estimate of the amount and identify it as an estimate).

I first furnished these services or materials on . . . . (give date) and last furnished services or materials on . . . . (give date; if the date has not yet arrived, insert an estimate of the date on which services or materials will be last furnished and identify the date as an estimate).

I gave notice of the right to claim a lien as required by [section 7] on . . . . (give date) to . . . . (give name of contracting owner). . . . (If it is not required to give a notice of the right to claim a lien, state the reason it is not required.)

**Section 11. Priority among holders of construction liens.** (1) There is equal priority between or among construction lien claimants who contribute to the same real estate improvement project, regardless of the date on which each lien claimant first contributed services or materials and regardless of the date on which he filed his notice of lien. When the proceeds of a foreclosure sale are not sufficient to pay all construction lien claimants in full, each claimant will receive a pro rata share of the proceeds based on the amount of his respective lien.

(2) Construction liens attaching at different times have priority in the order of attachment.

**Section 12. Priority of construction liens as against claims other than construction lien claims.** (1) A construction lien arising under this part has priority over any other interest, lien, mortgage, or encumbrance that may attach to the building, structure, or improvement or on the real property on which the building, structure, or improvement is located and which is filed after the construction lien attaches.

(2) An interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches has priority over a construction lien arising under this part, except as provided in subsections (3) and (4).

(3) A construction lien has priority, to the extent of the value of the work or improvement that is severable, over an interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches. If the work or improvement may be removed without harm to the rest of the real property, the lienholder may have the value determined, the work or improvement sold separately on foreclosure, and the proceeds delivered to him to satisfy the construction lien.

(4) A construction lien has priority over any interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches if that interest, lien, mortgage, or encumbrance was taken to secure advances made for the purpose of paying for the particular real estate improvement being liened.

**Section 13.** Section 71-3-512, MCA, is amended to read:

**"71-3-512. Notice of completion.** (1) The *contracting* owner may file a notice of completion at any time after the completion of any work or improvement.

(2) The following acts or events constitute completion of any work or improvement for the purpose of filing a notice of completion:

(a) the written acceptance by the *contracting* owner, his agent, or representative of the building, improvement, or structure. The filing of a notice of completion shall not be considered as an acceptance of the building, improvement, or other structure.

(b) the cessation from labor for 30 days upon any building, improvement, or structure, or the alteration, addition to, or repair thereof.

(3) The notice of completion together with an affidavit of publication as hereinafter required shall be filed in the office of the county clerk and recorder of the county where the property is situated and the notice shall set forth:

(a) the date when the work or improvement was completed or the date on which cessation from labor occurred first and the period of its duration;

(b) the *contracting* owner's name and address and the nature of the title, if any, of the person signing the notice;

(c) a description of the property sufficient for identification;

(d) the name of the contractor, if any.

(4) The notice shall be verified by the *contracting* owner or his agent.

(5) A copy of the notice of completion shall be published once each week for 3 successive weeks in a newspaper of general circulation in the county where the land on which the work or improvement was performed is situated.

(6) *The contracting owner shall give a copy of the notice of completion to any person who has given the contracting owner a notice of a right to claim a lien."*

Section 14. Section 71-3-516, MCA, is amended to read:

**"71-3-516. Substitution of bond allowed — filing — amount — condition.** (1) Whenever a *construction* lien has been filed upon real property or any improvements thereon, the *contracting* owner of any interest in such property, whether legal or beneficial, may, at any time before the lien claimant has commenced an action to foreclose such lien, file a bond with the clerk of the district court in the county in which such property is situated or, if such property is situated in more than one county, with the clerk of the district court of any county in which a part of such property is situated.

(2) Such bond shall be in an amount  $1\frac{1}{2}$  times the amount of the lien and shall be either in cash or written by a corporate surety company. If written by a corporate surety, such bond shall be approved by a judge of the district court with which such bond is filed.

(3) The bond shall be conditioned that if the lien claimant shall be finally adjudged to be entitled to recover upon the claim upon which his lien is based, the principal or his sureties shall pay to such claimant the amount of his judgment, together with any interest, costs, attorneys' fees, and other sums which such claimant would be entitled to recover upon the foreclosure of a lien against the principal."

Section 15. Section 70-23-607, MCA, is amended to read:

**"70-23-607. Claim for common expenses — priority of lien — contents — recording.** (1) Whenever an association of unit owners acting through its manager furnishes to a unit any services, labor, or material

lawfully chargeable as common expenses, the association of unit owners, upon complying with subsection (2) of this section, shall have a lien upon the individual unit and the undivided interest in the common elements appertaining to such unit for the reasonable value of such common expenses, and the lien shall be prior to all other liens or encumbrances upon the unit except:

- (a) tax and assessment liens; and
- (b) a first mortgage or trust indenture of record.

(2) An association of unit owners claiming the benefits of subsection (1) of this section shall record in the county in which the unit or some part thereof is located a claim containing:

- (a) a true statement of the account due for such common expenses after deducting all just credits and offsets;
- (b) the name of the owner of the unit or reputed owner, if known;
- (c) a description of the property where the common expenses were furnished and the designation of the unit, sufficient for identification.

(3) The claim shall be verified by the oath of some person having knowledge of the facts and shall be filed with and recorded by the recording officer in the book kept for the purpose of recording liens filed under *Title 71, chapter 3, part 5*. The record shall be indexed as deeds and other conveyances are required by law to be indexed."

Section 16. Section 70-23-608, MCA, is amended to read:

**"70-23-608. Foreclosure of lien under claim for common expenses — action without foreclosure.** (1) The proceedings to foreclose liens created by 70-23-607 shall conform as nearly as possible to the proceedings to foreclose liens created by *Title 71, chapter 3, part 5*. The lien may be enforced by the manager acting on behalf of the association of unit owners.

(2) An action to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the lien securing the claim for common expenses."

Section 17. **Repealer.** Sections 71-3-501 through 71-3-503, 71-3-511, and 71-3-514, MCA, are repealed.

Section 18. **Codification instruction.** Sections 1 through 12 are intended to be codified as an integral part of *Title 71, chapter 3, part 5*, and the provisions of *Title 71, chapter 3, part 5*, apply to sections 1 through 12.

Section 19. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 20. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this

act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. **Applicability.** This act applies to real estate improvement contracts made after September 30, 1987.

Approved March 25, 1987.

## CHAPTER NO. 203

[SB 40]

AN ACT AMENDING THE CRIME VICTIMS COMPENSATION ACT OF MONTANA TO PERMIT CERTAIN RELATIVES OF A VICTIM KILLED AS A RESULT OF CRIMINALLY INJURIOUS CONDUCT OR CERTAIN RELATIVES OF A MINOR VICTIM OF A SEXUAL CRIME TO BE REIMBURSED FOR MENTAL HEALTH TREATMENT; AND AMENDING SECTION 53-9-128, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-9-128, MCA, is amended to read:

**"53-9-128. Compensation benefits.** (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks such weekly benefits, the claimant, as a result of such injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is 66 ⅔% of the wages received at the time of the criminally injurious conduct, subject to a maximum of \$125. Weekly compensation payments shall be made at the end of each 2-week period. No weekly compensation payments may be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1 week, weekly compensation payments shall be paid from the date the wage loss began. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon, reasonable hospital services and medicines, and such other treatment as may be approved by the division for the injuries suffered due to criminally injurious conduct.

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66 ⅔% of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of \$125 per week. Weekly compensation payments shall be made at the end of each 2-week period.

(b) Benefits under subsection (3)(a) of this section shall be paid to the spouse for the benefit of the spouse and other dependents unless the division determines that other payment arrangements should be made. If a

spouse dies or remarries, benefits under subsection (3)(a) shall cease to be paid to the spouse but shall continue to be paid to the other dependents so long as their dependent status continues.

(4) Reasonable funeral and burial expenses of the victim, not exceeding \$1,100, shall be paid if all other collateral sources have properly paid such expenses but have not covered all such expenses.

(5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death, because of injuries suffered due to an act of criminally injurious conduct may not exceed \$25,000 in the aggregate.

(6) Compensation benefits are not payable for pain and suffering, inconvenience, physical impairment, or nonbodily damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of such injury has no reasonable prospect of being regularly employed in the normal labor market, who was employable but was not employed at the time of such injury, may in the discretion of the division be awarded weekly compensation benefits in an amount determined by the division not to exceed \$100 per week. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market or for a shorter period as determined by the division. The claimant shall be awarded benefits as provided in subsection (2) of this section.

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death may in the discretion of the division be awarded, in a gross single amount payable to all dependents, a sum not to exceed \$100 per week which shall be payable in the manner and for the period provided by subsection (3)(b) of this section or for such shorter period as determined by the division. The claimant shall be awarded benefits as provided in subsection (4) of this section.

(c) Compensation payable to a victim or a victim's dependents under this subsection may not exceed \$20,000, and the limitations of subsection (6) apply to compensation under this subsection (7).

(8) Amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every 2 weeks.

(9) (a) *Subject to the limitations in subsection (9)(c), the spouse, parent, child, brother, or sister of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental health treatment received as a result of the victim's death.*

(b) *Subject to the limitations in subsection (9)(c), the parent, brother, or sister of a minor who is a victim of a sexual crime for which a person has been charged and who is not entitled to receive services under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a result of the crime.*

(c) *Total payments made under subsections (9)(a) and (9)(b) may not exceed \$500 for each person or \$1,500 for a family. Payments must terminate 1 year after a claim is filed under 53-9-125."*

Approved March 25, 1987.



## CHAPTER NO. 204

[SB 94]

AN ACT REQUIRING STAFF OF THE DEPARTMENT OF JUSTICE TO INQUIRE ORALLY WHETHER AN APPLICANT FOR A DRIVER'S LICENSE OR A RENEWAL INTENDS TO MAKE AN ANATOMICAL GIFT; AMENDING SECTION 61-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-5-301, MCA, is amended to read:

**"61-5-301. Indication on driver's license of intent to make anatomical gift.** (1) The department of justice shall provide on each operator's or chauffeur's license a space for indicating when the licensee has executed a document under 72-17-204 of intent to make a gift of all or part of his body under the Uniform Anatomical Gift Act.

(2) The department shall provide each applicant, at the time of application for a new driver's license or for a renewal, printed information calling the applicant's attention to the provisions of this section. *Each applicant must be asked orally whether he wishes to make an anatomical gift.*

(3) *Each* applicant must be given an opportunity to indicate in the space provided under subsection (1) his intent to make an anatomical gift.

(4) The department shall issue to every applicant who indicates such an intent a statement which, when signed by the licensee in the manner prescribed in 72-17-204, constitutes a document of anatomical gift. This statement must be printed on a sticker that the donor may attach permanently to the back of his driver's license.

(5) The department shall also furnish the licensee a means of revoking the document of gift upon the license."

Section 2. **Extension of authority.** Any existing authority of the department of justice to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 25, 1987.

## CHAPTER NO. 205

[SB 104]

AN ACT TO ELIMINATE THE PROVISION PROVIDING THAT CONCEALMENT OF MERCHANDISE DOES NOT CONSTITUTE PROOF OF THE COMMISSION OF THEFT; AND REPEALING SECTION 46-6-504, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Repealer.** Section 46-6-504, MCA, is repealed.

Approved March 25, 1987.

**CHAPTER NO. 206**

[SB 128]

AN ACT TO CHANGE THE USES OF MONEY AND PROPERTY CREDITED TO THE SPECIAL LAW ENFORCEMENT ASSISTANCE ACCOUNT; AND AMENDING SECTION 44-13-103, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 44-13-103, MCA, is amended to read:

**"44-13-103. Limitations on use of special law enforcement assistance account.** (1) *After property is credited to the account, the attorney general may:*

(a) *transfer the property to any local or state law enforcement agency to be used for criminal investigation purposes;*

(b) *sell the property by public sale;*

(c) *destroy any illegal or controlled substances and sell or destroy raw materials, products, and equipment used or intended for use in manufacturing, compounding, or processing a controlled substance;*

(d) *compromise and pay claims against the property; and*

(e) *make any other disposition of the property authorized by law.*

(2) *Money and proceeds from property credited to the account may be used by the attorney general for:*

(a) *the payment of any expenses necessary to seize, detain, appraise, inventory, safeguard, maintain, advertise, or sell seized, detained, or forfeited property, including but not limited to payment for contract services and reimbursement to a federal, state, or local agency for its expenses;*

(b) *the payment of awards for information or assistance leading to a criminal proceeding or a civil forfeiture proceeding;*

(c) *the compromise and payment of claims against property;*

(d) *the payment of sums for criminal investigation purposes, including but not limited to:*

(i) *payment of informants;*

(ii) *use by undercover agents to purchase unlawful substances, including, without limitation, counterfeit or real controlled substances, pornographic materials, stolen property, or other contraband;*

(iii) *use by undercover agents as gambling front money; and*

(iv) *payment of overtime to state or local law enforcement officers when engaged in special criminal investigations;*

(e) *the payment of funds into the account created by 53-9-109; and*

(f) *matching federal grants for criminal investigation purposes.*

(3) *The attorney general shall give the legislature, not later than 4 months after the end of each fiscal year, a detailed written report of the amounts and property credited to the account and of the disposition of money and property credited to the account, but may not make any disclosure that would compromise any investigation or prosecution."*

Approved March 25, 1987.

## CHAPTER NO. 207

[SB 133]

AN ACT REQUIRING PAYMENT OF ELEMENTARY SCHOOL TUITION IN DECEMBER AND JUNE OF THE FISCAL YEAR; AND AMENDING SECTION 20-5-307, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-5-307, MCA, is amended to read:

**"20-5-307. Budgeting, levy requirement, and paying elementary tuition.** (1) The tuition amount that has been established in 20-5-305 shall be paid during the ensuing school fiscal year. The trustees of the elementary district shall include such amount in the tuition fund of the preliminary budget. If the trustees should fail to include such amount or any portion of it in the preliminary budget, they shall adjust the budgeted amount in adopting the final budget to provide for the total tuition amount that is due during the ensuing school fiscal year. Such adjustment shall not be subject to the budget adjustment provisions of 20-9-132.

(2) The county superintendent shall report the net tuition fund levy requirement for each elementary district to the county commissioners on the second Monday of August, and a levy on the district shall be made by the county commissioners in accordance with 20-9-142. Such levy requirement shall be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget the sum of the cash balance in the tuition fund at the end of the immediately preceding school fiscal year plus any other anticipated moneys that may be realized in the tuition fund.

(3) The trustees shall pay by warrants drawn on the tuition fund the tuition amounts owed to each district included in the county superintendent's notification provided under the provisions of 20-5-305. *At least one-half of the payments must be made in December, and the remaining payments must be made by June 15 of the fiscal year."*

Approved March 25, 1987.

## CHAPTER NO. 208

[HB 13]

AN ACT TO AMEND SECTION 31-2-106, MCA, TO INCLUDE AS EXEMPT PROPERTY IN A BANKRUPTCY PROCEEDING ALL PROPERTY OF AN INDIVIDUAL DEBTOR EXEMPT FROM EXECUTION OF JUDGMENT AS PROVIDED IN THE MONTANA CODE ANNOTATED AND 11 U.S.C. 522(D)(10); AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 31-2-106, MCA, is amended to read:

**"31-2-106. Exempt property — bankruptcy proceeding.** No individual may exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522(d) except *that property specified in 11 U.S.C. 522(d)(10) and that property exempt from execution of judgment as provided in 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1006, 19-10-504, 19-11-612, 19-13-1004, Title 25, chapter 13, part 6, 33-7-511, 33-15-512 through 33-15-514, 35-10-502, 39-51-3105, 39-71-743, 39-73-110, 53-2-607, 53-9-129, Title 70, chapter 32, and 80-2-245.*"

Section 2. **Effective date — applicability.** This act is effective on passage and approval and applies to bankruptcy petitions in which discharge takes place on or after the effective date of this act.

Approved March 25, 1987.

## CHAPTER NO. 209

[HB 42]

AN ACT TO CLARIFY THE LEGAL STANDARD GOVERNING LAND-OWNER LIABILITY; AND AMENDING SECTIONS 23-2-321, 27-1-701, AND 70-16-302, MCA.

WHEREAS, the Montana Supreme Court in *Limberhand v. Big Ditch Co.*, \_\_\_ Mont. \_\_\_, 706 P.2d 491 (1985), replaced the traditional invitee, licensee, and trespasser standards for measuring landowner liability with a single standard of reasonable care; and

WHEREAS, this single standard adopted by the Montana Supreme Court conflicts with the policy of restricted landowner liability established by the Legislature in sections 23-2-321 and 70-16-302, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-2-321, MCA, is amended to read:

**"23-2-321. Restriction on liability of landowner and supervisor.** (1) A person who makes recreational use of surface waters flowing over or

through land in the possession or under the control of another, pursuant to 23-2-302, or land while portaging around or over barriers or while portaging or using portage routes, pursuant to 23-2-311, is owed no duty by a landowner, his agent, or his tenant other than that provided in subsection (2).

(2) A landowner, his agent, or tenant is liable to a person making recreational use of waters or land described in subsection (1) only for an act or omission that constitutes willful or wanton misconduct.

(3) No supervisor or any member of the arbitration panel who participates in a decision regarding the placement of a portage route is liable to any person who is injured or whose property is damaged because of placement or use of the portage route except for an act or omission that constitutes willful and wanton misconduct."

Section 2. Section 27-1-701, MCA, is amended to read:

**"27-1-701. Liability for negligence as well as willful acts.** *Except as otherwise provided by law, everyone is responsible not only for the results of his willful acts but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person except so far as the latter has willfully or by want of ordinary care brought the injury upon himself.*"

Section 3. Section 70-16-302, MCA, is amended to read:

**"70-16-302. Restriction on liability of landowner or his agent or tenant.** *A person who makes recreational use of any property in the possession or under the control of another, with or without permission and without giving a valuable consideration therefor, does so without any assurance from the landowner, his agent, or his tenant that the property is safe for any purpose. The landowner, his agent, or his tenant owes the person no duty of care with respect to the condition of the property, except that the landowner, his agent, or his tenant is liable to such person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct.*"

Approved March 25, 1987.

## CHAPTER NO. 210

[HB 64]

AN ACT REQUIRING COMPETENCY TRAINING FOR PERSONS UNDER 18 YEARS OF AGE BEFORE PURCHASING A BOW AND ARROW HUNTING LICENSE; INCREASING THE BOW AND ARROW LICENSE FEE BY \$1; AMENDING SECTIONS 87-2-105 AND 87-2-708, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-2-105, MCA, is amended to read:

**"87-2-105. Safety instruction required.** (1) No hunting license may be issued to any resident person under the age of 18 years unless he

presents to the person authorized to issue such license a certificate of competency as provided by this section.

(2) No hunting license may be issued to any nonresident person under the age of 18 years unless he presents to the person authorized to issue such license a certificate of competency as provided in this section or a certificate verifying that he has successfully completed a course in the safe handling of firearms in any state or province.

(3) *No bow and arrow license may be issued to any resident or nonresident person under the age of 18 years unless he presents to the person authorized to issue such license a certificate of competency in the safe handling of bow hunting tackle, in addition to the certificate of competency in the safe handling of firearms.*

(4) *The department shall provide for a course of instruction in the safe handling of firearms and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate as an instructor any person it finds to be competent to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and shall issue a certificate of competency in the safe handling of firearms to any person successfully completing the course.*

(5) *The department shall provide for a course of instruction in the safe handling of bow hunting tackle and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give instructions in the handling of bow hunting tackle. A person so appointed shall give such course of instruction and shall issue a certificate of competency in the safe handling of bow hunting tackle to any person successfully completing the course."*

Section 2. Section 87-2-708, MCA, is amended to read:

**"87-2-708. Class A-2—special bow and arrow license.** A holder of a valid hunting license for which a special archery season is set by the department may receive, upon payment of an additional fee of \$7, a Class A-2 license which shall authorize the holder thereof to pursue, hunt, shoot, and kill with bow and arrow the game animals so authorized by the licenses held and to possess the carcass thereof during seasons and in areas, as designated by the department."

Section 3. **Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective March 1, 1988.

Approved March 25, 1987.

**CHAPTER NO. 211**

[HB 67]

AN ACT TO GENERALLY REVISE THE VIDEO DRAW POKER MACHINE CONTROL LAW OF 1985; AMENDING SECTIONS 23-5-605, 23-5-606, 23-5-608, 23-5-611, AND 23-5-613, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-5-605, MCA, is amended to read:

**“23-5-605. Powers and duties of the department — licensing.**

(1) The department shall administer the provisions of this part, except 23-5-615.

(2) The department shall adopt rules implementing this part, except 23-5-615, and, with respect to state licenses:

- (a) provide licensing procedures;
- (b) prescribe necessary application forms; and
- (c) grant or deny license applications.

(3) The department may not *suspend, revoke, deny, or place a condition on a license except for reasonable cause. Reasonable cause includes but is not limited to conviction of a violation of a local government gambling ordinance.*

(4) The department is a criminal justice agency, and designated employees and duly authorized department representatives are granted peace officer status with powers of search, seizure, and arrest to regulate and control those persons licensed under this part, except 23-5-615.”

Section 2. Section 23-5-606, MCA, is amended to read:

**“23-5-606. Description and specifications.** Each video draw poker machine must:

(1) be inspected in the state of Montana for certification and licensure by the department;

(2) be connected with a system consisting of player-operated terminals. The terminals must be intelligent devices operated by the players in the manner specified in this part.

(3) not have any switches, jumpers, wire posts, or any other means of manipulation that could affect the operation or outcome of a game;

(4) offer only the game of draw poker and have the following method of operation:

- (a) the cards must be shuffled after each hand of poker is dealt;
- (b) the game must have one memory location for each card in the deck. The deck must be shuffled by use of a random number generator to exchange each card in the deck with another randomly selected card.

- (c) after shuffling, five cards must be dealt from the top of the deck;
- (d) any discarded cards must be replaced by remaining cards in the deck, starting with the sixth card and using the cards in the order of the deck;
- (e) after the first five cards of a hand have been dealt, the player may be allowed to raise his wager up to the amount of his initial ante, not to exceed eight quarters;
- (f) the game must display the hands for which free games or credits will be awarded and the number of free games or credits for each hand;
- (g) the machine must have doors to two locking areas, one area containing the logic board and software for the game draw poker and the other housing the cash compartment and mechanical meters. These areas must be locking and separated. Access to one from the other must not be allowed at any time.
- (h) the machine must have two mechanisms, hereinafter referred to as "mechanism 1" and "mechanism 2", that accept quarters;
- (i) the machine must use a color display with images of cards that closely resemble standard poker playing cards;
- (j) the machine must be capable of printing a ticket voucher for the player at the completion of each game. If credits are owed the player, a *valid* ticket must contain:
  - (i) the name of the licensed establishment;
  - (ii) the name of the city, town, or county in which the licensed establishment is located;
  - (iii) the value of the prize in numbers;
  - (iv) the value of the prize in words;
  - (v) the time of day, in hours and minutes in a 24-hour format;
  - (vi) the date;
  - (vii) the machine license number or serial number up to eight digits;
  - (viii) the sequential number of the ticket voucher; and
  - (ix) an encrypted validation number from which the validity of the prize can be determined;
- (k) an exact copy of each printed ticket voucher must be printed and retained within the machine;
- (l) the machine must have nonresettable mechanical meters housed in a *readily accessible area* that keep a permanent record of:
  - (i) coins accepted by each coin acceptor;
  - (ii) credits played by player;
  - (iii) credits won by player; and



- (iv) credits printed out by the ticket voucher printer;
- (m) the machine must contain electronic metering, using meters that record the following and display them on the video screen:
  - (i) total coins in mechanism 1, total coins in mechanism 2, and total coins in mechanisms 1 and 2 combined;
  - (ii) total credits, total credits played, and total credits won;
  - (iii) total hands of poker played and total hands of poker won;
  - (iv) total winning hands, consisting of a pair, two pair, three of a kind, a straight, a flush, a full house, four of a kind, a straight flush, or five of a kind;
  - (v) total errors from the logic board random access memory; and
  - (vi) total examination of electronic meters;
- (n) the machine may not have any functions or parameters adjustable by or through any separate video display or input codes, except for the adjustment of features that are wholly cosmetic;
- (o) the machine must issue, by activation of an external switch, an accounting ticket containing a performance synopsis of the machine. The ticket must contain:
  - (i) the name of the licensed establishment;
  - (ii) the name of the city, town, or county in which the licensed establishment is located;
  - (iii) the license number of the machine;
  - (iv) the time of day, in hours and minutes in a 24-hour format;
  - (v) the date; and
  - (vi) the electronic meter readings required by subsection (4)(m); and
- (5) *have a serial number or other identification number permanently affixed to the machine by the manufacturer."*

Section 3. Section 23-5-608, MCA, is amended to read:

**"23-5-608. Limitation on amount of money played and value of prizes — payment of credits in cash.** (1) A machine may not allow more than \$2 to be played on a game or award free games or credits in excess of the value of \$100 per hand.

(2) *Each licensee shall pay in cash all credits owed to a player as shown on a valid ticket voucher provided in 23-5-606(4)(j)."*

Section 4. Section 23-5-611, MCA, is amended to read:

**"23-5-611. State license qualifications — limitations — right to hearing.** (1) (a) A person who has been granted a license under 16-4-401(2) to sell alcoholic beverages for consumption on the premises

may be granted a license for the placement of video draw poker machines in his licensed establishment.

*(b) Each applicant for a license shall on the application form disclose to the department any previous experience or involvement as an owner or operator of gambling devices and establishments. Previous experience or involvement includes:*

- (i) controlling of gambling devices as an owner or operator;*
- (ii) employment with the owner or operator of gambling devices;*
- (iii) employment in establishments where gambling is offered to the public; and*
- (iv) conviction of violation of state or local gambling laws in any jurisdiction.*

(2) A licensee may not have on the premises or make available for play on the premises of his licensed establishment more than five machines.

(3) A person denied a state license has the right to a hearing before the department. The hearing must be conducted in accordance with the provisions of the Montana Administrative Procedure Act."

Section 5. Section 23-5-613, MCA, is amended to read:

**"23-5-613. Investigations and violations.** (1) The department or duly authorized department representatives shall make necessary investigations, suspend or revoke state licenses for violations of this part, except 23-5-615, and hold hearings on such matters. A license may be suspended prior to a hearing upon a finding of danger to public health and welfare but may not be revoked until the hearing is completed.

(2) A violation of this part, except 23-5-615, or a rule promulgated under 23-5-605 is a criminal offense, and a fine not to exceed \$10,000 for the first violation and \$15,000 for a subsequent violation must be imposed.

(3) If a video draw poker machine is operated in violation of this part, except 23-5-615, it may be seized under 23-5-121 and the provisions of 23-5-122 apply.

(4) Employees of the department or duly authorized department representatives designated as enforcement agents may investigate the background of license applicants to the extent judged necessary by the department, but no person may be investigated prior to his submission of an application for a license.

(5) (a) Findings of suspected illegal activity must be reported to the appropriate law enforcement agency.

*(b) The clerk of the court shall, upon final judgment of conviction of a licensee, report to the department the name of the licensee convicted of violating a local gambling ordinance.*

*(c) On receipt of such report, the department may commence proceedings to revoke or suspend the licensee's video poker license.*

(6) Any peace officer of this state may arrest a person for tampering with a video draw poker machine, attempting or conspiring to manipulate the outcome or the payoff of a video draw poker machine, or manipulating the outcome or payoff of a video draw poker machine by physical tampering or other interference with the proper functioning of the machine."

**Section 6. Removal of machine from public access.** If a machine fails to meet the specifications and requirements of 23-5-606, 23-5-607, or 23-5-608 at any time after initial licensure, the licensee shall immediately remove the machine from public access until it meets all requirements.

**Section 7. Penalties — hearing.** If the department determines after a hearing conducted pursuant to the Montana Administrative Procedure Act that a person licensed under this part has violated any of the provisions of this part or the department's rules, the department may, in addition to the other penalties prescribed:

- (1) suspend the license for a period of not more than 180 days;
- (2) impose a civil penalty not to exceed \$6,000;
- (3) revoke the license;
- (4) deny renewal of the license on expiration thereof; or
- (5) impose a combination of any two of the penalties set forth in subsections (1) through (4).

**Section 8. Judicial review of agency decision.** (1) Any interested party has the right to judicial review of a final decision of the department concerning the grant, denial, renewal, revocation, or suspension of a license required under this part.

(2) A petition for judicial review must conform to the provisions of Title 2, chapter 4, part 7.

**Section 9. Codification instruction.** Sections 6 through 8 are intended to be codified as an integral part of Title 23, chapter 5, part 6, and the provisions of Title 23, chapter 5, part 6, apply to sections 6 through 8.

**Section 10. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 11. Effective date.** This act is effective on passage and approval.

Approved March 25, 1987.

**CHAPTER NO. 212**

[HB 81]

AN ACT CONFORMING MONTANA LAW WITH THE OMNIBUS BUDGET RECONCILIATION ACT OF 1984 BY PROVIDING THAT CHILD SUPPORT ORDERS, WHETHER ESTABLISHED BY ADMINISTRATIVE OR JUDICIAL PROCESS, MAY ONLY BE PROSPECTIVELY MODIFIED; PROVIDING THAT A MODIFICATION OF SUPPORT MAY BE EFFECTIVE ONLY FOR INSTALLMENTS ACCRUING SUBSEQUENT TO ACTUAL NOTICE OF THE MOTION FOR MODIFICATION; AMENDING SECTIONS 40-4-208 AND 40-5-227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-4-208, MCA, is amended to read:

**"40-4-208. Modification and termination of provisions for maintenance, support, and property disposition.** (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to *actual notice to the parties of the motion for modification.*

(2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable; or

(ii) upon written consent of the parties.

(3) The provisions as to property disposition may not be revoked or modified by a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances."

Section 2. Section 40-5-227, MCA, is amended to read:

**"40-5-227. Filing and docketing of final orders — orders effective as district court decrees.** (1) An abstract of any final administrative order under this chapter may be filed in the office of the clerk of the district court of any county of Montana. The order, if approved, must be docketed in the judgment docket of the district court. The properly filed and docketed order has all the force, effect, and attributes of a docketed order or decree of the district court, including but not limited to lien effect and enforceability by supplemental proceedings, writs of execution, and contempt of court proceedings.

(2) A final administrative order that determines and sets periodic support payments in the absence of a district court order, when filed and docketed under this section, may be modified by a district court order only as to installments accruing after *actual notice to the parties* of any motion for modification. The standard for any such modification is that set forth in 40-4-208.

(3) The department may issue a warrant for distraint based upon a properly filed and docketed order pursuant to 40-5-241."

Section 3. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.

## CHAPTER NO. 213

[HB 130]

AN ACT CLARIFYING THE LIABILITY OF INSURERS WHEN A WORKER IS CERTIFIED UNDER THE SUBSEQUENT INJURY FUND; AND AMENDING SECTIONS 39-71-907 AND 39-71-909, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-71-907, MCA, is amended to read:

**"39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter — insurer liability for compensation limited.** A person certified as vocationally handicapped who receives a personal injury arising out of and in the course of his employment and resulting in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of his death resulting from such injury, the compensation must be paid to his beneficiaries or dependents. The liability of the *insurer* for payment of medical and burial *benefits* as provided in this chapter is limited to those benefits *arising from services rendered* during the period of 104 weeks after

the date of injury. *The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid.* Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund."

Section 2. Section 39-71-909, MCA, is amended to read:

**"39-71-909. Effect of fund's failure to give notification of its intent to dispute liability — subsequent notification by fund authorized.** If the fund does not notify the *insurer* of its intent to dispute the payment of compensation, medical, and burial benefits, the *insurer* shall continue to make payments on behalf of the fund and shall be reimbursed by the fund for all benefits paid *in excess of the insurer's liability*. However, at any time subsequent to 104 weeks after the date of injury, the fund may notify the *insurer* of a dispute as to payment of benefits. The liability of the fund to reimburse the *insurer* shall be suspended 30 days thereafter until the controversy is determined."

Section 3. **Extension of authority.** Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 25, 1987.

## CHAPTER NO. 214

[HB 267]

### AN ACT IMPOSING A DUTY TO WARN POTENTIAL VICTIMS OF A PATIENT'S VIOLENT BEHAVIOR AND GRANTING IMMUNITY FROM LIABILITY UNDER CERTAIN CIRCUMSTANCES TO MENTAL HEALTH PROFESSIONALS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definition.** As used in [sections 1 through 3], "mental health professional" means:

- (1) a certified professional person as defined in 53-21-106;
- (2) a physician licensed under Title 37, chapter 3;
- (3) a professional counselor licensed under Title 37, chapter 23;
- (4) a psychologist licensed under Title 37, chapter 17; or
- (5) a social worker licensed under Title 37, chapter 22.

Section 2. **Duty to warn of violent behavior.** A mental health professional has a duty to warn of or take reasonable precautions to provide protection from violent behavior only if the patient has communicated to the mental health professional an actual threat of physical violence by specific means against a clearly identified or reasonably identifiable victim. The duty is discharged by a mental health professional if he has:

(1) made reasonable efforts to communicate the threat to the victim and notify the law enforcement agency closest to the patient's or the victim's residence of the threat of violence; and

(2) supplied a requesting law enforcement agency with any information he has concerning the threat of violence.

**Section 3. Immunity from liability.** (1) No monetary liability and no cause of action may arise against any mental health professional for failing to predict, warn of, or take precautions to provide protection from a patient's threatened violent behavior unless he has a duty to warn of violent behavior, as provided in [section 2].

(2) No monetary liability and no cause of action may arise against any mental health professional for disclosing confidential or privileged information in an effort to discharge a duty arising under [section 2].

**Section 4. Codification instruction.** Sections 1 through 3 are intended to be codified as an integral part of Title 27, chapter 1, and the provisions of Title 27, chapter 1, apply to sections 1 through 3.

Approved March 25, 1987.

## CHAPTER NO. 215

[HB 335]

AN ACT AUTHORIZING A PRIVATE PARKING SERVICE TO ENTER INTO AN AGREEMENT WITH A LOCAL GOVERNMENT FOR ENFORCEMENT OF PARKING REGULATIONS; ALLOWING CERTAIN FORMS OF IMPOUNDING MOTOR VEHICLES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Private parking services — parking citations.** (1) As used in this section, the following definitions apply:

(a) "Local government" means a municipality, if the private parking service operates parking services within a municipality, or a county, if such services are not operated within a municipality.

(b) "Private parking service" means the service of providing areas for parking motor vehicles, as defined in 61-1-102, by the general public for compensation and includes such services conducted:

(i) on private property; or

(ii) on public property under contract or agreement with the local government.

(2) A local government may by ordinance allow a private parking service to impound a motor vehicle. A motor vehicle may not be impounded by attaching a device that makes the motor vehicle immobile.

(3) A private parking service may enter into an agreement with the local government to authorize employees of the private parking service to issue citations for parking violations as defined by state, municipal, or county laws, which occur within the boundaries of the private parking service's parking areas. All such citations must be considered within the jurisdiction of the local government and must be handled in the same manner as citations issued by peace officers thereof.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 25, 1987.

## CHAPTER NO. 216

[HB 452]

AN ACT TO ALLOW A MUNICIPALITY TO CORRECT AN ERRONEOUS DESCRIPTION OF ITS MANNER OR TIME OF ELECTION; AMENDING SECTIONS 13-1-104 AND 13-1-107, MCA; AND PROVIDING AN APPLICABILITY DATE, AN IMMEDIATE EFFECTIVE DATE, AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Erroneous statutory basis — historical use of nonpartisan elections.** A municipality with the statutory basis provided in 7-3-113, but which conducts its elections in a nonpartisan manner and did so prior to the enactment of 7-3-113, may by adoption of a resolution provide that the municipality is described under 7-3-113, except that 7-3-113(1)(k) does not apply and 7-3-219(2) does apply to the municipality. The resolution must be adopted prior to October 1, 1989. A copy of the resolution must be sent to the secretary of state.

Section 2. Section 13-1-104, MCA, is amended to read:

**"13-1-104. Times for holding general elections.** (1) A general election shall be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November to vote on ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, unless an earlier date is provided in a law authorizing a special election on an initiative or referendum pursuant to Article III, section 6, and to elect federal officers, state or multicounty district officers, members of the legislature, judges of the district court, and county officers when the terms of such offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(2) A general election shall be held throughout the state in every odd-numbered year on the first Tuesday after the first Monday in November to elect municipal officers, officers of political subdivisions wholly within one county and not required to hold annual elections, and any other officers specified by law for election in odd-numbered years when the term for the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.



(3) The general election for any political subdivision, *other than a municipality*, required to hold elections annually shall be held on school election day, the first Tuesday of April of each year, and is subject to the election procedures provided for in 13-1-401.

(4) *The general election for a municipality required to hold elections annually may be held either on school election day as provided in subsection (3) or on the first Tuesday after the first Monday in November, at the discretion of the governing body.*"

Section 3. Section 13-1-107, MCA, is amended to read:

**"13-1-107. Times for holding primary elections.** (1) On the first Tuesday after the first Monday in June preceding the general election provided for in 13-1-104(1), a primary election shall be held throughout the state.

(2) On the Tuesday following the second Monday in September preceding the general election provided for in 13-1-104(2), a primary election, if required, shall be held throughout the state.

(3) *If the general election for a municipality required to hold annual elections is held in November, as provided in 13-1-104(4), a primary election, if required, shall be held on the Tuesday following the second Monday in September. In an even-numbered year, the cost of this election must be paid by the municipality.*"

Section 4. **Applicability.** Sections 2 and 3 apply to municipal elections held after the effective date of this act.

Section 5. **Termination date.** Section 1 terminates October 1, 1989.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved March 25, 1987.

## CHAPTER NO. 217

[HB 21]

AN ACT RAISING THE LEGAL DRINKING AGE FROM 19 TO 21; ALLOWING THOSE PERSONS OF LEGAL DRINKING AGE TO CONTINUE TO DRINK; RETURNING THE LEGAL DRINKING AGE TO 19 IF THE UNITED STATES CONGRESS REPEALS OR REMOVES OR A FINAL JUDGMENT INVALIDATES THE PROVISION OF FEDERAL LAW REQUIRING STATES TO RAISE THE AGE TO 21 OR LOSE A PORTION OF FEDERAL HIGHWAY FUNDS; AMENDING SECTIONS 16-3-301, 16-6-305, 16-6-314, 45-5-623, AND 45-5-624, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 16-3-301, MCA, is amended to read:

**"16-3-301. Unlawful purchases, sales, or deliveries.** (1) It shall be unlawful for a licensed retailer to purchase or acquire beer from anyone except a brewer or wholesaler licensed under the provisions of this code.

(2) It shall be unlawful for any licensee, his or her employee or employees, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

- (a) any person under 21 years of age;
- (b) any intoxicated person or any person actually, apparently, or obviously intoxicated.

(3) Any person under 21 years of age or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining an alcoholic beverage from such licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in 45-5-624; provided, however, that nothing herein contained shall be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.

(4) It shall be further mandatory under the provisions of this code that all licensees display in a prominent place in their premises a placard as issued by the department stating fully the consequences for violations of the provisions of this code by persons under 21 years of age."

Section 2. Section 16-6-305, MCA, is amended to read:

**"16-6-305. Age limit for sale of alcoholic beverages.** (1) Except in the case of an alcoholic beverage given to a person under 21 years of age by his parent or guardian for beverage or medicinal purposes or administered to him by his physician or dentist for medicinal purposes or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply an alcoholic beverage to any person under 21 years of age or permit any person under that age to consume an alcoholic beverage.

(2) Any person shall be guilty of a misdemeanor who:

(a) invites a person under the age of 21 years into a public place where an alcoholic beverage is sold and treats, gives, or purchases an alcoholic beverage for such person;

(b) permits such person in a public place where an alcoholic beverage is sold to treat, give, or purchase liquor for him; or

(c) holds out such person to be 21 years of age or older to the owner of the establishment or his or her employee or employees.

(3) It is unlawful for any person to fraudulently misrepresent his or her age to any dispenser of alcoholic beverages or to falsely procure any identification card or to alter any of the statements contained in any identification card."

Section 3. Section 16-6-314, MCA, is amended to read:

**"16-6-314. Penalty for violating code — revocation of license — penalty for violation by underage person.** (1) A person who violates a provision of this code is guilty of a misdemeanor punishable as provided in 46-18-212, except as is herein otherwise provided.

(2) If a retail licensee is convicted of an offense under this code, his license shall be immediately revoked or, in the discretion of the department, such other sanction imposed as may be authorized under 16-4-406.

(3) A person under 21 years of age who violates 16-3-301(3) or 16-6-305(3) is subject to the penalty provided in 45-5-624(2)."

Section 4. Section 45-5-623, MCA, is amended to read:

**"45-5-623. Unlawful transactions with children.** (1) A person commits the offense of unlawful transactions with children if he knowingly:

(a) sells or gives explosives to a child under the age of majority except as authorized under appropriate city ordinances;

(b) sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;

(c) sells or gives alcoholic beverages to a person under 21 years of age; or

(d) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian.

(2) A person convicted of the offense of unlawful transactions with children shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined not to exceed \$1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 5. Section 45-5-624, MCA, is amended to read:

**"45-5-624. Unlawful possession of an intoxicating substance — interference with sentence or court order.** (1) A person under the age of 18 years commits the offense of possession of an intoxicating substance if he knowingly has in his possession an intoxicating substance other than an alcoholic beverage. A person under the age of 21 commits the offense of possession of an intoxicating substance if he knowingly has in his possession an alcoholic beverage, except that he does not commit the offense when in the course of his employment it is necessary to possess alcoholic beverages.

(2) A person convicted of the offense of possession of an intoxicating substance shall:

(a) be fined not to exceed \$50;

(b) be ordered to complete and, if financially able, pay all costs of his participation in a community-based substance abuse information course;

(c) have his driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if he was driving or otherwise in actual physical control of a motor vehicle when the offense occurred; or

(d) be sentenced to any combination of these penalties.

(3) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when he failed to comply must be transferred to the youth court. If proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do not apply. If proceedings for violation of subsection (1) or for failure to comply with a sentence are held in the youth court, the offender shall be treated as an alleged youth in need of supervision as defined in 41-5-103(13). In such case, the youth court may enter its judgment under 41-5-523.

(4) A person commits the offense of interference with a sentence or court order if he purposely or knowingly causes his child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined \$100 or imprisoned in the county jail for 10 days, or both."

**Section 6. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 7. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 8. Applicability.** The provisions of this act do not apply to persons who were born on or between April 1, 1966, and April 1, 1968.

**Section 9. Effective date — contingent termination date.** (1) This act is effective April 1, 1987.

(2) If the United States congress repeals or removes or a final judgment invalidates the provisions of federal law that require states to raise the legal age for purchasing and possessing alcoholic beverages to 21 as a condition of full receipt of federal highway funds, the governor of Montana shall immediately certify the fact of the repeal, removal, or invalidation to the secretary of state of Montana. This act terminates on the date of such certification.

Approved March 26, 1987.

## CHAPTER NO. 218

[SB 14]

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII, SECTION 13, OF THE MONTANA CONSTITUTION TO REMOVE CERTAIN CONSTRAINTS ON INVESTMENT OF PUBLIC FUNDS AND PROVIDE FOR INVESTMENT AS AUTHORIZED BY THE LEGISLATURE; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Article VIII, section 13, of The Constitution of the State of Montana is amended to read:

"Section 13. **Investment of public funds.** (1) The legislature shall provide for a unified investment program for public funds and provide rules

therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) *The unified investment program shall be administered as provided by law."*

**Section 2. Effective date.** If approved by the electorate, this amendment is effective January 1, 1989.

**Section 3. Submission to electorate.** This amendment shall be submitted to the electors of Montana at the general election to be held November 8, 1988, by printing on the ballot the full title of this act and the following:

- ☐ FOR removing constraints on investment of public funds and allowing investment as authorized by the legislature.
- ☐ AGAINST removing constraints on investment of public funds and allowing investment as authorized by the legislature.

Approved March 26, 1987.

## CHAPTER NO. 219

[SB 6]

### AN ACT PROVIDING FOR ORGAN DONATION REQUESTS IN HOSPITALS UNDER CERTAIN CIRCUMSTANCES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. When organ donation may be requested.** (1) When, based on generally accepted medical standards, a hospital patient is a suitable candidate for organ or tissue donation and has not made an anatomical gift as provided in this part, the hospital administrator or his designated representative shall request the person authorized in 72-17-201 to donate all or any part of the decedent's body as an anatomical gift. Requests shall be made in order of priority stated in 72-17-201 when persons in prior classes are not available at the time of death.

(2) Donation of all or part of the decedent's body may not be requested:

(a) if the hospital administrator or his designated representative:

(i) has actual notice of opposition to the gift by the decedent or a person in the class authorized to make a gift under 72-17-201; or

(ii) has reason to believe that an anatomical gift is contrary to the decedent's religious beliefs; or

(b) if there are medical or emotional conditions under which the request would contribute to severe emotional distress.

(3) When a request is made pursuant to this section, the request and its disposition must be noted in the patient's medical record and documented as provided in 72-17-204(3).

**Section 2. Immunity from liability.** A person who acts in good faith in accordance with the terms of [section 1] is not liable for damages in any civil proceeding or subject to prosecution in any criminal proceeding that might result from this action.

**Section 3. Organ procurement program required.** The administrator of a hospital licensed under this chapter shall as a condition of licensure under 50-5-201:

(1) establish a written protocol for the identification of potential organ donors that:

(a) assures that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline;

(b) encourages discretion and sensitivity with respect to the circumstances, views, and beliefs of families of potential organ donors; and

(c) requires that a qualified organ procurement agency be notified of potential organ donors;

(2) designate and train a person or persons to represent him for purposes of requesting an anatomical gift as provided in [section 1]; and

(3) make known to the public that the hospital has an organ procurement program as described in subsection (1).

**Section 4. Codification instruction.** (1) Sections 1 and 2 are intended to be codified as an integral part of Title 72, chapter 17, part 2, and the provisions of Title 72, chapter 17, apply to sections 1 and 2.

(2) Section 3 is intended to be codified as an integral part of Title 50, chapter 5, part 2, and the provisions of Title 50, chapter 5, apply to section 3.

**Section 5. Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of section 3 is extended to the provisions of section 3.

Approved March 27, 1987.

## CHAPTER NO. 220

[SB 73]

AN ACT REGULATING USES OF A CARDTROL, KEYLOCK, OR SIMILAR DEVICE FOR DELIVERY OF SPECIAL FUELS FROM UNATTENDED PUMPS; AMENDING SECTIONS 15-70-201 AND 15-70-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-70-301, MCA, is amended to read:

**"15-70-301. Definitions.** As used in this part, the following definitions shall apply:

(1) "Bond" means:

(a) a bond duly executed by a special fuel dealer or special fuel user as principal with a corporate surety qualified under the laws of Montana, which bond shall be payable to the state of Montana, conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of such special fuel dealer or special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel dealer or special fuel user, under such terms and conditions as the department of revenue may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(2) "*Cardtrol*" or "*keylock*" means any unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(3) "Department" means the department of revenue.

(4) "Motor vehicle" means any vehicle which is self-propelled upon the highways.

(5) "Person" means and includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation; whenever used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, means and includes the partners or members thereof and, as applied to joint-stock companies and corporations, the officers thereof.

(6) "Public roads and highways of this state" shall mean all streets, roads, highways, and related structures as have been or shall be built and maintained with appropriated funds of the United States and which have been or shall be built and maintained with funds of the state of Montana or any political subdivision thereof or which have been or shall be dedicated to public use or have been acquired by eminent domain or have been acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(7) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles propelled upon the public highways or streets within the state of Montana. The term includes compressed natural gas.

(8) "Special fuel dealer" means any person in the business of handling special fuel who delivers any part thereof into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him or any person who *sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device or who provides any facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by such dealer.* For this purpose the term

"fuel supply tank or tanks" does not include cargo tanks even though fuel is withdrawn directly therefrom for propulsion of the vehicle.

(9) "Special fuel user" means any person other than a county, incorporated city or town, or school district of this state who consumes in this state special fuel for the propulsion of motor vehicles owned or controlled by him upon the highways of this state.

(10) "Use" means either the receipt, delivery, or placing of special fuels by a special fuel dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him while such vehicle is within this state or the consumption by a special fuel user of special fuels in propulsion of a motor vehicle on the highways of this state."

**Section 2. Affidavit required of cardtrol or keylock purchaser — inspection by department.** (1) A person who uses a cardtrol, keylock, or similar device to obtain delivery of special fuel tax free from an unattended pump or dispensing unit shall sign and furnish to the special fuel dealer an affidavit, on a form prescribed and furnished by the department, stating the type of equipment in which the special fuel will be placed and stating that no special fuel will be placed into the supply tank of a motor vehicle to be operated on the public roads and highways of this state.

(2) The special fuel dealer shall keep all such affidavits and make them available for inspection by the department.

**Section 3. Displaying notice on cardtrol or keylock pumps.** A special fuel dealer shall display, in a prominent location on each unattended pump or dispensing unit from which special fuel may be obtained by use of a cardtrol, keylock, or similar device, a notice to be furnished by the department and in language prescribed by the department of the penalties provided for violation of this part.

**Section 4.** Section 15-70-201, MCA, is amended to read:

**"15-70-201. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person whose major endeavor and primary source of earned income is from the business of farming or ranching.

(2) "Aviation dealer" means any person in this state engaged in the business of selling aviation gasoline, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as herein provided for.

(3) "Aviation gasoline" means gasoline or any other liquid fuel by whatsoever name such liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all such gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.



(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks thereat or gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks thereat or gasoline imported into this state and placed in storage at refineries or pipeline terminals shall be deemed to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from such tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from such tanks, refinery, or terminal, such gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, shall be deemed to be "distributed" after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) any person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) any person who imports gasoline for sale, use, or distribution;

(c) any person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) any dealer licensed as of January 1, 1969, except a dealer at an established airport;

(e) any person in Montana who blends alcohol with gasoline.

(7) "Export" means export as defined in 15-70-503.

(8) "Gasohol" means all products commonly or commercially known or sold as gasohol, used for the purpose of effectively and efficiently operating internal combustion engines, consisting of not less than 10% anhydrous ethanol produced in Montana from Montana agricultural products, including Montana wood or wood products.

(9) "Gasoline" includes all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation gasoline, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Gasoline does not include special fuels as defined in 15-70-301.

(10) "Import" shall include and mean to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of any gasoline shipped or transported into this state from point of origin without this state other than in the fuel supply tank of a motor vehicle.

(11) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(12) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(13) "Use" shall include and mean the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision thereof."

**Section 5. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 6. Codification instruction.** Sections 2 and 3 are intended to be codified as an integral part of Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 3, apply to sections 2 and 3.

**Section 7. Effective date.** Section 5 and this section are effective on passage and approval.

Approved March 27, 1987.

## CHAPTER NO. 221

[SB 130]

AN ACT ALLOWING PARIMUTUEL BETTING AT MONTANA TRACKS ON CERTAIN SIMULCAST OR TELEVISED HORSE RACES OF NATIONAL INTEREST THAT ARE HELD ON THE DAY OF A MONTANA RACE HELD AND LICENSED UNDER MONTANA LAW; AMENDING SECTION 23-4-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 23-4-301, MCA, is amended to read:

**"23-4-301. Parimutuel betting — other betting illegal.** (1) It is unlawful to make, report, record, or register a bet or wager on the result of a contest of speed, skill, or endurance of an animal, whether the contest is held within or outside of this state, except under this chapter.

(2) A licensee conducting a race meet under this chapter may provide a place in the race meet grounds or enclosure where the licensee may conduct or supervise the use of the parimutuel system by patrons on the result of the races conducted under this chapter and the rules of the board.

(3) *A person licensed under this chapter to hold a race meet may, on the day a race meet is conducted, also provide a place in the race meet grounds or enclosure where the licensee may conduct or supervise the use of the parimutuel system by patrons on the results of the following simulcast or televised races:*

(a) *the Kentucky derby;*

(b) *the preakness;*

- (c) *the belmont;*
- (d) *the travers;*
- (e) *the all-American futurity;*
- (f) *the arlington million; and*
- (g) *the Marlboro cup.*

(4) It is unlawful to conduct pool selling, bookmaking, or to circulate handbooks or to bet or wager on a race of a licensed race meet, other than by the parimutuel system and in the race meet grounds or enclosure where the race is held, or to permit a minor to use the parimutuel system."

**Section 2. Extension of authority.** Any existing authority of the board of horseracing to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.

## CHAPTER NO. 222

[SB 174]

AN ACT TO ALLOW A SCHOOL DISTRICT TO MAKE PAYMENT ON A LEGAL BONDED DEBT IN THE CURRENT SCHOOL FISCAL YEAR; AMENDING SECTION 20-9-133, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-9-133, MCA, is amended to read:

**"20-9-133. Adoption and expenditure limitations of final budget.** (1) When the trustees have caused the amount of an item of the budget for the district to be determined and set, they shall enter the amount in the portion of the budget form provided for the reporting of the final budget and upon completion of all the items, the chairman and clerk shall sign the budget form. The resulting budget shall constitute the final budget and the appropriations for the district for the current school fiscal year.

(2) *Except as provided in subsection (3), the trustees and all officers and employees of the district shall be limited in making expenditures or incurring liabilities to the amount of such appropriations, except that transfers from any appropriation item to another appropriation item within a fund's budget may be made as provided by law. Except as provided in subsection (3), expenditures made, liabilities incurred, or warrants issued in excess of any of the final budget appropriations for any item, as originally determined or as revised by transfer, shall not be a liability of the district, and no money of the district shall ever be used to pay the same.*

(3) *If a district incurs a legal bonded debt payment after the final debt service fund budget for the current fiscal year has been adopted and if payment on the debt is required for the current fiscal year, payment on the debt in the current school fiscal year is allowed if money is available."*

**Section 2. Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.

## CHAPTER NO. 223

[SB 185]

AN ACT ESTABLISHING AN OFFICE OF LEGAL AND LONG-TERM CARE OMBUDSMAN SERVICES; SPECIFYING THE OMBUDSMAN'S POWERS AND DUTIES; PROVIDING FOR THE OMBUDSMAN'S ACCESS TO LONG-TERM CARE FACILITIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Purpose.** The legislature finds that many disabled and elderly Montana citizens reside in long-term care facilities in Montana and because of their isolated and vulnerable condition are dependent on others for care and protection. It is the intent of the legislature that, contingent on receipt of federal funds for the purpose, the office of legal and long-term care ombudsman services:

- (1) monitor the quality of care and life for residents of long-term care facilities;
- (2) develop and coordinate legal services for elderly citizens; and
- (3) through necessary investigations, reports, and corrective action, ensure that a good quality of care and life be maintained for residents of long-term care facilities.

**Section 2. Definitions.** In [sections 1 through 5], the following definitions apply:

- (1) "Local ombudsman" means a person officially designated by the long-term care ombudsman to act as his local representative.
- (2) "Long-term care facility" means a facility or part thereof that provides skilled nursing care, intermediate nursing care, or personal care, as these terms are defined in 50-5-101.
- (3) "Long-term care ombudsman" means the individual appointed under 42 U.S.C. 3027(a)(12) to fulfill the federal requirement that the state provide an advocate for residents of long-term care facilities.

**Section 3. Office of legal and long-term care ombudsman services.** Contingent on receipt of federal funds for the purpose, there is an

office of legal and long-term care ombudsman services in the department of social and rehabilitation services. As required by the Older Americans Act of 1965, as amended (42 U.S.C. 3001, et seq.), and the regulations adopted pursuant thereto, the office:

(1) serves as an advocate for Montana citizens residing in long-term care facilities, regardless of their age or source of payment for care, to ensure that their rights are protected, that they receive quality care, and that they reside in a safe environment; and

(2) coordinates legal services for the elderly.

**Section 4. Access to long-term care facilities.** (1) The long-term care ombudsman or local ombudsman shall have access without advance notice to any long-term care facility, including private access to any resident, for the purpose of meeting with residents, investigating and resolving complaints, and advising residents on their rights.

(2) Access must be granted to the long-term care ombudsman or local ombudsman during normal visiting hours (9 a.m. to 6 p.m.) and to the long-term care ombudsman at any time he considers necessary to perform the duties described in [section 3].

(3) The ombudsman shall carry out the duties described in [section 3] in a manner that is least disruptive to resident care and activities.

**Section 5. Enforcement of access.** (1) A person who violates the provisions of [section 4] is subject to a civil penalty not to exceed \$1,000. Each day of violation constitutes a separate violation. The department of health and environmental sciences or, upon request of that department, the county attorney of the county in which the long-term care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty must be deposited in the state general fund.

(2) The department of health and environmental sciences or, upon request of that department, the county attorney of the county in which the long-term care facility in question is located may bring an action to enjoin a violation of any provision of [section 4] in addition to or exclusive of the remedy in subsection (1).

**Section 6. Codification instruction.** Sections 1 through 5 are intended to be codified as an integral part of Title 53, chapter 5, and the provisions of Title 53, chapter 5, apply to sections 1 through 5.

**Section 7. Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of sections 4 and 5 is extended to the provisions of sections 4 and 5.

**Section 8. Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.

**CHAPTER NO. 224**

[SB 206]

AN ACT TO CHANGE THE DISTRICT RESIDENCY REQUIREMENT FOR ELECTION AS A COUNTY COMMISSIONER FROM 2 YEARS PRIOR TO CANDIDACY TO RESIDENCY AT THE TIME OF THE FILING AS A CANDIDATE FOR THE PRIMARY ELECTION; AND AMENDING SECTION 7-4-2104, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-4-2104, MCA, is amended to read:

**"7-4-2104. Commissioners to be elected by district.** (1) At each general election, the member or members of the board of county commissioners to be elected shall be selected from the residents and electors of the district or districts in which the vacancy occurs, but the election of such member or members of the board shall be submitted to the entire electorate of the county.

(2) No one shall be elected as a member of said board who has not resided in *the county* for at least 2 years next preceding the time when he shall become a candidate for said office *and was not a resident of the district at the time of filing for the primary election.*"

Approved March 27, 1987.

**CHAPTER NO. 225**

[SB 214]

AN ACT REQUIRING THE CONSENT OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES OR A LICENSED ADOPTION AGENCY BEFORE A PARENTAL RELINQUISHMENT MAY BE EXECUTED; AMENDING SECTION 40-6-135, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-6-135, MCA, is amended to read:

**"40-6-135. Relinquishment of parental rights — form, execution, and revocation.** (1) Any parent or guardian who proposes to relinquish custody of a child for purposes of placing the child for adoption may do so by executing a relinquishment by which all parental rights to the child are voluntarily relinquished to the *department of social and rehabilitation services* or a licensed adoption agency. *A parent may not execute a relinquishment to the department or a licensed adoption agency unless the department or the agency has agreed to accept custody of the child until the child is adopted.*

(2) Except as otherwise provided in this section, a relinquishment shall be by a separate instrument executed before a notary public.

(3) If the person from whom a relinquishment is required is a member of any of the armed services or is in prison, the relinquishment may be executed and acknowledged before any person authorized by law to administer oaths.

(4) If the relinquishment is executed in another state or country, the court having jurisdiction over the adoption proceeding in this state shall determine whether the relinquishment was executed in accordance with the laws of that state or country and may not proceed unless it finds that the relinquishment was so executed.

(5) Upon the filing of a properly and voluntarily executed relinquishment of a child by a parent or guardian, the court shall immediately issue an order terminating the rights of that parent or guardian to that child. If the rights of both parents, the surviving parent, or the guardian have been terminated *and if the department of social and rehabilitation services or a licensed adoption agency has agreed to accept custody of the child until the child is adopted*, the court shall issue an order committing the child to the department or to the licensed adoption agency to which the relinquishment was given.

(6) Entry of an order terminating the rights of both parents pursuant to subsection (5) terminates the jurisdiction of the district court over the child in any divorce or separate maintenance action.

(7) Upon petition of a person who executed a relinquishment and of the *department of social and rehabilitation services or the licensed adoption agency to which the child was relinquished*, the court with which the relinquishment was filed may grant a hearing to consider whether the relinquishment should be revoked. A relinquishment may not be revoked if the child has been placed for adoption. A verbatim record of testimony related to the petition shall be made."

**Section 2. Applicability.** This act applies to relinquishments executed on or after the effective date of this act.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.

## CHAPTER NO. 226

[SB 231]

AN ACT ALLOWING A NEW HIGH SCHOOL DISTRICT A TIME PERIOD OF 2 YEARS IN WHICH TO OPEN AND OPERATE A SCHOOL BEFORE THE ORDER TO CREATE THE DISTRICT IS VOID AND THE DISTRICT CEASES TO EXIST; AMENDING SECTION 20-6-325, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-6-325, MCA, is amended to read:

**"20-6-325. Procedure for creation of new high school district out of existing districts — limitation for creation.** (1) To create a

new high school district, a petition requesting the creation of a new high school district out of the territory of an existing high school district or districts must be addressed to the county superintendent and must:

(a) describe the territory that is requested to be incorporated in the new district and the taxable value of such territory as shown by the last completed assessment roll;

(b) state the reasons why the creation of a new district is requested; and

(c) be signed by the parents or guardians of not less than 50 children who are at least 14 years old but less than 18 years old and who reside in the territory that would be included in the new district and who reside more than 20 miles over the shortest practical route from an operating high school.

(2) When a county superintendent receives a valid petition requesting the creation of a new district, he shall:

(a) file such petition;

(b) set a hearing place, date, and time for consideration of the petition that is not more than 40 days after the receipt of the petition; and

(c) give notice of the place, date, and time of the hearing. Notices must be posted in the high school districts affected by the request in the manner prescribed in 20-20-204 for school elections, with at least one such notice posted in the territory to be included in the new district.

(3) The county superintendent shall conduct the hearing as scheduled unless before or at the time of the hearing he receives a protest petition signed by a majority of the electors of the proposed new district who are qualified to vote under the provisions of 20-20-301. A valid protest petition conclusively denies the creation of a new district. If a hearing is conducted, any resident or taxpayer of the affected districts must be heard. If the county superintendent considers it advisable and in the best interests of the residents of the proposed new district, he shall grant the petitioned request and order the creation of a new district with its boundaries coinciding with the boundaries defined in the petition. Otherwise, he shall by order deny the request. In the order creating the new district, the effective date for its creation must be the following July 1.

(4) The county superintendent's order may be appealed to the superintendent of public instruction within 30 days after the date of such order. An appeal must be in writing and be signed by not less than 10 residents of the proposed new district. The superintendent of public instruction shall:

(a) call a hearing on the appeal not less than 20 days or more than 30 days from receipt of the appeal;

(b) provide notice of the hearing in the manner prescribed in subsection (2)(c);

(c) consider the material presented at the county superintendent's hearing and pertinent other material; and



(d) render a decision on the creation of such new high school district. The decision is final.

(5) When a new high school district is created, the trustees of the elementary district in which the high school buildings are located are the trustees of the new district. A trustee appointed under the provisions of this section shall serve until a successor is elected at the next regular school election and is qualified.

(6) If the district does not open and operate a school within 2 years after the effective date of the creation of the new district, the order of the county superintendent or, if his order is appealed, the decision of the superintendent of public instruction creating a new district under this section is void and the new district ceases to exist. If the new district does not satisfy this requirement, the territory must be reincorporated in the district or districts in which it was located before the creation of the new district and the trustees are without capacity to act.

(7) If a petition has been filed under the provisions of this section and denied by the county superintendent, no new petition may be filed until 1 year after the final decision on the original petition.

(8) For the purposes of this section, the taxable value of the taxable property of the territory proposed to be included in the new district must be at least \$500,000, unless 50,000 acres or more of such proposed new district are nontaxable Indian land."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.

## CHAPTER NO. 227

[SB 232]

AN ACT REVISING THE LAWS GOVERNING THE SUSPENSION AND REVOCATION OF TEACHER OR SPECIALIST CERTIFICATES; ADDING IMMORAL CONDUCT AS A REASON FOR SUSPENDING OR REVOKING A CERTIFICATE; REQUIRING SCHOOL TRUSTEES TO MAKE A WRITTEN REPORT TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION WHEN EMPLOYMENT ENDS BECAUSE OF IMMORAL CONDUCT OR COMMISSION OF A CRIMINAL OFFENSE BY A TEACHER OR SPECIALIST; ALLOWING THE SUPERINTENDENT TO INVESTIGATE FURTHER AND REQUEST ACTION TO SUSPEND OR REVOKE A CERTIFICATE AFTER A REPORT BY THE TRUSTEES; GRANTING IMMUNITY TO TRUSTEES AND THE SUPERINTENDENT FOR ACTIONS RELATED TO THE FILING OF A REPORT; AND AMENDING SECTIONS 20-4-101 AND 20-4-110, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-4-110, MCA, is amended to read:

**"20-4-110. Suspension, revocation, and denial — appeals.** (1) The board of public education may suspend or revoke the teacher or specialist certificate of any person for any of the following reasons:

(a) making any statement of material fact in the application for a certificate which the applicant knows to be false;

(b) any reason that would have required or authorized the denial of the teacher or specialist certificate to *the* person if it had been known at the time *the* certificate was issued;

(c) incompetency;

(d) gross neglect of duty;

(e) conviction of, *entry of a guilty verdict, a plea of guilty, or a plea of no contest* to a criminal offense involving moral turpitude *in this state or any other state or country*;

(f) *immoral conduct related to the teaching profession*;

(g) substantial and material nonperformance of the employment contract between the teacher or specialist and the trustees of a district without good cause or the written consent of the trustees; or

(h) denial, revocation, suspension, or surrender of a teacher or specialist certificate in another state for any reason constituting grounds for *similar* action in this state.

(2) The board *may* initiate proceedings under this section if a request for the suspension or revocation of the teacher or specialist certificate of any person is made to it by:

(a) the trustees of a district as to a teacher or specialist employed by that district within the 12 months immediately preceding receipt of the request by the board of public education; or

(b) the superintendent of public instruction.

(3) (a) *If the employment relationship between a school district and a teacher or specialist is terminated or not renewed because the trustees have reason to believe that the teacher or specialist engaged in conduct described in subsection (1)(e) or (1)(f), the trustees shall make a written report to the superintendent of public instruction describing the circumstances of the termination or nonrenewal of the employment relationship.*

(b) *The superintendent shall review the report and may conduct further investigation. If he is satisfied that sufficient grounds exist, he may request action by the board of public education under subsection (2)(b). The request must be brought within 1 year after discovery of the events that gave rise to the report.*

(c) *The trustees and the superintendent shall ensure the confidentiality of the report.*

(d) *The trustees and the superintendent and their agents and employees are immune from suit for actions taken in good faith under this section with respect to the report.*

(4) The board shall give a 30-day written notification to any person when the board intends to consider the suspension or revocation of his certificate. The board shall conduct an investigation of the reasons for the

suspension or revocation charge and then, if the investigation warrants further action, conduct a hearing in the manner provided by board policies. At the hearing the board shall afford the person an opportunity to defend himself and his qualifications against the charge.

(5) After a hearing, the board may suspend or revoke the person's teacher or specialist certificate, except that in the case of a first violation under subsection (1)(g), the maximum penalty is a 2-year suspension of the person's certificate.

(6) Whenever the superintendent of public instruction denies the issuance or the renewal of a teacher or specialist certificate, *the applicant* may appeal the denial to the board of public education. *The board shall hear the appeal in the same manner provided in this section for suspension or revocation and in accordance with the policies of the board. The decision of the board shall be final.*"

Section 2. Section 20-4-101, MCA, is amended to read:

**"20-4-101. System and definitions of teacher and specialist certification — student teacher exception.** (1) In order to establish a uniform system of quality education and to ensure the maintenance of professional standards, a system of teacher and specialist certification shall be established and maintained under the provisions of this title and no person shall be permitted to teach in the public schools of the state until he has obtained a teacher certificate or specialist certificate or the district has obtained an emergency authorization of employment from the state.

(2) *As used in this part, "teacher or specialist certificate" means a certificate issued or applied for under 20-4-106. The term "teacher or specialist" refers to a person certified under 20-4-106.*

(3) The above certification requirement shall not apply to a student teacher who is hereby defined as a student enrolled in an institution of higher learning approved by the board of regents of higher education for teacher training and who is jointly assigned by such institution of higher learning and the governing board of a district or a public institution to perform practice teaching in a nonsalaried status under the direction of a regularly employed and certificated teacher.

(4) A student teacher, while serving such nonsalaried internship under the supervision of a certificated teacher, shall be accorded the same protection of the laws as that accorded a certificated teacher and shall, while acting as such student teacher, comply with all rules of the governing board of the district or public institution and the applicable provisions of 20-4-301 relating to the duties of teachers."

Section 3. **Extension of authority.** Any existing authority of the board of public education to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Two-thirds vote required — severability.** Because proposed subsection (3)(d) of 20-4-110 grants immunity to the superintendent of public instruction and school district trustees, a vote of two-thirds of the

members of each house is required for the enactment of proposed subsection (3)(d). If the bill passes but fails to receive a vote of two-thirds of the members of each house, then proposed subsection (3)(d) of 20-4-110 is deleted and the remaining parts of this act are valid.

Approved March 27, 1987.

## CHAPTER NO. 228

[SB 249]

AN ACT EXTENDING THE TERMINATION DATE FOR LIMITATION ON GOVERNMENTAL LIABILITY FOR DAMAGES IN TORT ACTIONS; AMENDING SECTION 9, CHAPTER 22, SPECIAL LAWS OF JUNE 1986; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 9, Chapter 22, Special Laws of June 1986, is amended to read:

**"Section 9. Effective dates — termination date.** This act is effective on passage and approval, except that section 3 is effective July 1, 1991. Sections 1 and 2 of this act terminate on June 30, 1991."

Section 2. **Two-thirds vote.** Because this act amends and extends the effect of a statute imposing limited immunity on governmental entities, Article II, section 18, of the Montana constitution may require a two-thirds vote of the members of each house of the legislature to be effective.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.

## CHAPTER NO. 229

[SB 267]

AN ACT PERMITTING LEGISLATORS TO APPLY THE EMPLOYER CONTRIBUTION FOR GROUP BENEFITS TO PREMIUMS REQUIRED FOR COVERAGE UNDER ANOTHER DISABILITY INSURANCE PLAN; AMENDING SECTION 5-2-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 5-2-303, MCA, is amended to read:

**"5-2-303. Participation in state benefits group — employer contribution made to other plan.** (1) Individual members of the senate

and the house of representatives may enroll in the state employees benefits group during the terms to which they have been elected. The provider of benefits shall enroll and collect employee contributions directly from such legislators. The employer contribution shall be paid from funds appropriated for that purpose.

(2) (a) *If a member does not enroll or terminates enrollment under the state employees benefits group plan and is insured under a plan providing disability insurance as defined in 33-1-207, the department of administration, upon request of the member, shall pay to the member's insurer an amount equal to the premium required to be paid by the member for coverage of the member and any dependents under the disability insurance plan, subject to the limitation contained in subsection (2)(b).*

(b) *A payment made under subsection (2)(a) may not exceed the amount of the employer contribution for group benefits for members of the legislature as provided for in 2-18-703."*

**Section 2. Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.

## CHAPTER NO. 230

[SB 282]

AN ACT REDUCING THE PERSONAL LIABILITY OF COUNTY COMMISSIONERS AND COUNTY CLERKS FOR CLAIMS AND WARRANTS IN EXCESS OF BUDGET APPROPRIATIONS TO THE AMOUNT OF THE WARRANT; AMENDING SECTION 7-6-2323, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-6-2323, MCA, is amended to read:

**"7-6-2323. Effect of exceeding budget appropriations — personal liability.** (1) Expenditures made, liabilities incurred, or warrants issued in excess of any of the detailed budget appropriations, as originally determined or as thereafter revised by transfer as provided in this part, shall not be a liability of the county, but the official making or incurring such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond.

(2) (a) The board of county commissioners shall not approve any claim and the county clerk and recorder shall not issue any warrant for any expenditure in excess of said detailed budget appropriations, as finally

adopted or as revised under the provisions of this part, except upon an order of a court of competent jurisdiction or for an emergency as herein-after provided. Any county commissioner or commissioners or county clerk and recorder approving any claim or issuing any warrant in excess of any such budget appropriation except as above provided shall forfeit to the county the amount of such claim or warrant.

(b) The amount forfeited under subsection (2)(a) shall be recovered in an action against such county commissioner or commissioners or county clerk and recorder or all of them and their several sureties on their official bonds. It shall be the duty of the county attorney of such county to bring an action therefor in the name of the county."

**Section 2. Applicability.** This act applies to claims approved and warrants issued on or after July 1, 1987.

**Section 3. Effective date.** This act is effective July 1, 1987.

Approved March 27, 1987.

## CHAPTER NO. 231

[SB 299]

AN ACT TO PRESCRIBE THE STATUTE OF LIMITATIONS FOR CIVIL AND ADMINISTRATIVE ACTIONS BROUGHT PURSUANT TO THE SECURITIES ACT OF MONTANA; AMENDING SECTIONS 30-10-305 AND 30-10-307, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 30-10-305, MCA, is amended to read:

**"30-10-305. Injunctions and other remedies — limitations on actions.** (1) If it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder, he may in his discretion:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that remains in effect until 10 days after the hearing on the allegations contained in the cease and desist order is held or that becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or

(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order hereunder. Upon a proper showing, a permanent or temporary

injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, he is entitled to reasonable attorneys' fees as fixed by the court.

(2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for such violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in an action brought against him under 30-10-307.

(3) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed \$5,000 per violation upon a person found to have engaged in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order issued under parts 1 through 3 of this chapter. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of such person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of his right to do business in this state under parts 1 through 3 of this chapter.

(4) (a) *No administrative or civil action may be maintained by the commissioner under this section to enforce any liability founded on a violation of 30-10-201 through 30-10-205 unless it is brought within 2 years after the violation occurs.*

(b) *No administrative or civil action may be maintained by the commissioner under this section to enforce any liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued thereunder, except 30-10-201 through 30-10-205, unless it is brought within 2 years after discovery by the commissioner or his staff of the facts constituting the violation.*

(c) *In no event may an action be maintained under this section to enforce any liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued thereunder unless it is brought within 5 years after the transaction on which the action is based."*

Section 2. Section 30-10-307, MCA, is amended to read:

**"30-10-307. Civil liabilities — limitations on actions.** (1) Any person who offers or sells a security in violation of any provisions of 30-10-202 through 30-10-205 or offers or sells a security by means of fraud or misrepresentation is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at 10% per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any

income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less:

- (a) the value of the security when the buyer disposed of it; and
- (b) interest at 10% per annum from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1), every partner, officer, or director (or person occupying a similar status or performing similar functions) or employee of such a seller, and every broker-dealer or salesman who participates or materially aids in the sale is liable jointly and severally with and to the same extent as the seller if the nonseller knew, or in the exercise of reasonable care could have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution among the several persons so liable.

(3) Any tender specified in this section may be made at any time before entry of judgment. A cause of action under this statute survives the death of any person who might have been a plaintiff or a defendant. No person may sue under this section:

(a) if the buyer has received a written offer, at a time when he owned the security, to refund the consideration paid, together with interest at 10% per annum from the date of payment, less the amount of any income received on the security and he failed to accept the offer within 30 days of its receipt; or

(b) if the buyer has received a written offer at a time when he did not own the security in the amount that would be recoverable under subsection (1) upon a tender less:

- (i) the value of the security when the buyer disposed of it; and
- (ii) interest at 10% per annum from the date of disposition.

(4) No person who has made or engaged in the performance of any contract in violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of parts 1 through 3 of this chapter or any rule or order hereunder is void as against public policy and in the public interest.

(5) (a) *No action may be maintained under this section to enforce any liability founded on a violation of 30-10-202 unless it is brought within 2 years after the violation occurs.*

(b) *No action may be maintained under this section to enforce any liability founded on fraud or misrepresentation unless it is brought within 2 years after discovery of the fraud or misrepresentation on which the liability is founded or after such discovery should have been made by the exercise of reasonable diligence.*



(c) *In no event may an action be maintained under this section to enforce any liability founded on fraud or misrepresentation unless it is brought within 5 years after the transaction on which the action is based."*

**Section 3. Extension of authority.** Any existing authority of the securities commissioner to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Applicability.** Sections 1 and 2 apply retroactively, within the meaning of 1-2-109, to a securities transaction occurring prior to the effective date of this act for which no action has been commenced within 1 year from the effective date of this act.

**Section 5. Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.

## CHAPTER NO. 232

[HB 94]

AN ACT TO MAKE OPTIONAL MEMBERSHIP IN A RATING ORGANIZATION FOR THE STATE COMPENSATION INSURANCE FUND; AND AMENDING SECTIONS 33-16-1005, 39-71-2302, AND 39-71-2304, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-71-2302, MCA, is amended to read:

**"39-71-2302. General requirements for electing coverage under plan.** Every employer subject to the provisions of compensation plan No. 3 shall at the times and in the manner prescribed by the division pay to the division a premium based on a percentage of his payroll as determined by the division, which *may be a member of a rating organization in accordance with the provisions of this chapter. The division and the rating organization shall exchange financial and statistical data, including but not limited to payroll exposure and accident information, for ratemaking experience modification and other purposes regardless of whether the division is a member of the rating organization.*"

Section 2. Section 39-71-2304, MCA, is amended to read:

**"39-71-2304. Determination of rates and classifications by division.** (1) The division is hereby given full power and authority to determine premium rates and classifications as in its judgment and experience may be necessary or expedient, provided that no change in the classification or rates prescribed shall be effective until 30 days after the date of the order making such change.

(2) The industrial insurance program shall be neither more nor less than self-supporting. Employments affected by the provisions hereof shall

be divided by the division into classes, whose rates may be readjusted at such times as the division may actuarially determine. Separate accounts shall be kept of the amounts collected and expended in each class for actuarially determining rates, but for payment of compensation and dividends, the industrial insurance expendable trust fund shall be one and indivisible.

(3) The division shall determine the hazards of the different classes of occupations or industries and fix the premiums therefor at the lowest rate consistent with maintenance of an actuarially sound industrial insurance fund and the creation of actuarially sound surplus and reserves, and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each risk and shall utilize the experience and information afforded to it.

(4) In addition, compensation plan No. 3 shall use an experience rating system for employers enrolled under it. This system shall reward employers with a better than average safety record, penalize employers with a worse than average safety record, and may provide for premium volume discount.

(5) The division in fixing rates shall provide for the expenses of administering the industrial insurance expendable trust fund allowed by law, the disbursements on account of injuries and deaths of employees in each class, an actuarially sound catastrophe reserve, reserves actuarially determined to meet anticipated and unexpected losses, and such other reserves and surplus as may be determined by the division. The amounts of such reserves and surplus shall be as determined from time to time by the division to be adequate but not excessive for the purposes intended."

Section 3. Section 33-16-1005, MCA, is amended to read:

**"33-16-1005. Membership in rating organization required — exception — filings with commissioner.** (1) Every insurer, *except* the division of workers' compensation, writing workers' compensation insurance in this state shall be a member of a workers' compensation rating organization. No insurer may, at the same time, belong to more than one rating organization with respect to such insurance.

(2) A rating organization shall file with the insurance commissioner every manual of classifications and rules and every rating plan and advisory manual rates, including every modification of the foregoing. Every such filing shall state the effective date thereof. Any insurer writing pursuant to compensation plan No. 2 shall adhere to the manual rules and classifications and rating plans of the rating organization of which it is a member and may adopt by reference, in whole or in part, the advisory manual rates filed under this section. Nothing in this section, however, requires adherence by any insurer to any rates established or published by any rating organization."

Section 4. **Extension of authority.** Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 27, 1987.

**CHAPTER NO. 233**

[HB 134]

AN ACT TO PROVIDE THAT NO PUBLICATION IS REQUIRED FOR A MINOR'S NAME CHANGE WHEN BOTH PARENTS AND ALL LEGAL GUARDIANS CONSENT; AND AMENDING SECTION 27-31-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 27-31-201, MCA, is amended to read:

**"27-31-201. Order setting hearing date — notice.** (1) When a petition setting out the matters contained in 27-31-101 or 27-31-102 is filed, the court or judge may appoint a time for hearing the petition. *Except as provided in subsection (2), notice of the time and place of hearing the petition must be published for 4 successive weeks in some newspaper published in the county, if a newspaper be printed therein, but if no newspaper be printed in the county, a copy of such notice must be posted in at least three public places in the county for a like period.*

(2) *No publication is required for a change of name of a minor under 27-31-101 if both parents and all legal guardians consent in writing."*

Approved March 27, 1987.

**CHAPTER NO. 234**

[HB 143]

AN ACT GENERALLY REVISING THE LAWS ON UNEMPLOYMENT INSURANCE; PROVIDING FOR REMOVAL OR SUSPENSION OF A PERSON FROM THE STATE VENDOR LIST FOR FAILURE TO COMPLY WITH THE UNEMPLOYMENT INSURANCE LAW OR THE WORKERS' COMPENSATION ACT; AMENDING SECTIONS 18-4-241, 39-51-201, 39-51-203, 39-51-204, 39-51-407, 39-51-1101, 39-51-1109, 39-51-1121, 39-51-1125, 39-51-1213, 39-51-1219, 39-51-1301, 39-51-1303, 39-51-1304, 39-51-2101, 39-51-2105, 39-51-2303, 39-51-2304, 39-51-2402, 39-51-2403, 39-51-2410, 39-51-2501, 39-51-3105, 39-51-3202, AND 39-51-3206, MCA; REPEALING SECTION 39-51-2206, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-51-201, MCA, is amended to read:

**"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to *the individual's* unemployment.

(4) "Benefit year", with respect to any individual, means the 52 consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or had in its employ one or more individuals performing services for it within this state, except as provided under subsections (8) and (9) of 39-51-203. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(10) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(11) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required and from which all benefits provided under this chapter shall be paid.

(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or *the* employer.

(13) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(14) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(15) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(16) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(17) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment *made by the employer, if the payment was made under a plan established for the employees in general or for a specific class or classes of employees, to or on behalf of the employee for:*

(A) retirement;

(B) sickness or accident disability, *but in the case of payments made by an employer directly to an employee, only those payments made under a workers' compensation law are excluded from "wages";*

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare office.

(18) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(19) An individual's "weekly benefit amount" means the amount of benefits *the individual* would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-51-203, MCA, is amended to read:

**"39-51-203. Employment defined.** (1) "Employment", subject to other provisions of this section, means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" includes an individual's entire service performed within or both within and without this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or

(B) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) Service is considered to be localized within a state if:

(i) the service is performed entirely within such state; or

(ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment insurance law of any other state or of the federal government is considered to be employment subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the employing unit for whom such services are performed that the entire service of such individual is considered to be employment subject to this chapter.

(4) Service performed by an individual for wages is considered to be employment subject to this chapter unless and until it is shown to the satisfaction of the department that:

(a) such individual has been and will continue to be free from control or direction over the performance of such services, both under *the individual's* contract and in fact;

(b) such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(c) such individual is customarily engaged in an independently established trade, occupation, profession, or business.

(5) The term "employment" includes service performed by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. The term "employment" includes service performed by all individuals, including without limitations those individuals who work for the state of Montana, its *universities*, any of its colleges, public schools, components or units thereof, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term "employment" includes service performed by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term "employment" includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, in the employ of an American employer, other than service which is considered employment under the provisions of subsection (2) of this section or the parallel provisions of another state's law, if:

(i) the employer's principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation which is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of sections (7)(a)(i) and (7)(a)(ii) of this subsection are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(b) An "American employer", for purposes of this subsection, means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

(8) Agricultural labor exempted under 39-51-204 is considered employment whenever the employing unit pays \$20,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or employs 10 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has agricultural employment, all employees are covered under the chapter regardless of the amount of money expended for agricultural purposes. *When the otherwise subject wages are paid by the employing unit for the purpose of providing outfitter and guide services, the agricultural wages are not covered.*

(9) Domestic service exempted under 39-51-204(1)(b) is considered employment whenever the employing unit pays \$1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has domestic employment, all employees are covered under the chapter regardless of the amount of money expended for domestic purposes."

Section 3. Section 39-51-204, MCA, is amended to read:

**"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-203(8);

(b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-203(9);

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of *that individual's* son, daughter, or spouse and service performed by a child under the age of 21 in the employ of *the child's* father or mother;



(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

(g) services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital;

(1) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. "Regularly employed" means the services are performed during at least 24 days in the same quarter.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of *the church's* ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(d) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(e) for a state prison or other state correctional or custodial institution by an inmate of that institution."

Section 4. Section 39-51-407, MCA, is amended to read:

**"39-51-407. Reimbursement of fund by state.** This state recognizes its obligation to replace, and hereby pledges the faith of this state that funds will be provided in the future and applied to the replacement of any of the money received from the United States or any agency thereof under Title III of the Social Security Act, any unencumbered balances in the unemployment insurance administration account, any money granted to this state pursuant to the provisions of the Wagner-Peyser Act, and any money made available by the state or its political subdivisions and matched by such money granted to this state pursuant to the provisions of the Wagner-Peyser Act which the secretary of labor finds have, because of any action or contingency, been lost or have been expended for purposes other than or in amounts in excess of those found necessary by the secretary of labor for the proper administration of this chapter. Such money shall be promptly supplied by money furnished by the state of Montana or any of its subdivisions for the use of the department and used only for purposes approved by the secretary of labor. The department shall, if necessary, promptly report to the governor and the governor to the legislature the amount required for such replacement."

Section 5. Section 39-51-1101, MCA, is amended to read:

**"39-51-1101. Commencement and termination of coverage under chapter.** (1) Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year, except that this subsection shall not apply to an employing unit electing coverage as provided for in 39-51-1102.

(2) Except as otherwise provided in 39-51-1102, an employing unit shall cease to be an employer subject to this chapter only as of January 1 of any calendar year only if it files with the department prior to the last day of February of such year a written application for termination of coverage and the department finds that the total wages payable for employment by said employer in the preceding calendar year did not exceed \$1,000. For the purpose of this subsection, the two or more employing units mentioned in subsection (2) or (3) of 39-51-202 shall be treated as a single employing unit."

Section 6. Section 39-51-1109, MCA, is amended to read:

**"39-51-1109. Tax appeals.** Any person aggrieved by any decision, determination, or redetermination of the department involving contribution liability, contribution rate, application for refund, or the charging of benefit payments to employers making payment in lieu of contributions is entitled to a review in accordance with Title 2, chapter 4, parts 6 and 7. *Such decision, determination, or redetermination is final unless an interested party entitled to notice thereof applies for a review within 10 days after notification was mailed to the last known address, provided that the period may be extended for good cause.*"

Section 7. Section 39-51-1121, MCA, is amended to read:

**"39-51-1121. Definitions.** As used in this part and part 12, the following definitions apply:

(1) "Computation date" means the reporting period ending September 30 preceding the calendar year for which a covered employer's contribution rate is effective.

(2) "Cutoff date" means December 31 immediately following the computation date. The department may extend the cutoff date in meritorious cases.

(3) "Deficit employer" means *an employer who is subject under this chapter and who has established a record of accumulated benefits charged to the employer's account in excess of the employer's accumulated contributions paid as of the cutoff date.*

(4) "Department" means the department of labor and industry.

(5) "Eligible employer" means *an employer who has been subject under this chapter for the 3 years immediately preceding the computation date and who has:*

(a) *filed all contribution reports prescribed by the department;*

(b) *paid all contributions and assessments under 39-51-404(4), and penalties and interest thereon;*

(c) *established a record of accumulated contributions in excess of benefits charged to the employer's account; and*

(d) *paid wages in at least 1 of the 8 calendar quarters preceding the computation date.*

(6) "Fiscal year" means the four consecutive calendar quarters ending on September 30.

(7) "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.

(8) "Unrated employer" means *an employer who is subject under this chapter and who does not meet all the criteria of an eligible or a deficit employer."*

Section 8. Section 39-51-1125, MCA, is amended to read:

**"39-51-1125. Computation of payments in lieu of contributions.**

(1) *After June 30, 1987, qualified employers electing to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus the state's share of extended benefits paid to individuals based on wages paid by the employing unit. After December 31, 1978, governmental entities shall pay the full amount of extended benefits.*

(2) *If benefits paid an individual are based on wages paid by both the employer and one or more other employers, the amount payable by any one employer to the fund bears the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all the individual's base period employers.*

(3) *If the base period wages of an individual include wages from more than one such employer, the amount to be paid into the fund with respect to the benefits paid to the individual shall be prorated among the liable employers in proportion to the wages paid to the individual by each such employer during the base period.*

(4) *The amount of payment required from employers shall be ascertained by the department monthly and becomes due and payable by the employer quarterly as directed in this chapter. Penalty and interest for delinquency shall be assessed such employers as specified in 39-51-1301."*

Section 9. Section 39-51-1213, MCA, is amended to read:

**"39-51-1213. Classification of employers for experience rating purposes.** (1) *The department shall for each calendar year classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with contribution rates reflecting benefit experience. Each employer's rate for a calendar year shall be determined on the basis of the employer's record as of October 1 of the preceding calendar year.*

(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the manner set forth below:

(a) Each employer is given an "experience factor" which is contributions paid since October 1, 1981, minus benefits charged on each employer's account since October 1, 1981, divided by *the employer's* average annual taxable payroll rounded to the next lower dollar amount for the 3 fiscal years immediately preceding the computation date. The computation of the "experience factor" shall be to six decimal places.

(b) Schedules shall be prepared listing all eligible and deficit employers in inverse numerical order of their experience factors. There shall be listed on such schedules for each employer in addition to the experience factor:

(i) the amount of *the employer's* taxable payroll for the fiscal year ending on the computation date; and

(ii) the cumulative total consisting of the sum of the employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding *that employer* on the schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 shall be segregated into groups that will yield approximately the average tax rate according to the tax schedule assigned for that particular taxable year. Each group shall be identified by the rate class number listed in the table which represents the percentage limits of each group. Each employer on the schedules is assigned that contribution rate opposite *that employer's* rate class for the tax schedule in effect for the taxable year.

(4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which the halves of *that employer's* taxable payroll are so required.

(b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater part of *that employer's* taxable payroll is so required.

(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers are included in and assigned the contribution rate specified for such class, notwithstanding the provisions of 39-51-1214.

(5) If the taxable payroll amount or the experience factor or both such taxable payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, the employer is placed in that position on the schedules which *the employer* would have occupied had *that employer's* taxable payroll amount or experience factor as changed been used in determining *that employer's* position in the first instance, but such change does not affect the position or rate classification of any other employer listed on the schedules and does not affect the rate determination for previous years.

*(6) Deficit employers who have not filed all required payroll reports or paid all contributions due by the cutoff date must be assigned the maximum contribution rate in effect for the taxable year."*

Section 10. Section 39-51-1219, MCA, is amended to read:

**"39-51-1219. Procedures for the substitution, merger, or acquisition of an employer account by a successor employing unit.**

(1) Subject to the provisions of subsection (3), whenever any individual or organization (whether or not a covered employer) in any manner succeeds to or acquires all or substantially all of the business of an employer who at the time of acquisition was a covered employer and whenever in respect to whom the department finds that the business of the predecessor is continued solely by the successor:

(a) the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor shall, upon the joint application of the predecessor and the successor within 90 days after such acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

(b) any successor who was not an employer on the date of acquisition becomes a covered employer as of such date.

(2) Whenever any individual or organization (whether or not a covered employer) in any manner succeeds to or acquires part of the business of an employer who at the time of acquisition was a covered employer and whenever such portion of the business is continued by the successor:

(a) so much of the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bears to the payroll of the predecessor in the last four completed calendar quarters immediately preceding the date of transfer, shall, upon the joint application of the predecessor and the successor within 90 days after such acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

(b) any successor who was not an employer on the date of acquisition becomes a covered employer as of such date.

(3) (a) The 90-day period may be extended at the discretion of the department.

(b) Whenever a predecessor covered employer has a deficit experience rating account as of the last computation date, the transfer provided for in subsections (1) and (2) is mandatory except when it is shown by substantial evidence that *neither* the management, ownership, *nor* both the management and ownership are substantially the same for the successor as for the predecessor, in which case the successor shall begin with the rate of a new employer. Whenever such mandatory transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to

supply the required payroll information within 10 days after notice, the transfer shall be based on estimates of the applicable payrolls.

(4) (a) If the successor was a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, *the successor's* rate of contribution, effective the first day of the calendar year immediately following the date of acquisition, is based on the combined experience of the predecessor and successor.

(b) If the successor was not a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, *the successor's* rate is the rate applicable to the predecessor with respect to the period immediately preceding the date of acquisition, but if there was more than one predecessor, the successor's rate shall be a newly computed rate based on the combined experience of the predecessors, becoming effective immediately after the date of acquisition and remaining in effect for the balance of the rate year."

Section 11. Section 39-51-1301, MCA, is amended to read:

**"39-51-1301. (Temporary) Penalty and interest on past-due contributions.** (1) Contributions unpaid on the date on which they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, that are paid *by the end of the month following* the due date shall be subject to a penalty assessment of \$10 or 10% of the contribution due, whichever is greater. If the contributions are not paid *by the end of the month following* the due date, the employer shall be subject to a penalty assessment of \$15 or 15% of the contributions due, whichever is greater. All past-due contributions shall bear interest at the rate of 18% a year, to be prorated on a daily basis.

(2) A penalty of \$40 shall be assessed whenever, as the result of a willful refusal of an employer to furnish wage information or pay contributions on time, the department issues a subpoena to obtain wage information or makes a summary or jeopardy assessment pursuant to 39-51-1302.

(3) There is an account in the federal special revenue fund. Penalties and interest collected under this section must be deposited in that account. Money deposited in that account and appropriated to the department must be used by the department to administer this chapter and for programs to train and retrain unemployed and underemployed persons. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

(4) When failure to pay contributions on time was not caused by willful intent of the employer, the department may abate the penalty and interest.

(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due contributions must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose.

**39-51-1301. (Effective July 1, 1989) Penalty and interest on past-due contributions.** (1) Contributions unpaid on the date on which

they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, that are paid *by the end of the month following* the due date shall be subject to a penalty assessment of \$10 or 10% of the contribution due, whichever is greater. If the contributions are not paid *by the end of the month following* the due date, the employer shall be subject to a penalty assessment of \$15 or 15% of the contributions due, whichever is greater. All past-due contributions shall bear interest at the rate of 18% a year, to be prorated on a daily basis.

(2) A penalty of \$40 shall be assessed whenever, as the result of a willful refusal of an employer to furnish wage information or pay contributions on time, the department issues a subpoena to obtain wage information or makes a summary or jeopardy assessment pursuant to 39-51-1302.

(3) Interest and penalties collected pursuant to this section shall be paid into the unemployment insurance trust fund.

(4) When failure to pay contributions on time was not caused by willful intent of the employer, the department may abate the penalty and interest.

(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due contributions must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose."

Section 12. Section 39-51-1303, MCA, is amended to read:

**"39-51-1303. Collection of unpaid contributions by civil action.**

(1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the department may *at its discretion* initiate a civil action in the name of the Montana department of labor and industry to collect the amount due, and the employer adjudged in default shall pay the costs of such action.

(2) An action for the collection of contributions due must be brought within 5 years after the due date of such contributions or it is barred.

(3) The department may pursue its remedy under either this section or 39-51-1304, or both."

Section 13. Section 39-51-1304, MCA, is amended to read:

**"39-51-1304. Lien for payment of unpaid contributions and assessments — levy and execution.** Unpaid contributions *and assessments under 39-51-404(4), including penalties and interest assessed thereon*, have the effect of a judgment against the employer, arising at the time *such payments* are due. The department may issue a *certificate of lien* setting forth the amount of *payments due* and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. *From the time the judgment is docketed, it becomes a lien upon all real property of the employer. From the time the judgment is filed with the secretary of state or a registrar of personal property specifically describing the personal property, it becomes a lien upon personal property of the employer.* After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment pursuant to Title 25, chapter 13, except that the



department may enforce the judgment at any time within 10 years of the creation of the lien."

Section 14. Section 39-51-2101, MCA, is amended to read:

**"39-51-2101. Total unemployment — when.** An individual shall be deemed totally unemployed in any week during which *the individual* performed no work and earned no wages or a week of less than full-time work with wages of less than 2 times *the individual's* weekly benefit amount."

Section 15. Section 39-51-2105, MCA, is amended to read:

**"39-51-2105. Qualifying wages.** To qualify for benefits, an individual must have had at least 20 weeks of work with an average of \$50 per week in subject employment in the base period. To qualify for benefits, the total base period wages must be \$1,000 or more."

Section 16. Section 39-51-2303, MCA, is amended to read:

**"39-51-2303. Disqualification for discharge due to misconduct.** An individual shall be disqualified for benefits *after being* discharged:

(1) for misconduct connected with *the individual's* work or affecting *the individual's* employment until *the individual* has performed services, other than self-employment, for which remuneration is received equal to or in excess of eight times *the individual's* weekly benefit amount subsequent to the week in which the act causing the disqualification occurred.

(2) for gross misconduct connected with *the individual's* work or committed on the employer's premises, as determined by the department, for a period of 52 weeks."

Section 17. Section 39-51-2304, MCA, is amended to read:

**"39-51-2304. Disqualification for failure to apply for or to accept suitable work.** (1) An individual is disqualified for benefits if *the individual* fails without good cause either to apply for available and suitable work when so directed by the employment office or the department or to accept an offer of suitable work which *the individual* is physically able and mentally qualified to perform or to return to customary self-employment, if any, when so directed by the department. Such disqualification continues for the week in which such failure occurs and until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of six times *that individual's* weekly benefit amount subsequent to the date the act causing the disqualification occurred, with 6 weeks' reduction in benefit duration, as determined by the department, provided *the individual* has not left this work under disqualifying circumstances.

(2) In determining whether or not any work is suitable for an individual, the department shall consider:

(a) the degree of risk involved to *the individual's* health, safety, and morals;

(b) *the individual's* physical fitness and prior training;

- (c) *the individual's* experience and previous earnings;
  - (d) *the individual's* length of unemployment and prospects for securing local work in *the* customary occupation; and
  - (e) the distance of the available work from *the individual's* residence.
- (3) Notwithstanding any other provisions of this chapter, including subsection (4), no work may be considered suitable and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:
- (a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;
  - (b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
  - (c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.
- (4) Subject to subsection (3), after 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers 75% of the individual's earnings in previous insured work in *the individual's* customary occupation. No individual, however, is required to accept a job paying less than the federal minimum wage."

Section 18. Section 39-51-2402, MCA, is amended to read:

**"39-51-2402. Initial determination — redetermination.** (1) A representative designated by the department and hereinafter referred to as a deputy shall promptly examine the claim and, on the basis of the facts found by *the deputy*, shall either determine whether or not such claim is valid and, if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable, and the maximum duration thereof or shall refer such claim or any question involved therein to an appeals referee who shall make *the* decision with respect thereto in accordance with the procedure prescribed in 39-51-2403. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor.

(2) The deputy may for good cause reconsider *the* decision and shall promptly notify the claimant and such other interested parties of *the* amended decision and the reasons therefor.

(3) No determination or redetermination of an initial or additional claim shall be made under this section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party.

(4) A determination or redetermination shall be deemed final unless an interested party entitled to notice thereof applies for reconsideration of the determination or appeals therefrom within 10 days after such notification was mailed to *the interested party's* last known address, provided that such period may be extended for good cause."

Section 19. Section 39-51-2403, MCA, is amended to read:

**"39-51-2403. Decision of appeals referee.** After a hearing, an appeals referee shall make findings and conclusions promptly and on the basis thereof affirm, modify, or reverse the deputy's determination or redetermination. Each interested party shall be furnished promptly a copy of the decision and the supporting findings and conclusions. This decision shall be final unless further review is initiated pursuant to 39-51-2404 within 10 days after such notification was mailed to *the interested party's* last known address, provided that such period may be extended for good cause."

Section 20. Section 39-51-2410, MCA, is amended to read:

**"39-51-2410. Finality of board's decision — judicial review.** (1) Any decision of the board in the absence of an appeal therefrom as herein provided shall become final 30 days after the date of notification or mailing thereof and judicial review shall be permitted only after any party claiming to be aggrieved has exhausted *all* remedies before the board. The department is deemed to be a party to any judicial action involving any such decision and may be represented in any such action by an attorney employed by the department or, at the department's request, by the attorney general.

(2) Within 30 days after the date of notification or mailing of the decision of the board, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which said party resides and in which action any other party to the proceeding before the board shall be made a defendant. In such action a petition, which need not be verified but which shall state the grounds upon which a review is sought, shall be served upon the commissioner of labor and industry and all interested parties in the manner provided in the Montana Rules of Civil Procedure.

(3) The department shall certify and file with said court all documents and papers and a *record* of all testimony taken in the matter, together with the board's findings of fact and decision. The board may also in its discretion certify to such court questions of law involved in any decision by it.

(4) Whenever the department seeks review of a decision of the board, all interested parties shall be served with a copy of its petition together with all documents filed with the court.

(5) In any judicial proceeding under 39-51-2406 through 39-51-2410, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. Such action and the questions so certified shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workers' compensation law of this state.

(6) An appeal may be taken from the decision of the district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It shall not

be necessary in any judicial proceeding under this section to enter exceptions to the rulings of the board and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the department shall enter an order in accordance with such determination."

Section 21. Section 39-51-2501, MCA, is amended to read:

**"39-51-2501. Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Extended benefit period" means a period which:

(a) begins with the third week after a week for which there is a state "on" indicator, provided that no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state; and

(b) ends with the third week after the first week for which there is a state "off" indicator or the 13th consecutive week of such period.

(2) (a) "Rate of insured unemployment", for purposes of 39-51-2504 and 39-51-2505, means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the department on the basis of its reports to the U.S. secretary of labor, by the average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period.

(b) Computations required by the provisions of subsection (2)(a) shall be made by the department in accordance with regulations prescribed by the U.S. secretary of labor.

(3) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to *ex-service personnel* pursuant to 5 U.S.C. chapter 85, other than extended benefits.

(4) "Extended benefits" means benefits, including benefits payable to federal civilian employees and to *ex-service personnel* pursuant to 5 U.S.C. chapter 85, payable to an individual under the provisions of this part for weeks of unemployment in *the individual's* eligibility period.

(5) "Eligibility period", *relating to extended benefits*, means the period consisting of the weeks in *the individual's* benefit year which begin in an extended benefit period and, if *the individual's* benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(6) "Exhaustee" means an individual who, with respect to any week of unemployment in *the* eligibility period:

(a) has received, prior to such week, all of the regular benefits that were available under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employees and *ex-service*

*personnel* under 5 U.S.C. chapter 85, in *the* current benefit year that includes such week; provided that, for the purposes of this subsection, an individual shall be deemed to have received all of the regular benefits that were available although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination of *the* benefit year, *the individual* may subsequently be determined to be entitled to added regular benefits;

(b) *the* benefit year having expired prior to such week, has no or insufficient wages on the basis of which *the individual* could establish a new benefit year that would include such week;

(c) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act and such other federal laws as are specified in regulations issued by the U.S. secretary of labor; and

(d) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if *the individual* is seeking such benefits and the appropriate agency finally determines that *the individual* is not entitled to benefits under such law, *the individual* is considered an exhaustee.

(7) "State law" means the unemployment insurance law of any state approved by the U.S. secretary of labor under section 3304 of the Internal Revenue Code of 1954."

Section 22. Section 39-51-3105, MCA, is amended to read:

**"39-51-3105. Assignment, pledge, or encumbrance of right to benefits void — benefits exempt from levy, execution, attachment, or other remedy for collection of debt — exception.** Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void, and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt, and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except *as provided in 39-51-3106*. Any waiver of any exemption provided for in this section shall be void."

Section 23. Section 39-51-3202, MCA, is amended to read:

**"39-51-3202. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — criminal penalty.** (1) A person who, in order to obtain or increase for *personal gain* or for any other person benefits under this chapter or under an employment security law of any other state or territory or the federal government, knowingly makes a false statement or representation or knowingly fails to disclose a material fact is guilty of a crime under 45-7-203, and the department may cause criminal proceedings to be initiated against *the person*.

(2) *A person will be required to repay to the department an amount as determined by 39-51-3201(2).*

(3) *For purposes of this section, restitution awarded under this section must include a sum equal to the amount wrongfully received plus 18% interest a year notwithstanding the provisions of 25-9-205."*

Section 24. Section 39-51-3206, MCA, is amended to read:

**"39-51-3206. Collection of benefit overpayments.** *A person who receives benefits not authorized by this chapter shall repay to the department either directly or, as authorized by the department, by offset of future benefits to which the claimant may be entitled, or by a combination of both methods, a sum equal to the amount of the overpayment. The sum is collectible in the manner provided in this chapter for the collection of past due contributions unless the department finds that the benefits were received through no fault of the person and the recovery of the benefits would be against equity and good conscience. An action for collection of overpaid benefits must be brought within 5 years after the date of the overpayment. Notwithstanding any other provision of this chapter, the department may recover an overpayment of benefits paid to any individual under this state or another state law or under an unemployment benefit program of the United States."*

Section 25. **Authority to determine uncollectibility of debts — transfer of debts for collection — liability for payment of fees and costs of collection.** (1) After making all reasonable efforts to collect unpaid contributions, assessments under 39-51-404(4), and penalties and interest thereon, or overpaid benefits under 39-51-3206 and interest thereon, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may transfer the debt to the department of revenue for collection as provided in 17-4-104.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the department of revenue may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt, plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the department of revenue. If less than the full amount of the debt is collected, the department of revenue shall retain only a proportionate share of the collection fees or costs.

Section 26. Section 18-4-241, MCA, is amended to read:

**"18-4-241. Authority to remove or suspend from vendors' list.** (1) The department may remove a person for cause from consideration for award of contracts. The removal may not be for a period of more than 3 years.

(2) The department may suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in activities that may lead to removal. The suspension may not be for a period exceeding 3 months unless an indictment has been issued for an offense that would be a cause for removal under subsection (3), in which case the suspension must, at the request of the attorney general, remain in effect until after the trial of the suspended person. The authority to remove

or suspend must be exercised in accordance with rules adopted by the department.

(3) The causes for removal or suspension include the following:

(a) violation of contract provisions, as set forth in (i) and (ii) of this subsection, of a character which is regarded by the department to be so serious as to justify removal action:

(i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for removal;

(b) failure to respond to a number of solicitations over a period of time as determined by the department in accordance with rules, and after adequate written notice to the affected person of the intent to remove or suspend;

(c) any other cause the department determines to be so serious and compelling as to affect responsibility as a state contractor, including removal by another governmental entity for any cause listed in the department's rules; and

(d) *failure to comply with the provisions of Title 39, chapter 51, or Title 39, chapter 71.*

(4) The department shall issue a written decision to remove or suspend, stating the reasons for the action taken. A copy of the decision must be mailed or otherwise furnished immediately to the person involved."

**Section 27. Extension of authority.** Any existing authority of the department of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 28. Repealer.** Section 39-51-2206, MCA, is repealed.

**Section 29. Codification instruction.** Section 25 is intended to be codified as an integral part of Title 39, chapter 51, part 32, and the provisions of Title 39, chapter 51, apply to section 25.

**Section 30. Effective date.** This act is effective July 1, 1987.

Approved March 27, 1987.

## CHAPTER NO. 235

[HB 165]

AN ACT PROVIDING THAT A PHARMACIST IS NOT LIABLE FOR ACTION TAKEN AS A MEMBER OF A PEER REVIEW COMMITTEE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Nonliability for peer review.** No member, employee, or volunteer intervenor of the Montana pharmaceutical association in its peer review program is liable in damages to any person for any action taken or

recommendation made within the scope of the program if the member, employee, or volunteer acts in good faith in accordance with the rules of the association.

**Section 2. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 37, chapter 7, and the provisions of Title 37, chapter 7, apply to section 1.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.

## CHAPTER NO. 236

[HB 175]

AN ACT TO DISQUALIFY A COUNTY SUPERINTENDENT FROM HEARING OR DECIDING MATTERS OF CONTROVERSY INVOLVING THE EDUCATION OR POSSIBLE IDENTIFICATION OF A HANDICAPPED CHILD; AMENDING SECTION 20-3-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-3-211, MCA, is amended to read:

**"20-3-211. Disqualification of county superintendent.** A county superintendent may not hear or decide matters of controversy pursuant to 20-3-210 when:

- (1) he is a party to or has an interest in the controversy;
- (2) he is related to either party in the controversy by consanguinity or affinity within the sixth degree, computed according to the rules of law;
- (3) either party to the controversy makes and files with the county superintendent of schools an affidavit that he has reason to believe and does believe that he cannot have a fair and impartial hearing before the county superintendent by reason of the bias or prejudice of the county superintendent; or
- (4) *the controversy involves the education or possible identification of a handicapped child."*

**Section 2. Extension of authority.** Any existing authority of the superintendent of public instruction to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.



**CHAPTER NO. 237**

[HB 183]

AN ACT TO AUTHORIZE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO SET FEES FOR CERTAIN LICENSES AUTHORIZED BY THE FISH AND GAME COMMISSION FOR GAME MANAGEMENT PURPOSES; AMENDING SECTION 87-2-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-2-104, MCA, is amended to read:

**"87-2-104. Number of licenses allowed — fees.** (1) Except as authorized by the commission and except for class B-4 licenses, only one license of any one class shall be issued to any one person. The department may prescribe rules and regulations for the issuance or sale of a replacement license of the same class in the event the original license is lost, stolen, or destroyed upon payment of the original price of the lost, stolen, or destroyed license, not to exceed \$5.

(2) *When authorized by the commission for game management purposes, the department may issue more than one Class A-3, Class A-4, Class B-7, Class B-8, or special antelope license to an applicant. An applicant for these game management licenses is not at the time of application required to hold any license or permit of that class.*

(3) *The fee for any resident or nonresident license of any class issued under subsection (2) must be set annually by the department and may not exceed the regular fee provided by law for that class."*

Section 2. **Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.

**CHAPTER NO. 238**

[HB 246]

AN ACT TO REQUIRE APPLICANTS FOR THE ESTABLISHMENT OF A WELL SPACING UNIT FOR AN OIL OR GAS WELL OR FOR THE POOLING OF INTERESTS IN A WELL SPACING UNIT TO GIVE WRITTEN NOTICE TO INFORM PARTIES AFFECTED BY THE APPLICATION; AND AMENDING SECTION 82-11-141, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82-11-141, MCA, is amended to read:

**"82-11-141. Administrative procedure.** (1) Unless otherwise provided, the Montana Administrative Procedure Act applies to this chapter.

(2) An order or amendment thereof, except in an emergency, may not be made by the board without a public hearing upon at least 10 days' notice. The public hearing shall be held at such time and place as may be prescribed by the board, and any interested person is entitled to be heard.

(3) When an emergency requiring immediate action is found to exist, the board may issue an emergency order without advance notice or hearing which shall be effective upon promulgation. An emergency order may not remain in effect more than 15 days.

(4) If notice is required by the chapter and the Montana Administrative Procedure Act does not apply, the notice shall be made by publication in one or more issues of a newspaper in general circulation in Helena and a newspaper of general circulation in the county where the land or some part thereon is situated, and the board may also cause publication to be made in a trade journal or bulletin of general circulation in the oil and gas industry in the state. *At least 20 days prior to the public hearing, a person who applies to establish a well spacing unit under 82-11-201 or who applies to pool all interests in a well spacing unit pursuant to 82-11-202 shall cause written notice of any hearing thereon to be served upon the record owners of the oil and gas and leasehold interests sought to be spaced or pooled. Notice must be given by mailing the written notice, postage prepaid, to their addresses as shown by the record of the county clerk and recorder at the time the notice is given.*

(5) *If written notice is not possible, proof of service by publication under subsection (4) shall be made by the affidavit of the printer or publisher of the newspaper, trade journal, or bulletin in which the notice is published or by a foreman or principal clerk of the newspaper, bulletin, or trade journal.*

(6) Except as provided otherwise in this chapter, the board may act upon its own motion or upon the petition of an interested person. On the filing of a petition concerning a matter within the jurisdiction of the board, the board shall promptly fix a date for a hearing thereon and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The board shall enter its order within 30 days after the hearing."

**Section 2. Extension of authority.** Any existing authority of the board of oil and gas conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 27, 1987.

**CHAPTER NO. 239**

[HB 249]

AN ACT TO REQUIRE THE DIVISION OF WORKERS' COMPENSATION TO CHARGE A MINIMUM ANNUAL PREMIUM ON EACH CONTRACT AND POLICY OF INSURANCE ISSUED UNDER COMPENSATION PLAN NO. 3 SUFFICIENT TO COVER THE COST OF ADMINISTERING THE POLICY; AMENDING SECTION 39-71-2304, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-71-2304, MCA, is amended to read:

**"39-71-2304. Determination of rates and classifications by division.** (1) The division is hereby given full power and authority to determine premium rates and classifications as in its judgment and experience and as a member of a rating organization as is otherwise provided for in this chapter may be necessary or expedient, provided that no change in the classification or rates prescribed shall be effective until 30 days after the date of the order making such change.

(2) The industrial insurance program shall be neither more nor less than self-supporting. Employments affected by the provisions hereof shall be divided by the division, as a member of a rating organization, into classes, whose rates may be readjusted at such times as the division as a member of such rating organization may actuarially determine. Separate accounts shall be kept of the amounts collected and expended in each class for actuarially determining rates, but for payment of compensation and dividends, the industrial insurance expendable trust fund shall be one and indivisible.

(3) The division as a member of such rating organization shall determine the hazards of the different classes of occupations or industries and fix the premiums therefor at the lowest rate consistent with maintenance of an actuarially sound industrial insurance fund and the creation of actuarially sound surplus and reserves, and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each risk and shall utilize the experience and information afforded to it as a member of such rating organization.

(4) In addition, compensation plan No. 3 shall use an experience rating system for employers enrolled under it. This system shall reward employers with a better than average safety record, penalize employers with a worse than average safety record, and may provide for premium volume discount.

(5) The division in fixing rates shall provide for the expenses of administering the industrial insurance expendable trust fund allowed by law, the disbursements on account of injuries and deaths of employees in each class, an actuarially sound catastrophe reserve, reserves actuarially determined to meet anticipated and unexpected losses, and such other reserves and surplus as may be determined by the division as a member of such rating

organization. The amounts of such reserves and surplus shall be as determined from time to time by the division to be adequate but not excessive for the purposes intended.

(6) *The division shall charge a minimum annual premium on each contract and policy of insurance sufficient to cover the cost of administering the contract or policy.*"

**Section 2. Extension of authority.** Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date — applicability.** This act is effective July 1, 1987, and applies to contracts and policies of insurance in force on July 1, 1987, or issued on or after July 1, 1987.

Approved March 27, 1987.

## CHAPTER NO. 240

[HB 266]

AN ACT TO AUTHORIZE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO PROPOSE LEGISLATION FOR ANY ADDITION OR DELETION OF SPECIES OF WILDLIFE ON THE ENDANGERED SPECIES LIST; AND AMENDING SECTION 87-5-107, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-5-107, MCA, is amended to read:

**"87-5-107. List of endangered species.** (1) (a) On the basis of investigations on nongame wildlife provided for in 87-5-104 and other available scientific and commercial data and after consultation with other state wildlife agencies, appropriate federal agencies, and other interested persons and organizations but not later than 1 year after July 1, 1973, the department shall recommend to the legislature a list of those species and subspecies of wildlife indigenous to the state which are determined to be endangered within this state, giving their common and scientific names by species and subspecies.

(b) The department *may propose legislation to specifically* include any species or subspecies of fish and wildlife appearing on the United States' list of endangered native fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix D) as it appears on July 1, 1973, as well as any species or subspecies of fish and wildlife appearing on the United States' list of endangered foreign fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix A), as such list may be modified hereafter.

(2) The department shall conduct a review of the state list of endangered species within not more than 2 years from its effective date and every 2 years thereafter. The department *may propose specific legislation to*

amend the list by such additions or deletions as are deemed appropriate and at such times as are deemed appropriate.

(3) Except as otherwise provided in this part, it shall be unlawful for any person to take, possess, transport, export, sell, or offer for sale and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on any of the following lists:

(a) the list of wildlife indigenous to the state determined to be endangered within the state pursuant to subsection (1);

(b) any species or subspecies of fish and wildlife included by the department and appearing on the United States' list of endangered native fish and wildlife (part 17 of Title 50, Code of Federal Regulations, appendix D) as it appears on July 1, 1973; and the United States' list of endangered foreign fish and wildlife (part 17 of Title 50, Code of Federal Regulations, appendix A), as such list may be modified hereafter.

(4) Any species or subspecies of wildlife appearing on any of the foregoing lists which enters the state from another state or from a point outside the territorial limits of the United States and which is transported across the state destined for a point beyond the state may be so entered and transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(5) In the event the United States' list of endangered native fish and wildlife is modified subsequent to July 1, 1973, by additions or deletions, such modifications, whether or not involving species or subspecies indigenous to the state, may be accepted as binding under subsections (3) and (4) if, after the type of scientific determination described in subsection (1), the department *proposes* and the legislature accepts such modification for the state."

Approved March 27, 1987.

## CHAPTER NO. 241

[HB 298]

AN ACT TO PROVIDE ADDITIONAL RESTRICTIONS ON SPECIAL HUNTING LICENSES; AUTHORIZING THE FISH AND GAME COMMISSION TO REQUIRE AN APPLICANT FOR A SPECIAL PERMIT TO HOLD A BIG GAME LICENSE; LIMITING THE TAKING OF GRIZZLY BEARS TO ONE PER LIFETIME; AMENDING SECTION 87-2-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-2-702, MCA, is amended to read:

**"87-2-702. Restrictions on special licenses.** (1) A person who has received a special permit for elk is not eligible to receive a second special

permit for *elk* during any license year. However, in the event the number of applications received is not equal to the number of *elk* desired to be killed by the department, reapplication may be made by those valid license holders of the current year who may fall within these limitations.

(2) A person who has killed or taken any game animal, except a deer or an antelope, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species.

(3) *The commission may require applicants for special permits authorized by this chapter to obtain a valid big game license for that species for the current year prior to applying for a special permit.*

(4) *After [the effective date of this act], a person may, during his lifetime, lawfully take only one grizzly bear in Montana with a license authorized by 87-2-701."*

Section 2. **Extension of authority.** Any existing authority of the department of fish, wildlife, and parks or fish and game commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.

## CHAPTER NO. 242

[HB 345]

AN ACT TO REVISE THE BOND AMOUNT THAT WORKERS' COMPENSATION PLAN NO. 2 INSURERS MUST DEPOSIT WITH THE DIVISION TO GUARANTEE PAYMENT OF LIABILITY; AMENDING SECTION 39-71-2206, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-71-2206, MCA, is amended to read:

**"39-71-2206. Deposits by insurer with division to guarantee payment of liability.** (1) Before issuance of any policy by an insurer as herein authorized, the insurer must deposit with the division bonds of the United States or the state of Montana or of any school district, county, city, or town in the state of Montana or a corporate surety bond made out to and approved by the division in an amount not less than \$25,000 or more than \$200,000, as the division may determine. If any insurer fails to discharge any liability after the amount thereof is determined by the division and within the time limited by the division, the division shall convert the bonds or such part thereof as is necessary into cash and from the proceeds liquidate such liability, and thereafter the insurer must make an additional deposit to meet any deficiency caused thereby. It is intended to give

the division the discretion in the matter of whether an insurer has failed to discharge any liability.

(2) Within 30 days of the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the division for the protection and guarantee of the payment of such liability in such sum as the division may direct. However, if the division considers the amount on deposit by the insurer under the provisions of subsection (1) of this section sufficient to cover all liabilities of the insurer, then no further deposit may be required.

(3) Any deposit made under the provisions of compensation plan No. 2 must be held in trust by the division as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the division as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor by withdrawing the same or any part thereof and substituting other deposits therefor. Upon proof of the final payment of the liability for which such deposit was made, any deposit remaining must be returned to the depositor. All earnings made by such deposit must first be applied upon any liability of the depositors, and if no such liability exists, then such earnings must upon demand be delivered to such depositor. The division and its bondsmen are liable for the value and safekeeping of such deposit and shall at any time, upon demand of a depositor, account for the same and the earnings thereof."

**Section 2. Extension of authority.** Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 27, 1987.

## CHAPTER NO. 243

[HB 349]

AN ACT TO INCLUDE REPAIR OF EQUIPMENT AS AN ALLOWABLE COST FOR A DISTRICT SPECIAL EDUCATION PROGRAM; AMENDING SECTION 20-7-431, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-7-431, MCA, is amended to read:

**"20-7-431. Allowable cost schedule for special programs — superintendent to make rules — annual accounting.** (1) For the purpose of determining the maximum-budget-without-a-vote for special education as defined in 20-9-321, the following schedule of allowable costs shall be followed by the school district in preparation of its special education

budget for state aid request purposes and by the superintendent of public instruction in his review and approval of the budget (for the purposes of determining the amount of the maximum-budget-without-a-vote for special education for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with 20-9-311 and 20-9-313):

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses including:

(i) salaries and benefits of special program teachers, regular program teachers, teacher aides, special education supervisors, audiologists, and speech and hearing clinicians—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(ii) teaching supplies and textbooks if used exclusively for special programs—the actual total cost;

(iii) other expenses:

(A) contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies—the actual total cost;

(B) transportation costs for special education personnel who must travel on an itinerant basis from school to school or district to district or to in-state child study team meetings or in-state individualized education program meetings—the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes;

(b) supportive services, including:

(i) salaries and benefits of professional supportive personnel—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program. Professional supportive personnel may include counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) salaries and benefits of clerical personnel for professional personnel in supportive services—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(c) equipment:

(i) equipment—the actual total cost;

(ii) special equipment for district-owned school buses necessary to accommodate special students—the actual total cost;



(iii) special equipment for school buses contracted to transport special students—that portion of the contract price attributable to the cost of special equipment or personnel required to accommodate special students—the actual special cost;

*(iv) repair and maintenance of equipment—the actual total cost;*

(d) room and board costs when the special pupil has to attend a program at such a distance from his home that commuting is undesirable as determined by the superintendent of public instruction.

(2) The superintendent of public instruction shall, prior to September 1, 1977, revise the rules in accordance with the policies of the board of public education for:

(a) keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs;

(b) defining the total special program caseload that shall be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(b) of this section; and

(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(c)(i) of this section.

(3) An annual accounting of all expenditures of school district general fund moneys for special education shall be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for such accounting.

(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget may not be reimbursed under the maximum-budget-without-a-vote for special education.

(5) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, the federal social security system, or the costs for unemployment compensation insurance.

(6) (a) Notwithstanding other provisions of the law, the superintendent of public instruction shall not approve a maximum-budget-without-a-vote for special education which exceeds legislative appropriations; however, any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation.

(b) If the total allowable cost of the special education budgets exceeds legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations based upon prioritized budget items as established by the superintendent of public instruction. The amount of the approved budgets in excess of the available appropriations may not be reimbursed under the maximum-budget-without-a-vote for special education and is the responsibility of the school district."

Section 2. **Extension of authority.** Any existing authority of the superintendent of public instruction to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.

## CHAPTER NO. 244

[HB 396]

AN ACT TO ALLOW THE DEPARTMENT OF JUSTICE TO SUSPEND THE DRIVER'S LICENSE OF A LICENSEE WHO HAS COMMITTED AN UNLAWFUL OR FRAUDULENT USE OF A DRIVER'S LICENSE; AND AMENDING SECTION 61-5-206, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-5-206, MCA, is amended to read:

**"61-5-206. Authority of department to suspend license or driving privilege or issue probationary license.** (1) The department is hereby authorized to suspend the license or driving privilege of an operator or chauffeur without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

(a) has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;

(b) has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(c) is an habitually reckless or negligent driver of a motor vehicle;

(d) is incompetent to drive a motor vehicle;

(e) has *committed* or permitted an unlawful or fraudulent use of such license as specified in 61-5-302;

(f) has committed an offense in another state which if committed in this state would be grounds for suspension or revocation; or

(g) has falsified his date of birth on his application for a driver's license.

(2) However, the department may, in its discretion and in lieu of such suspension of license or driving privilege, issue a probationary license to an operator or chauffeur, without preliminary hearing, upon a showing by its records or other sufficient evidence that the licensee's driving record is such as would authorize suspension as provided in subsection (1) hereof.

Upon issuance of a probationary license the licensee shall be subject to the restrictions set forth thereon. The licensee's driving privilege may be suspended upon conviction or forfeiture of bail not vacated of any traffic violation during the period of such probation. The licensee shall surrender to the department all driver licenses theretofore issued to him before such probationary license shall be issued. His refusal or neglect to surrender such licenses upon demand shall be ground for suspending all such licenses. Probationary licenses may be issued for a period not to exceed 12 months.

(3) Upon suspending the license of any person or upon placing such person on probation, as hereinbefore in this section authorized, the department shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed 20 days after receipt of such request in the county wherein the licensee resides unless the department and the licensee agree that such hearing may be held in some other county. Upon such hearing the department through its duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the department shall either rescind its order of suspension or probation, or, good cause appearing therefor, may affirm, reduce, or extend the period of probation or suspension of such license."

Approved March 27, 1987.

## CHAPTER NO. 245

[HB 401]

AN ACT EXEMPTING CERTAIN MAINTENANCE ELECTRICIANS FROM LICENSING AND INSPECTION PROVISIONS; CHANGING CERTAIN PROVISIONS IN ELECTRICIANS' LICENSING REQUIREMENTS; AUTHORIZING THE STATE ELECTRICAL BOARD TO ADOPT RULES FOR CONTINUING EDUCATION; AND AMENDING SECTIONS 37-68-103, 37-68-201, 37-68-304, AND 37-68-314, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-68-103, MCA, is amended to read:

**"37-68-103. Exemptions.** (1) Nothing in this chapter shall be deemed to apply to the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city. *For purposes of this exemption, "communications equipment" includes telephone wire inside a customer's premises. Nothing in this chapter prohibits a public utility from doing inside wiring to install, alter, repair, or maintain electrical equipment, installations, or facilities in buildings owned by the public utility if the work is accomplished by an employee who is a licensed electrician. If the building owned by the public utility is open to*

*the public and the inside wiring constitutes major renovation or construction, the installation, alteration, repair, or maintenance of electrical equipment, installations, or facilities is subject to permits and inspections required by law.*

(2) The licensing or inspection provisions of this chapter do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer, nor do they apply to line work on the business premises of the employer *when* ordinary and customary in-plant or on-site installations, modifications, additions, or repairs *are performed*.

(3) Nothing in this chapter shall be construed to require an individual to hold a license while or for doing electrical work on his own property or residence provided that said property or residence is maintained for his own use.

(4) An individual, firm, partnership, or corporation may engage in business as an electrical contractor without an electrician's license if all electrical work performed by such individual, firm, partnership, or corporation is under the direction, control, and supervision of a licensed master electrician or under the direction, control, and supervision of a journeyman electrician for residential construction consisting of less than five living units in a single structure.

(5) Any person who plugs in an electrical appliance where an approved electrical outlet is already installed shall not be considered as an installer.

(6) No provisions of this chapter shall in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure where the appliance is to be connected."

Section 2. Section 37-68-304, MCA, is amended to read:

**"37-68-304. Master electricians — application — qualifications — contents of examination.** (1) An applicant for a master electrician's license shall furnish written evidence that he is a graduate electrical engineer of an accredited college or university and has 1 year of practical electrical experience or that he is a graduate of an electrical trade school and has at least 4 years of practical experience in electrical work or that he has had at least 5 years' practical experience in planning, laying out, or supervising the *installation and repair of wiring, apparatus, or equipment for electrical light, heat, and power.*

(2) Applicants for license as a master electrician shall file an application on forms prescribed by the board and furnished by the department, together with the examination fee. The board shall, not less than 30 days prior to a scheduled written examination, notify each applicant that the evidence submitted with his application is sufficient to qualify him to take the written examination or that the evidence is insufficient and is rejected. If the application is rejected, the board shall set forth the reasons in the notice to the applicant and shall authorize the department to return the applicant's examination fee. The place of examinations shall be designated

by the board, and examinations shall be held at least once a year and at other times as, in the opinion of the board, the number of applicants warrants.

(3) The written examination shall consist of at least 30 questions designed to fairly test the applicant's knowledge and his technical application in the following subjects:

- (a) the national electrical code;
- (b) cost estimating for electrical installments;
- (c) procurement and handling of materials needed for electrical installations and repair;
- (d) reading of blueprints for electrical work;
- (e) drafting and layout of electrical circuits;
- (f) knowledge of practical electrical theory."

Section 3. Section 37-68-314, MCA, is amended to read:

**"37-68-314. Qualifications for licensing examination — when no discretion in board.** A person applying for a license as a journeyman electrician or a residential electrician must be allowed by the state electrical board to take the required examination and be granted a license upon passing the examination if:

- (1) he has completed an appropriate training program conducted by a bona fide union;
- (2) he has completed the appropriate required apprenticeship; or
- (3) he has worked in the electrical field for 10 years and is considered by his employer, as shown by a written statement of the employer, to be capable and qualified to take the examination for the license for which he is applying."

Section 4. Section 37-68-201, MCA, is amended to read:

**"37-68-201. Organization — meetings — quorum — rule-making power — seal.** (1) Each July the board shall elect from its membership a president, vice-president, and secretary-treasurer.

(2) The board shall meet quarterly and at such other times it considers necessary.

(3) A majority of the members of the board shall constitute a quorum for transaction of business.

(4) The board may:

(a) adopt rules for the administration of this chapter, for the licensing of electrical contractors, *for continuing education, and for the examination and licensing of master and journeymen electricians;*

(b) adopt a seal;

(c) cause the prosecution and enjoinder of persons violating this chapter."

Section 5. **Extension of authority.** Any existing authority of the state electrical board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 27, 1987.

## CHAPTER NO. 246

[HB 404]

AN ACT TO PROVIDE A TIME LIMIT FOR THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO REACH A DECISION ON CENTERLINE LOCATION; AMENDING SECTION 75-20-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-20-205, MCA, is amended to read:

**"75-20-205. Centerline location.** (1) For all facilities defined in 75-20-104(10)(b) and (10)(c) and associated facilities certified under this chapter, the board shall condition the certificate upon board approval of a final centerline location.

(2) The final centerline location must be determined in a noncontested case proceeding before the board after the submission of a centerline location report by the department. *Within 60 days after the commencement of a noncontested case proceeding, the board shall render and record a decision approving a centerline location.*

(3) The department shall consult with the certificate holder and the affected landowners prior to making its report.

(4) The department's report must be prepared considering the criteria set forth in 75-20-301 and 75-20-503 and the findings of fact and conclusions of law set out in the board decision.

(5) The department report may be completed on segments of a certified facility as is convenient to the certificate holder.

(6) The certificate holder shall initiate the final centerline location approval process by submitting a proposed centerline location plan to the department. The certificate holder shall pay to the department the actual costs incurred in processing a final centerline location not to exceed 25% of the filing fee paid under 75-20-215."

Section 2. **Extension of authority.** Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.

**CHAPTER NO. 247**

[HB 411]

AN ACT CHANGING THE DEFINITION OF LINE TRUCKS THAT ARE EXEMPTED FROM THE LAWS REGULATING HOISTING ENGINES; AMENDING SECTION 50-76-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-76-101, MCA, is amended to read:

**"50-76-101. Where chapter not to apply.** (1) This chapter shall not apply to hoisting engines, air compressors, or elevators under federal control or to operating elevators in completed private or public buildings.

(2) The provisions of this chapter shall not apply to forklifts and front-end and rear-end loaders or line trucks and bucket trucks. For the purposes of this section, "line trucks" are hoisting and digging devices mounted on a standard manufacturer's truck chassis with an all-weather cab capable of transporting a driver and two or more crewmen. Line trucks are equipped with a hydraulically operated, telescoping boom which uses a nonmetallic cable for hoisting. Line trucks may be equipped with a rotary digging device and are capable of attaining maximum allowable highway speeds. "Bucket trucks" are personnel-lifting devices designed to lift personnel to work stations above ground. Bucket trucks are not designed for the purposes intended for a line truck."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.

**CHAPTER NO. 248**

[HB 438]

AN ACT ALLOWING THE OWNER OR OPERATOR OF A SELF-PROPELLED CRANE TO PURCHASE A 30-DAY SPECIAL PERMIT FOR OVERWEIGHT AND ESTABLISHING A FEE; AND AMENDING SECTION 61-10-124, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Crane defined.** As used in 61-10-124, "crane" means a self-propelled single-unit vehicle consisting of not more than four axles and used for raising, shifting, and lowering heavy weights by means of a projecting swinging arm.

Section 2. Section 61-10-124, MCA, is amended to read:

**"61-10-124. Special permits — fee.** (1) Except as provided in subsection (2)(b), in addition to the regular registration and gross vehicle weight fees, a fee of \$10 for each trip permit and a fee of \$75 for each term permit issued for size and weight in excess of that specified in 61-10-101 through 61-10-110 shall be paid for all movements under special permits on the public highways under the jurisdiction of the department.

(2) (a) Except as provided in subsection (2)(b), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; and an overheight vehicle, combination of vehicles, load, or other thing in excess of 13 ½ feet, or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. Special permits for vehicle combinations of more than two trailers are not permitted under this section. Special permits for vehicle combinations may specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). The fee for this permit is \$75. This permit covers a period of 1 year and expires on December 31 of each year with no grace period.

(c) With payment of the appropriate gross weight fee required by 61-10-203 and with payment of the fee prescribed in subsection (1), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

*(4) The owner or operator of a crane with a gross vehicle weight of less than 80,000 pounds may purchase a 30-day special permit for overweight if the crane has a current special mobile equipment identification plate and if the department of highways has approved the configuration of the crane through a weight analysis completed within the same calendar year. The permit is not transferable, and the fee for the permit is \$200."*

**Section 3. Extension of authority.** Any existing authority of the department of highways to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 27, 1987.



**CHAPTER NO. 249**

[HB 439]

**AN ACT RELATING TO THE REGULATION OF RISK RETENTION GROUPS AND PURCHASING GROUPS; AMENDING SECTION 33-2-708, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Purpose.** The purpose of [sections 1 through 14] is to regulate the formation and operation of risk retention groups and purchasing groups in this state formed pursuant to the provisions of the federal Liability Risk Retention Act of 1986.

**Section 2. Definitions.** As used in [sections 1 through 14], the following definitions apply:

(1) "Domicile", for purposes of determining the state where a purchasing group is domiciled, means:

(a) for a corporation, the state where the purchasing group is incorporated; and

(b) for an unincorporated entity, the state of its principal place of business.

(2) "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able to:

(a) meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(b) pay other obligations in the normal course of business.

(3) "Insurance" means primary insurance, excess insurance, reinsurance, surplus line insurance, and any other arrangement for shifting and distributing risk that is determined to be insurance under the laws of this state.

(4) (a) "Liability" means legal liability for damages, including costs of defense, legal costs and fees, and other claims expenses, because of injuries to other persons, damage to their property, or other damage or loss to other persons resulting from or arising out of:

(i) a business, whether profit or nonprofit, trade, product, services (including professional services), premises, or operations; or

(ii) an activity of any state or local government, or an agency or political subdivision thereof.

(b) The term does not include personal risk liability or an employer's liability with respect to its employees other than legal liability under the federal Employers' Liability Act (45 U.S.C. 51, et seq.). As used in this subsection, personal risk liability means liability for damages because of injury

to any person, damage to property, or other loss or damage resulting from personal, familial, or household responsibilities or activities rather than from responsibilities or activities referred to in subsection(4)(a).

(5) "Plan of operation or a feasibility study" means an analysis that presents the expected activities and results of a risk retention group, including at a minimum:

(a) the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;

(b) historical and expected loss experience of the proposed members and national experience of similar exposures to the extent this experience is reasonably available;

(c) pro forma financial statements and projections;

(d) appropriate opinions by a qualified independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

(e) identification of management, underwriting procedures, managerial oversight methods, and investment policies; and

(f) other matters as may be prescribed by the commissioner for liability insurance companies authorized by the insurance laws of the state where the risk retention group is chartered.

(6) "Purchasing group" means a group that:

(a) has as one of its purposes the purchase of liability insurance on a group basis;

(b) purchases liability insurance only for its group members and only to cover their similar or related liability exposure, as described in subsection(6)(c);

(c) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(d) is domiciled in any state.

(7) "Risk retention group" means a corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands:

(a) whose primary activity consists of assuming and spreading all or any portion of the liability exposure of its group members;

(b) that is organized for the primary purpose of conducting the activity described under subsection(7)(a);

(c) (i) that is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

(ii) that, before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified to the insurance regulatory official of at least one state that it satisfied the capitalization requirements of that state. However, such group is considered to be a risk retention group only if it has been engaged in business continuously since January 1, 1985, and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability.

(A) For purposes of this subsection (7), "completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by a person who:

(I) performs that work; or

(II) hires an independent contractor to perform that work; but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability.

(B) For purposes of this subsection (7), "product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage (including damages resulting from the loss of use of property) arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred.

(d) that does not exclude any person from membership in the group solely to provide to members of the group a competitive advantage over such person;

(e) (i) that has as its members only persons who have an ownership interest in the group and that has as its owners only persons who are members and who are provided insurance by the risk retention group; or

(ii) that has as its sole member and sole owner an organization that is owned by persons who are provided insurance by the risk retention group;

(f) whose members are engaged in businesses or activities that are similar or related with respect to the liability to which the members are exposed by virtue of any related, similar, or common business, trade, product, service, premises, or operation;

(g) whose activities do not include the provision of insurance other than:

(i) liability insurance for assuming and spreading all or any portion of the liability of its group members; and

(ii) reinsurance with respect to the liability of any other risk retention group or member of such other group that is engaged in businesses or activities so that such group or member meets the requirement described in subsection(7)(f) for membership in the risk retention group that provides the reinsurance; and

(h) whose name includes the phrase "risk retention group".

(8) "State" means any state of the United States or the District of Columbia.

**Section 3. Chartering — licensing — plan of operation.** A risk retention group seeking to be chartered in this state must be chartered and licensed as a casualty insurer pursuant to the insurance laws of this state and, except as provided in [sections 3 and 5 through 12], must comply with all of the laws, rules, regulations, and requirements applicable to such insurers chartered and authorized in this state and with [section 4] to the extent such requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before it may offer insurance in any state, the risk retention group shall also submit for approval to the commissioner a plan of operation or a feasibility study and revisions of such plan or study if the group intends to offer any additional lines of liability insurance.

**Section 4. Risk retention groups not chartered in this state.** A risk retention group chartered in a state other than this state and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state as follows:

(1) Before offering insurance in this state, a risk retention group shall submit to the commissioner:

(a) a statement identifying the state or states where the risk retention group is chartered and authorized as a casualty insurer, date of chartering, its principal place of business, and such other information, including information on its membership, as the commissioner requires to verify that the risk retention group is qualified under [section 2(7)];

(b) a copy of its plan of operation or a feasibility study and revisions of such plan or study submitted to its state of domicile. However, this provision relating to the submission of a plan of operation or a feasibility study does not apply with respect to any line or classification of liability insurance that was defined in the federal Product Liability Risk Retention Act of 1981 before October 27, 1986, and that was offered before that date by a risk retention group that had been chartered and operated for not less than 3 years before that date; and

(c) a statement of registration that designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(2) A risk retention group doing business in this state shall submit to the commissioner:

(a) a copy of the group's financial statement submitted to its state of domicile, which must be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or by a qualified loss reserve specialist under criteria established by the national association of insurance commissioners;

(b) a copy of each examination of the risk retention group as certified by the insurance regulatory official of the state in which the examination was conducted or public official conducting the examination;

(c) upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and

(d) such information as may be required to verify the group's continuing qualification as a risk retention group under [section 2(7)].

(3) (a) All premiums paid for coverage within this state to risk retention groups are subject to taxation at the same rate and to the same interest, fines, and penalties for nonpayment that apply to foreign admitted insurers.

(b) To the extent that an agent is used, he shall report and pay the taxes for the premiums for risks that he has placed with or on behalf of a risk retention group not chartered in this state.

(c) To the extent that an agent is not used or fails to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Further, each risk retention group shall report all premiums paid to it for risks insured within the state.

(4) Each risk retention group, its agents, and its representatives shall comply with Title 33, chapter 18, part 2.

(5) Each risk retention group shall comply with the provisions of Title 33, chapter 18, part 2, regarding deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding such conduct, the injunction must be obtained from a court of competent jurisdiction.

(6) Each risk retention group shall submit to an examination by the commissioner to determine its financial condition if the insurance regulatory official of the jurisdiction where the group is chartered has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner. The examination must be coordinated to avoid unjustified repetition and be conducted in an expeditious manner in accordance with the national association of insurance commissioners examiners handbook.

(7) Each policy issued by a risk retention group must contain, in 10-point type on the front page and the declaration page, the following notice:

#### "NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

(8) The following acts by a risk retention group are prohibited:

(a) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and

(b) the solicitation or sale of insurance by or operation of a risk retention group that is in a hazardous financial condition or is financially impaired.

(9) A risk retention group is not allowed to do business in this state if an insurer is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurers.

(10) A risk retention group may not offer insurance policy coverage declared unlawful by the Montana supreme court.

(11) A risk retention group not chartered in this state and doing business in this state must comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by the insurance regulatory official of any state if there has been a finding of financial impairment after an examination under [section 4(6)].

**Section 5. Compulsory associations.** (1) A risk retention group may not join or contribute financially to any insurance insolvency guaranty fund or similar mechanism in this state. In addition, a risk retention group or its insureds may not receive any benefit from any such fund for claims arising out of the operations of the risk retention group.

(2) A risk retention group shall participate in this state's joint underwriting associations, mandatory liability pools, and similar mechanisms as provided by Title 33, chapter 8.

**Section 6. Countersignature not required.** A policy of insurance issued to a risk retention group or member of that group need not be required to be countersigned as provided in 33-17-1111.

**Section 7. Purchasing groups — exemption from certain laws relating to group purchase of insurance.** A purchasing group meeting the criteria established under the provisions of the federal Liability Risk Retention Act of 1986 is exempt from any law of this state relating to the formation of groups for the purchase of insurance, prohibition of group purchasing, or any law that would discriminate against a purchasing group or its members. In addition, an insurer is exempt from any law of this state that prohibits providing or offering to provide to a purchasing group or its members advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters. A purchasing group is subject to all other applicable laws of this state.

**Section 8. Notice and registration requirements of purchasing groups.** (1) A purchasing group that intends to do business in this state shall furnish notice to the commissioner that:

- (a) identifies the state where the group is domiciled;
- (b) specifies the lines and classifications of liability insurance that the purchasing group intends to purchase;
- (c) identifies the insurer from which the purchasing group intends to purchase its insurance and the domicile of the insurer;
- (d) identifies the principal place of business of the purchasing group; and

(e) provides information required by the commissioner to verify that the purchasing group is qualified under [section 2(6)].

(2) The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process. However, such requirements do not apply in the case of a purchasing group:

(a) (i) that was domiciled before April 2, 1986, in any state of the United States; and

(ii) that was domiciled on and after October 27, 1986, in any state of the United States;

(b) (i) that, before October 27, 1986, purchased insurance from an insurer licensed in any state; and

(ii) that, since October 27, 1986, purchased its insurance from an insurer licensed in any state;

(c) that was a purchasing group under the requirements of the federal Product Liability Risk Retention Act of 1981 before October 27, 1986; and

(d) that does not purchase insurance that was not authorized for purposes of an exemption under the federal Product Liability Risk Retention Act of 1981, as in effect before October 27, 1986.

**Section 9. Restriction on insurance purchased by purchasing groups.** (1) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not authorized in the state where the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of that state.

(2) For purposes of subsection (1), the state where a purchasing group is located is each state where a member of the purchasing group has a risk resident, located, or to be performed.

**Section 10. Administrative and procedural authority regarding risk retention groups and purchasing groups.** The commissioner is authorized to use any powers established under this title to enforce the laws of this state so long as those powers are not specifically preempted by the federal Liability Risk Retention Act of 1986. The commissioner's powers include but are not limited to the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties. With regard to any investigation, administrative proceedings, or litigation, the commissioner may rely on the procedural law and regulations of the state. The injunctive authority of the commissioner in regard to risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

**Section 11. Penalties.** A risk retention group that violates any provision of [sections 3 through 12] is subject to fines and penalties applicable to licensed insurers generally, including revocation of its license to do business in this state.

**Section 12. Duty of agents to obtain license.** A person acting or offering to act as an agent for a risk retention group or purchasing group, that solicits members, sells insurance coverage, purchases coverage for its members located within the state, or otherwise does business in this state shall, before commencing such activity, obtain a license from the commissioner.

**Section 13. Enforceability of orders issued in United States district court.** An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance or operating in any state, territory, or possession of the United States upon a finding that such a group is in a hazardous financial condition, is enforceable in the courts of this state.

**Section 14. Rules and regulations.** The commissioner may make and amend any reasonable rules relating to risk retention groups and purchasing groups necessary or desirable to carry out the provisions of [sections 3 through 12].

**Section 15.** Section 33-2-708, MCA, is amended to read:

**"33-2-708. Fees and licenses.** (1) The commissioner shall collect in advance and the persons so served shall so pay to the commissioner the following fees and licenses:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (b) below) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with such application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers ..... \$ 30.00

(B) foreign insurers ..... 300.00

(ii) annual continuation of certificate of authority ..... 300.00

(iii) reinstatement of certificate of authority ..... 25.00

(b) articles of incorporation:

(i) filing original articles of incorporation of domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state  
..... 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation ..... 10.00

(c) filing bylaws or amendment thereto where required ..... 5.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority ..... 25.00



|                                                                                                                           |        |
|---------------------------------------------------------------------------------------------------------------------------|--------|
| (e) resident agent's license:                                                                                             |        |
| (i) application for original license, including issuance of license, if issued (life and/or disability) .....             | 10.00  |
| (ii) application for original license, including issuance of license, if issued (other than life and/or disability) ..... | 10.00  |
| (iii) appointment of agent, each insurer .....                                                                            | 10.00  |
| (iv) annual renewal, each insurer .....                                                                                   | 10.00  |
| (v) temporary license .....                                                                                               | 10.00  |
| (vi) amendment of license (excluding additions thereto) or reissuance of master license .....                             | 10.00  |
| (f) nonresident agent's license:                                                                                          |        |
| (i) application for original license, including issuance of license, if issued (life and/or disability) .....             | 100.00 |
| (ii) application for original license, including issuance of license, if issued (other than life and/or disability) ..... | 100.00 |
| (iii) appointment of agent, each insurer .....                                                                            | 10.00  |
| (iv) annual renewal, each insurer .....                                                                                   | 10.00  |
| (v) amendment of license (excluding additions thereto) or reissuance of master license .....                              | 10.00  |
| (g) solicitor's license:                                                                                                  |        |
| (i) application for original license, including issuance of license, if issued .....                                      | 5.00   |
| (ii) annual renewal of license .....                                                                                      | 5.00   |
| (h) examination for license as agent or solicitor, each examination .....                                                 | 10.00  |
| (i) surplus line agent's license:                                                                                         |        |
| (i) application for original license and for issuance of license, if issued .....                                         | 25.00  |
| (ii) annual renewal of license .....                                                                                      | 25.00  |
| (j) adjuster's license:                                                                                                   |        |
| (i) application for original license and for issuance of license, if issued .....                                         | 10.00  |
| (ii) annual renewal of license .....                                                                                      | 10.00  |
| (k) insurance vending machine license, each machine, each year .....                                                      | 10.00  |
| (l) commissioner's certificate under seal (except when on certificates of authority or licenses) .....                    | 3.00   |

- (m) copies of documents on file in the commissioner's office, per page ..... .50
- (n) policy forms:
- (i) filing each policy form ..... 25.00
- (ii) filing each application, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks ..... 10.00
- (iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days ..... 50.00
- (2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties, those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706, *and any fees and examination and miscellaneous charges received pursuant to [sections 1 through 14] that are collected by him pursuant to Title 33 and the rules adopted thereunder.*
- (3) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 will be refunded.
- (4) All fees and examination and miscellaneous charges, except fines or penalties or those amounts received pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by the commissioner pursuant to Title 33 and the rules adopted thereunder must be deposited in the insurance regulatory trust account pursuant to 17-2-121 through 17-2-123."

**Section 16. Codification instruction.** Sections 1 through 14 are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to sections 1 through 14.

**Section 17. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 18. Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.

## CHAPTER NO. 250

[HB 507]

**AN ACT TO ALLOW THE STATE OR ANY OTHER GOVERNMENTAL ENTITY TO WAIVE THE REQUIREMENT FOR BONDS OR BID SECURITY ON CONSTRUCTION CONTRACTS UNDER \$5,000; AMENDING SECTIONS 18-2-201, 18-2-202, AND 18-2-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 18-2-201, MCA, is amended to read:

**"18-2-201. Bonding requirements.** (1) Except as otherwise provided in 18-1-219 and subsection (4) *and* (5), of this section, whenever any

board, council, commission, trustees, or body acting for the state or any county, municipality, or any public body shall contract with any person or corporation to do any work for the state, county, or municipality or other public body, city, town, or district, such board, council, commission, trustees, or body shall require the corporation, person, or persons with whom such contract is made to make, execute, and deliver to such board, council, commission, trustees, or body a good and sufficient bond with a licensed surety company as surety, conditioned that such corporation, person, or persons shall:

- (a) faithfully perform all of the provisions of such contract;
- (b) pay all laborers, mechanics, subcontractors, and materialmen; and
- (c) pay all persons who shall supply such corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for the carrying on of such work.

(2) A copy of such bond shall be filed with the county clerk and recorder of the county where such work is performed or improvement made or, if to be performed in more than one county, then with the county clerk of either county, except in cases of cities and towns, in which case such bond shall be filed with the city or town clerk thereof.

(3) Notwithstanding the provisions of (1) and (2) above, the state or other governmental entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, materialmen, mechanics, and subcontractors:

- (a) lawful money of the United States; or
- (b) a cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of the state of Montana or by a national banking association located in Montana; or
- (c) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana.

(4) Notwithstanding the provisions of subsections (1) and (2) above, any board, council, commission, trustee, or body acting for any county, municipality, or any public body other than the state may, in lieu of a bond from a licensed surety company, accept a good and sufficient bond with two or more sureties acceptable to the governmental body.

(5) *The state or other governmental entity may waive the requirements contained in subsections (1) through (4) for building or construction projects, as defined in 18-2-101, that cost less than \$5,000."*

Section 2. Section 18-2-202, MCA, is amended to read:

**"18-2-202. Failure to require bond — waiver of bond.** If any board, council, commission, trustee, or body acting for the state or any board of county commissioners or any mayor and common council of any

incorporated city or town or tribunal transacting the business of any such municipal corporation *waives or fails* to take such bond, cash, checks, drafts, money orders, or certificates of deposit as herein required, the state or such county, incorporated city or town, or other municipal corporation shall be liable to the persons mentioned in 18-2-201 to the full extent and for the full amount of all of such debts so contracted by any such subcontractor as well as such contractor."

Section 3. Section 18-2-302, MCA, is amended to read:

**"18-2-302. Bid security.** (1) *Except as provided in subsection (2), each bid must be accompanied by bid security in the amount of 10% of the bid, such security to consist of cash, cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana, or a bid bond or bonds executed by a surety corporation authorized to do business in the state of Montana.*

(2) *The state or other governmental entity may waive the requirements for bid security on building or construction projects, as defined in 18-2-101, that cost less than \$5,000."*

Section 4. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.

## CHAPTER NO. 251

[HB 558]

AN ACT REVISING AND CLARIFYING THE TEST FOR RESPONSIBILITY FOR CRIMINAL CONDUCT ENGAGED IN WHILE INTOXICATED; AND AMENDING SECTION 45-2-203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-2-203, MCA, is amended to read:

**"45-2-203. Responsibility — intoxicated condition.** A person who is in an intoxicated condition is criminally responsible for *his* conduct and an intoxicated condition is not a defense to any offense and may not be taken into consideration in determining the existence of a mental state which is an element of the offense, *unless the defendant proves that he did not know that it was an intoxicating substance when he consumed, smoked, sniffed, injected, or otherwise ingested the substance causing the condition."*

Approved March 27, 1987.

**CHAPTER NO. 252**

[HB 591]

AN ACT TO REQUIRE COUNTIES TO TRANSMIT IRRIGATION DISTRICT FUNDS ON THE 10TH DAY OF EACH MONTH EXCEPT JUNE AND DECEMBER TO THE COUNTY IN WHICH THE DISTRICT OFFICE IS LOCATED; AMENDING SECTION 85-7-2135, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-7-2135, MCA, is amended to read:

**"85-7-2135. Transmission of funds from other counties.** Where the lands of any district lie in more than one county, the district taxes or assessments collected in counties in which the principal office is not located shall be transmitted, on or before *the 10th day of each month except June and December*, by the county treasurer of such county to the county treasurer of the county wherein the office of the district is located."

Section 2. **Effective date.** This act is effective July 1, 1987.

Approved March 27, 1987.

**CHAPTER NO. 253**

[HB 664]

AN ACT GENERALLY REVISING THE LAWS GOVERNING JOINT OBLIGATIONS AND DEBTS TO REFLECT REVISION OF JOINT AND SEVERAL LIABILITY; AMENDING SECTIONS 25-15-202, 28-1-301 THROUGH 28-1-303, AND 28-11-311, MCA; AND COORDINATING THIS ACT WITH THE REVISION OF JOINT AND SEVERAL LIABILITY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 25-15-202, MCA, is amended to read:

**"25-15-202. Effect of discharge — right of contribution.** *Except as provided in 27-1-703, the discharge of a joint debtor operates as a payment to the creditor equal to the proportionate interest of the debtor discharged, but the discharge of such debtor does not prevent his codebtors from enforcing the right of contribution in case they are compelled to pay the whole of the debt.*"

Section 2. Section 28-1-301, MCA, is amended to read:

**"28-1-301. Types of obligations involving several persons.** *Except as provided in 27-1-703, an obligation imposed upon several persons or a right created in favor of several persons may be:*

- (1) joint;
- (2) several; or
- (3) joint and several."

Section 3. Section 28-1-302, MCA, is amended to read:

**"28-1-302. Joint obligations and covenants to be taken as joint and several.** *Except as provided in 27-1-703, after March 1, 1895, all joint obligations and covenants shall be taken and held to be joint and several obligations and covenants."*

Section 4. Section 28-1-303, MCA, is amended to read:

**"28-1-303. Right to contribution from joint debtors.** *Except as provided in 27-1-703, a party to a joint or joint and several obligation who satisfies more than his share of the claim against all may require a proportionate contribution from all the parties joined with him."*

Section 5. Section 28-11-311, MCA, is amended to read:

**"28-11-311. Person indemnifying liable jointly and severally.** *Except as provided in 27-1-703, one who indemnifies another against an act to be done by the latter is liable jointly with the person indemnified and separately to every person injured by such act."*

Section 6. **Coordination instruction.** This act is effective only if this act and Senate Bill No. 51 or any other bill modifying joint and several liability by amending 27-1-703 are both passed and approved. If this act is passed and approved but Senate Bill No. 51 or any other bill modifying joint and several liability by amending 27-1-703, is not passed and approved, this act is void.

Approved March 27, 1987.

## CHAPTER NO. 254

[HB 691]

AN ACT REVISING RATE REGULATION FOR SMALL TELECOMMUNICATIONS PROVIDERS; DEFINING SMALL TELECOMMUNICATIONS PROVIDER; PROVIDING FOR NOTICE OF PROPOSED RATE INCREASES; PROVIDING FOR PUBLIC SERVICE COMMISSION REVIEW OF PROPOSED RATE INCREASES IN CERTAIN CIRCUMSTANCES; AMENDING SECTION 69-3-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definitions.** As used in [sections 1 through 7], the following definitions apply:

- (1) "Commission" means the Montana public service commission.

(2) "Rate" means a charge by a small telecommunications provider to a subscriber for the initiation or continued provision of regulated telecommunications service. The term includes but is not limited to charges for installations, local service, toll service, directory assistance, and late payment.

(3) "Rate increase" means an increase in the rates for regulated telecommunications services provided by a small telecommunications provider and the creation of new rates.

(4) "Regulated telecommunications service" is as defined in 69-3-803.

(5) "Small telecommunications provider" means a person, partnership, corporation, or other entity providing regulated telecommunications service to less than 5,000 subscribers in Montana. Rural telephone cooperatives organized under Title 35, chapter 18, are not small telecommunications providers.

(6) "Subscriber" means a person, partnership, corporation, or other entity acquiring regulated telecommunications service from a small telecommunications provider. There is one subscriber for each billed line of a small telecommunications provider.

**Section 2. Reduced rate regulation of small telecommunications provider.** Except as provided in [sections 1 through 7], small telecommunications providers are not subject to commission rate regulation provided in Title 69, chapter 3, parts 3 and 8.

**Section 3. Notice of rate increase.** (1) At least 60 days before the effective date of any rate increase proposed by a small telecommunications provider, the small telecommunications provider shall mail notice of the proposed rate increase to each affected subscriber, the commission, and the Montana consumer counsel.

(2) Notice to the commission and consumer counsel must include:

- (a) a summary of the justification for the proposed rate increase;
- (b) a list of the number of affected subscribers in each category of rates proposed to be increased; and
- (c) if requested by the commission, a list of the names of the affected subscribers.

(3) The notice to affected subscribers may be included with regular subscriber billings and must include:

- (a) a schedule of the proposed rates;
- (b) the effective date of the proposed rates; and
- (c) a description of the petition procedure in [section 6] for seeking commission review and determination of the proposed rates. If the small telecommunications provider publishes the petition procedure in a telephone directory, a reference to the location of the procedure in the directory is adequate notice.

**Section 4. Commission review and determination of rate increases.** (1) When a small telecommunications provider proposes a rate increase, the commission shall review and determine the rates pursuant to the applicable procedures in Title 69, chapter 3, if:

(a) the affected subscribers have successfully petitioned for commission review as described in [section 6];

(b) the small telecommunications provider requests the commission to review and determine the rates; or

(c) by the 60th day following notice of the proposed increase, the consumer counsel petitions the commission to review and determine the rates.

(2) An order of the commission issued under this section establishes the effective rate for the regulated telecommunications services covered by the order. Rates established by commission order may not be increased for a period of 6 months, except as ordered by the commission.

(3) The order of the commission is subject to review pursuant to Title 69, chapter 3, part 4.

**Section 5. Investigations by commission.** Nothing in [sections 1 through 7] limits the authority of the commission under 69-3-324 to investigate at any time and on its own motion the existing rates of a small telecommunications provider.

**Section 6. Petition for review of proposed rate increase.** Subscribers affected by a proposed rate increase for regulated telecommunications services by a small telecommunications provider may petition the commission to review and determine the rates. The petition must identify the proposed rate increase and must be in writing and signed by a subscriber or the authorized person if the subscriber is a business account.

**Section 7. Proposed increase effective unless requisite petitions received by commission.** (1) If by the 60th day following notice to subscribers of a proposed rate increase the commission has not received petitions containing signatures from at least 10% of the affected subscribers in any rate category or a petition for review from the consumer counsel, the commission shall certify this fact to the small telecommunications provider and the proposed rate increase becomes effective as published in the notice of proposed increase.

(2) If by the 60th day following notice to subscribers of a proposed rate increase the commission has received petitions containing signatures from 10% or more of the affected subscribers in any rate category or a petition for review from the consumer counsel, the commission shall notify the small telecommunications provider of this fact and shall indicate that the proposed rate increase in that rate category will not take effect as noticed. The commission shall then review and determine the rates in that category pursuant to [section 4].

(3) In the case of a proposed increase in rates for access services provided to interexchange carriers, a valid petition for commission review and determination of rates consists of a signature of an authorized representative of any interexchange carrier that would be affected by the access rates that are proposed to be increased.



Section 8. Section 69-3-302, MCA, is amended to read:

**"69-3-302. Changes in schedules.** (1) No change shall be made in any schedule, including schedules of joint rates, except as approved by the commission, upon the passage of 9 months, *or by operation of [section 7(1)]*. If the 9-month time period expires prior to commission approval of a schedule, a utility may waive the time period.

(2) Notwithstanding any provision of this title to the contrary and notwithstanding the existence of and authorization for the office of consumer counsel, the rates, tolls, or charges set forth in any schedule filed with the commission pursuant to 69-3-301 shall become effective and be lawful rates, tolls, or charges for the utility service rendered 9 months after the date upon which the schedule was filed under the rules of practice and procedure for filing as adopted by the commission or upon commission approval, whichever shall occur first, unless the utility waives the 9-month time period. However, if the rates, tolls, or charges become effective because of the passage of 9 months' time, the revenues collected thereunder shall be subject to rebate, plus interest at a per-annum rate determined by the commission, to the extent that the rates, tolls, or charges ultimately approved by the commission in its final decision produce revenues which are less than those collected under the filed schedules. In the case of an investor-owned utility, the interest rate set by the commission may not exceed the cost of equity capital as last determined by the commission.

(3) The commission may prescribe rules necessary to effectively administer this section."

Section 9. **Codification instruction.** Sections 1 through 7 are intended to be codified as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to sections 1 through 7.

Section 10. **Extension of authority.** Any existing authority of the public service commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 11. **Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.

## CHAPTER NO. 255

[HB 738]

### AN ACT PROVIDING FOR ESTABLISHMENT OF A MONTANA AGRICULTURAL CENTER AND MUSEUM OF THE NORTHERN GREAT PLAINS.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Establishment of Montana agricultural center and museum of the Northern Great Plains.** There is a Montana agricultural center and museum of the Northern Great Plains located in Fort Benton.

The department of fish, wildlife, and parks shall have jurisdiction, custody, and control of the center and museum, but shall lease the facility to the city of Fort Benton for so long as the city of Fort Benton provides for development, operation, and maintenance of the center and museum without cost to the state of Montana.

**Section 2. Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 23, chapter 1, part 1, and the provisions of Title 23, chapter 1, part 1, apply to section 1.

Approved March 27, 1987.

## CHAPTER NO. 256

[HB 783]

### AN ACT TO SUBSTANTIALLY LIMIT REQUIREMENTS FOR REVIEW OF DIVISIONS OF LAND FOR ACCESS AND EASEMENTS; AMENDING SECTIONS 76-3-505 AND 76-3-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 76-3-505, MCA, is amended to read:

**"76-3-505. Provision for summary review of subdivisions and other divisions of land.** Local subdivision regulations shall include procedures for the summary review and approval of subdivision plats containing five or fewer parcels where proper access to all lots is provided, where no land in the subdivision will be dedicated to public use for parks or playgrounds, and which have been approved by the department of health and environmental sciences where such approval is required by part 1 of chapter 4; provided that reasonable local regulations may contain additional requirements for summary approval."

Section 2. Section 76-3-609, MCA, is amended to read:

**"76-3-609. Review procedure for minor subdivisions and other divisions of land.** Subdivisions containing five or fewer parcels where proper access to all lots is provided and in which no land is to be dedicated to the public for parks or playgrounds are to be reviewed as follows:

(1) The governing body must approve, conditionally approve, or disapprove the first such subdivision from a tract of record within 35 days of the submission of an application for approval thereof.

(2) The governing body shall state in writing the conditions which must be met if the subdivision is conditionally approved or what local regulations would not be met by the subdivision if it disapproves the subdivision.

(3) The requirements for holding a public hearing and preparing an environmental assessment shall not apply to the first such subdivision created from a tract of record.

(4) Subsequent subdivisions from a tract of record shall be reviewed under 76-3-505 and regulations adopted pursuant to that section."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.

## CHAPTER NO. 257

[HB 822]

AN ACT AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO ADOPT RULES AUTHORIZING THE EQUIVALENT OF SURETY BONDS TO BE POSTED BY PRODUCE WHOLESALERS AND ITINERANT MERCHANTS; AMENDING SECTIONS 80-3-603 AND 80-3-705, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 80-3-603, MCA, is amended to read:

**"80-3-603. Application for license — bond — expiration date.**

(1) Licenses to engage in the business of a dealer at wholesale in this state shall be issued by the department to reputable persons who apply for a license and pay the prescribed fee.

(2) The application shall be in writing, accompanied by the prescribed fee, and under oath. It shall state:

(a) the place where the applicant intends to carry on the business for which the license is desired;

(b) the estimated amount of business to be done monthly;

(c) the full names of the persons constituting the firm, if the applicant is a partnership;

(d) the names of the officers and the place of incorporation, if the applicant is a corporation; and

(e) a financial statement showing in a general way the value and character of the assets and the amount of liabilities of the applicant.

(3) Before issuing a license, the department shall require the applicant to file with it a bond *or its equivalent, as established by the department by rule*, to the state in an amount to be fixed by the department based on the monthly business to be transacted by the applicant. The bond *or its equivalent* may not be for less than \$1,000. The department may require, under

penalty of revoking the license, additional bond *or its equivalent* if the business transacted warrants an increase. The bond *or its equivalent* shall cover all wholesale produce business transacted in this state. The bond shall be executed by the applicant as principal and a surety company authorized to do business in the state as surety. The form of the bond *or its equivalent* shall be fixed by the department, conditioned upon:

- (a) faithful performance of his duties as a dealer at wholesale;
- (b) observance of all laws relating to the business of a dealer at wholesale;
- (c) payment, when due, of the purchase price of produce purchased by him;
- (d) the prompt reporting of sales as required by law to all persons consigning produce to the dealer as licensee for sale on commission; and
- (e) the prompt payment to persons entitled to the proceeds of the sales less lawful charges, disbursements, and commissions.

(4) All licenses expire December 31 of each year. The license or a certified copy of the license shall be kept posted in the office of the licensee at each place in this state where he transacts business. The fee for each license is \$100 and for each certified copy of a license, \$1. If a truck is the place of business, the license fee for the first truck is \$100 and for each additional truck, \$50.

(5) A separate license is required for each place of business. Each truck used for assembling and distributing produce, other than from a permanently established place of business through which all business of sales and accounts is handled, is a separate place of business and must be licensed."

Section 2. Section 80-3-705, MCA, is amended to read:

**"80-3-705. Surety bond.** A license may not be issued until the applicant has filed a surety bond *or its equivalent*, as established by the department by rule, issued by a company authorized to do business in the state. The bond *or its equivalent* must first be approved by the department and shall be for not less than \$1,000. The bond *or its equivalent* shall be in a form prescribed by the department and shall be conditioned upon the delivery of honest weights, measures, or grades; accurate representation as to quality or class of produce; the actual payment of checks, drafts, or other obligations delivered by the itinerant merchant in exchange for the purchase of produce; and the payment of all other obligations incurred by him."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 27, 1987.

**CHAPTER NO. 258**

[HB 511]

**AN ACT TO REQUIRE PRESCHOOL SPECIAL EDUCATION FOR HANDICAPPED CHILDREN BETWEEN THE AGES OF 3 AND 6 BY SEPTEMBER 1, 1990; AND AMENDING SECTION 20-7-411, MCA.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-7-411, MCA, is amended to read:

**"20-7-411. Regular classes preferred — obligation to establish special education program.** (1) All handicapped children in Montana are entitled to a free appropriate public education provided in the least restrictive alternative setting. To the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, shall be educated with children who are not handicapped. Separate schooling or other removal of handicapped children from the regular educational environment may occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) After September 1, 1977, the board of trustees of every school district must provide or establish and maintain a special education program for every handicapped person as herein defined between the ages of 6 and 18, inclusive.

(3) *On or before September 1, 1990, the board of trustees of each elementary district shall provide or establish and maintain a special education program for each handicapped preschool child between the ages of 3 and 6, inclusive.*

(4) The board of trustees of any school district may meet its obligation to serve handicapped persons by establishing its own special education program, by establishing a cooperative special education program, or by participating in a regional services program."

Section 2. **Extension of authority.** Any existing authority of the superintendent of public instruction to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Implementation contingency.** A board of trustees of a school district is not required to implement this act if the federal government does not appropriate at least one-half of the authorized amount for each qualifying handicapped preschool child for school fiscal year 1991 and beyond.

Approved March 28, 1987.

**CHAPTER NO. 259**

[SB 17]

AN ACT REQUIRING THE DIRECTOR OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO APPOINT A QUALIFIED EMPLOYEE TO ACT AS AN INDIAN CHILD WELFARE SPECIALIST AND DEFINING THE SPECIALIST'S DUTIES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Indian child welfare specialist.** The director of the department shall appoint a qualified employee of the department to act as an Indian child welfare specialist. The duties of the specialist include:

(1) developing Indian foster homes and other Indian placement resources;

(2) providing technical advice to tribal, state, and county agencies and district courts on matters pertaining to Indian child welfare;

(3) providing assistance in negotiating cooperative agreements to provide foster care services to Indian children;

(4) conducting training seminars on implementing the Indian Child Welfare Act of 1978 (25 U.S.C. 1901, et seq.);

(5) applying for and accepting grants and other funds for Indian child welfare activities;

(6) developing and maintaining a list of attorneys to represent indigent parents and Indian custodians in Indian child welfare proceedings;

(7) making recommendations to the department on legislation and rules concerning Indian child welfare matters; and

(8) performing other duties concerning Indian child welfare matters as determined by the director.

**Section 2. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 53, chapter 4, part 1, and the provisions of Title 53, chapter 4, part 1, apply to section 1.

Approved March 29, 1987.

**CHAPTER NO. 260**

[SB 18]

AN ACT REQUIRING APPOINTMENT OF A PERSON KNOWLEDGEABLE ABOUT INDIAN CULTURAL AND FAMILY MATTERS TO CERTAIN FOSTER CARE REVIEW COMMITTEES; AMENDING SECTION 41-3-1115, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 41-3-1115, MCA, is amended to read:

**"41-3-1115. Foster care review committee.** (1) In every judicial district the youth court judge, in consultation with the department, shall

appoint a foster care review committee. The members of the committee must be willing to act without compensation. The committee shall be composed of not less than five or more than seven members. The members shall include:

- (a) a representative of the department;
- (b) a representative of the youth court;
- (c) someone knowledgeable in the needs of children in foster care placements who is not employed by the department or the youth court;
- (d) a representative of a local school district;
- (e) *if the child whose care under review is an Indian, someone, preferably an Indian person, knowledgeable about Indian cultural and family matters who is appointed effective only for and during that review; and*
- (f) if there is one, the foster parent of the child whose care is under review. The foster parent's appointment is effective only for and during that review.

(2) When a child is in foster care under the supervision of the department or the youth court or if payment for care is made pursuant to 41-3-1122 or 41-3-1121(2), the committee shall conduct a review of the foster care status of the child. The review must be conducted within a time limit established by the department. The time limit must comply with federal law and may not be later than the 12-month anniversary date of the child's placement into foster care.

(3) The department shall provide the committee with guidelines for operation of the committee. Within 30 days of the foster care review, the committee shall provide the youth court and the department a written report of its findings and recommendations for further action by the youth court or the department.

(4) The department shall adopt rules necessary to carry out the purposes of this section.

(5) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members is confidential and subject to the confidentiality requirements of the department.

(6) The committee is subject to the call of the youth court judge to meet and confer with him on all matters pertaining to the foster care of a child before the youth court."

Approved March 29, 1987.

**CHAPTER NO. 261**

[SB 21]

AN ACT AUTHORIZING THE ADOPTION OF TEMPORARY RULES TO IMPLEMENT STATUTES WITH EARLY EFFECTIVE DATES; AMENDING SECTIONS 2-4-303 AND 2-4-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-4-303, MCA, is amended to read:

**"2-4-303. Emergency or temporary rules.** (1) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, but the adoption of an identical rule under 2-4-302 is not precluded. The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to judicial review.

(2) *A statute enacted or amended to be effective prior to October 1 of the year of enactment or amendment may be implemented by a temporary administrative rule, adopted before October 1 of that year, upon any abbreviated notice or hearing that the agency finds practicable, but the rule may not be filed with the secretary of state until at least 30 days have passed since publication of the notice of proposal to adopt the rule. The temporary rule is effective until October 1 of the year of adoption. The adoption of an identical rule under 2-4-302 is not precluded during the period the temporary rule is effective."*

Section 2. Section 2-4-306, MCA, is amended to read:

**"2-4-306. Filing, format, and effective date — dissemination of emergency rules.** (1) Each agency shall file with the secretary of state a copy of each rule adopted by it.

(2) The secretary of state may prescribe a format, style, and arrangement for notices and rules which are filed pursuant to this chapter and may refuse to accept the filing of any notice or rule that is not in compliance therewith. He shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, which shall be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing such copies.

(3) In the event that the administrative code committee has conducted a poll of the legislature in accordance with 2-4-403 or the revenue oversight committee has conducted a poll in accordance with 5-18-109, the results of the poll shall be published with the rule.



(4) Each rule shall become effective after publication in the register as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date shall be the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) *a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and*

(ii) *an emergency rule shall become effective immediately upon filing with the secretary of state or at a stated date following publication in the register if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them."*

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1987.

## CHAPTER NO. 262

[SB 43]

**AN ACT CLARIFYING WHEN A \$500 BOND IS REQUIRED FOR SPECIAL FUEL USERS; AND AMENDING SECTION 15-70-304, MCA.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-70-304, MCA, is amended to read:

**"15-70-304. Bonding, release of surety, and additional bond.** (1) Except as herein provided, no special fuel dealer's license or special fuel user's permit shall be issued to any person or continued in force unless such person has furnished bond, as defined in 15-70-301 and in such form as the department may require, to secure its compliance with this part and the payment of any and all taxes, interest, and penalties due and to become due hereunder. *The department shall waive the bond requirement of any special fuel user not subject to subsection (2)(a) or (2)(b).* Upon application, the department shall waive the bond requirement of any public contractor licensed under Title 15, chapter 50, who has posted a performance bond conditioned on payment of all lawful taxes with the contracting entity.

(2) The total amount of the bond or bonds required of any special fuel dealer shall be equivalent to twice his estimated monthly tax payments and the total amount of the bond or bonds required of any special fuel user shall be equivalent to twice his estimated quarterly tax payments as herein-after provided, determined in such manner as the department may deem

proper; provided, however, that the total amount of the bond or bonds shall never be less than:

(a) \$5,000 for any special fuel user awarded a contract in accordance with 15-70-321;

(b) \$500 for any other special fuel user *who*:

(i) *possesses special fuel in bulk storage in this state on which the tax has not been paid;*

(ii) *requests a special fuel user's permit to be reissued after being canceled for cause; or*

(iii) *fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327; and*

(c) \$1,000 for a special fuel dealer.

(3) Any surety on a bond furnished by a special fuel dealer or special fuel user as provided herein shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of 30 days from the date upon which such surety shall have lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the 30-day period. The department shall, promptly upon receiving any such request, notify the special fuel dealer or special fuel user who furnished the bond, and unless the special fuel dealer or special fuel user shall, on or before the expiration of the 30-day period, file a new bond in accordance with the requirements of this section or make a deposit in lieu thereof as provided in 15-70-301(1), the department forthwith shall cancel the special fuel dealer's license or special fuel user's permit.

(4) The department may require a special fuel dealer or special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301(1) if, in its opinion, the security of the surety bond theretofore filed by such special fuel dealer or special fuel user or the market value of the properties deposited as security by such special fuel dealer or special fuel user shall become impaired or inadequate, and upon failure of the special fuel dealer or special fuel user to give such new additional surety bond or to deposit additional securities within 30 days after being requested so to do by the department, said department forthwith shall cancel his license."

**Section 2. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1987.

**CHAPTER NO. 263**

[SB 68]

**AN ACT ALLOWING SCHOOL DISTRICTS TO USE CLEARING ACCOUNTS AND ESTABLISHING STANDARDS FOR THE USE OF SUCH ACCOUNTS.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Clearing accounts.** (1) A clearing account may be used by a school district for bookkeeping purposes if:

(a) all funds from the account are disbursed through issuance of warrants as provided in 20-9-221;

(b) records are kept showing the source and use of the funds that passed through the account; and

(c) the balance in the account is no greater than the amount necessary to cover outstanding warrants written against the account.

(2) An elementary school district and a high school district that are unified may use the same clearing account if the account is maintained in accordance with rules adopted by the superintendent of public instruction.

(3) Nothing in this section may be construed to allow the use of funds for any purpose or in any manner other than that expressly authorized in this title.

**Section 2. Extension of authority.** Any existing authority of the superintendent of public instruction to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 20, chapter 9, part 2, and the provisions of Title 20, chapter 9, part 2, apply to section 1.

Approved March 29, 1987.

**CHAPTER NO. 264**

[SB 83]

**AN ACT MAKING REPORTS AND PUBLICATIONS OF THE MONTANA ECONOMIC DEVELOPMENT BOARD DUE ON DECEMBER 31 OF EACH YEAR; ELIMINATING THE REQUIREMENT FOR A REPORT TO THE LEGISLATURE ON POTENTIAL USES OF THE COAL TAX TRUST; AMENDING SECTION 17-6-322, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-6-322, MCA, is amended to read:

**"17-6-322. Reports and publications.** (1) By *December 31* of each year, the board shall publish a report for distribution to the governor, the

legislature, and the public. The report must be written in easily understandable language. The report must include:

- (a) financial statements audited by independent auditors;
  - (b) a statement of the amount of money received by the Montana in-state investment fund from each investment during the period covered;
  - (c) a statement of investments of the Montana in-state investment fund, including an appraisal at market value;
  - (d) a description of investment activity during the period covered by the report;
  - (e) a comparison of the Montana in-state investment fund's performance in relation to intended goals contained in 17-6-303;
  - (f) an examination of the impact of the investment criteria of 17-6-308 and 17-6-309;
  - (g) recommendations of any needed changes; and
  - (h) any other information the board believes would be of interest to the governor, the legislature, and the public.
- (2) The annual income statement and balance sheet of the Montana in-state investment fund must be published in at least one newspaper in each judicial district of the state by *December 31* of each year."

**Section 2. Effective date.** This act is effective on passage and approval.

Approved March 29, 1987.

## CHAPTER NO. 265

[SB 85]

AN ACT PROVIDING A STATUTORY APPROPRIATION FOR FUNDS RECEIVED FROM BONDS FOR THE PROPER PLUGGING OF ABANDONED OR DRY WELLS; DELETING THE REQUIREMENT FOR THE FILING OF STATEMENTS OF CRUDE PETROLEUM AND NATURAL GAS PRODUCED AND MARKETING IN THE STATE WITH THE BOARD OF OIL AND GAS CONSERVATION; DELETING THE REQUIREMENT FOR THE DEPARTMENT OF ADMINISTRATION'S APPROVAL OF THE EXPENDITURE OF FUNDS BY THE BOARD OF OIL AND GAS CONSERVATION; AMENDING SECTIONS 17-7-502, 82-11-132, AND 82-11-135, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by

permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations:

- (a) 2-9-202;
- (b) 2-17-105;
- (c) 2-18-812;
- (d) 10-3-203;
- (e) 10-3-312;
- (f) 10-3-314;
- (g) 10-4-301;
- (h) 13-37-304;
- (i) 15-31-702;
- (j) 15-36-112;
- (k) 15-70-101;
- (l) 16-1-404;
- (m) 16-1-410;
- (n) 16-1-411;
- (o) 17-3-212;
- (p) 17-5-404;
- (q) 17-5-424;
- (r) 17-5-804;
- (s) 19-8-504;
- (t) 19-9-702;
- (u) 19-9-1007;
- (v) 19-10-205;
- (w) 19-10-305;
- (x) 19-10-506;

- (y) 19-11-512;
- (z) 19-11-513;
- (aa) 19-11-606;
- (bb) 19-12-301;
- (cc) 19-13-604;
- (dd) 20-6-406;
- (ee) 20-8-111;
- (ff) 23-5-612;
- (gg) 37-51-501;
- (hh) 53-24-206;
- (ii) 75-1-1101;
- (jj) 75-7-305;
- (kk) 80-2-103;
- (ll) 80-2-228;
- (mm) 90-3-301;
- (nn) 90-3-302;
- (oo) 90-15-103;
- (pp) Sec. 13, HB 861, L. 1985; *and*
- (qq) [section 4].

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments."

Section 2. Section 82-11-132, MCA, is amended to read:

**"82-11-132. Statements to treasurer and payment of tax.** (1) Each producer of crude petroleum in the state shall, not later than the last day of each of the calendar months of February, May, August, and November of each calendar year, render a true statement to the state treasurer and the department of revenue, duly signed and sworn to, of all crude petroleum produced and marketed by him in this state during the preceding quarter and containing such other information as the *department of revenue* may require and shall accompany the statement with the payment to the state treasurer of the assessment provided for in 82-11-131(1) for the period covered by the statement.

(2) Each producer of natural gas in the state shall render like statements to the state treasurer *and* the department of revenue of all natural

gas produced and marketed by him in this state and shall make payment of the assessment provided for in 82-11-131(1) at such times and for such periods as may be prescribed by rule of the *department of revenue*.

(3) Any producer carrying on business at more than one place or location in this state may include all those places of business in one statement.

(4) The assessment imposed herein shall be due at the time the oil or natural gas is marketed. Oil or natural gas shall be deemed marketed when it is removed from the property from which it was produced.

(5) *The department of revenue may adopt rules to implement this section.*"

Section 3. Section 82-11-135, MCA, is amended to read:

**"82-11-135. Money earmarked for board expenses.** All money collected under this chapter shall be deposited in the state special revenue fund by the state treasurer and shall be used for the purpose of paying all expenses of the board and for no other purpose. All these moneys shall be used by the board subject to biennial appropriations by the legislature. Income and interest from investment of the board's moneys in the state special revenue fund shall be credited to the board."

Section 4. **Expenditure of funds from bonds for plugging wells.** The board may accept and expend all funds received by it from bonds for properly plugging dry or abandoned wells as authorized in 82-11-123(5). These funds are statutorily appropriated as provided in 17-7-502.

Section 5. **Extension of authority.** Any existing authority of the department of revenue or the board of oil and gas conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 6. **Codification instruction.** Section 4 is intended to be codified as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to section 4.

Section 7. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1987.

## CHAPTER NO. 266

[SB 138]

AN ACT TO ESTABLISH CRITERIA AND PROCEDURES FOR ASSESSING PROPOSALS FOR NEW OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS; PROVIDING FOR CONSOLIDATION OF EXISTING BOARDS; ASSIGNING RESPONSIBILITY FOR THESE FUNCTIONS TO THE LEGISLATIVE AUDIT COMMITTEE; PROVIDING FOR AN APPLICATION FEE; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Purpose.** (1) The legislature finds that the number of licensed occupations and professions has increased substantially and that occupational and professional licensing boards occasionally have been

established without a determination that the police power of the state is reasonably exercised by establishing them or a determination that existing licensing boards could provide the necessary regulation.

(2) It is the intent of the legislature to improve its ability to evaluate the need for new licensing boards by establishing criteria and procedures for reviewing proposed new occupational and professional licensing boards. To this end it is a purpose of this part to ensure that no new licensing board is established unless:

(a) the unregulated practice of the profession or occupation directly and immediately endangers the public health, safety, or welfare;

(b) practice of the profession or occupation requires specialized skill or training, and nationally recognized standards of education and training exist;

(c) a substantial majority of the public lacks the knowledge or experience to evaluate whether the practitioner is competent; and

(d) the public is not protected effectively by other means.

(3) It is also a purpose of this part to allow for the smallest number of licensing boards consistent with adequate regulation of appropriate occupations and professions.

**Section 2. Definitions.** In [sections 2 through 8], the following definitions apply:

(1) "Applicant" means the persons or organization proposing state licensing for an occupation or profession.

(2) "Committee" means the legislative audit committee.

(3) "License" means a permit, certificate, approval, registration, charter, or other form of permission required by law as a condition of practicing a profession or occupation.

(4) "Licensing" means a regulatory process that includes but is not limited to the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(5) "Licensing board" means an office, position, commission, or any other entity or instrumentality of the executive branch of state government that is responsible for licensing members of an occupation or profession.

**Section 3. Committee review and report.** (1) The committee shall review and assess the merits of any proposal to:

(a) establish a new licensing board;

(b) initiate a legislative or executive department study of the need for a new licensing board; or

(c) add to the duties of an existing licensing board responsibility for licensing another occupation or profession.

(2) Any proposal subject to review under subsection (1) must be submitted, in the form of a legislative proposal, to the committee at least 180 days before the first day of the next regular legislative session.



(3) The committee shall conduct the review required by subsection (1) only if the proposal includes:

(a) a written request by a senator whose term will not expire before the next regular legislative session or by a senator or representative who is not opposed in the next general election;

(b) the information required by [section 4(1)]; and

(c) a completed application as provided in [section 5].

(4) Within 90 days after the proposal is received, the committee shall prepare a draft report to the legislature for its next regular session. The report must include but is not limited to:

(a) the committee's findings with respect to each of the criteria in [section 4];

(b) an estimate of the cost to the state of licensing the occupation or profession and a proposed schedule of fees that will recover the cost of the licensing program as required by 37-1-134; and

(c) the committee's recommendation as to whether the profession or occupation should be licensed by the state.

(5) If the volume of requests makes it impossible to prepare all the required reports within 90 days, the committee may extend the time for preparation of a report to a maximum of 120 days from the date a request is received.

**Section 4. Criteria for committee assessment.** (1) The applicant shall demonstrate to the committee and if necessary furnish additional information requested by the committee to show that:

(a) the unregulated practice of the occupation or profession creates a direct, immediate hazard to the public health, safety, or welfare;

(b) the scope of practice is readily identified and easily distinguished from the scope of practice of other professions and occupations;

(c) the occupational or professional group has an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service;

(d) practice of the occupation or profession requires specialized skill or training, and nationally recognized standards of education and training exist;

(e) the proposed qualifications for obtaining a license are justified;

(f) the public will benefit from the proposed regulation of the occupation or profession;

(g) public support for the proposed licensure exists;

(h) licensing will not significantly increase the cost of services to the public; and

(i) no other board licenses a similar or closely related occupation or profession.

(2) In assessing the merits of the proposal for a new licensing board, the committee shall evaluate the applicant's information for each of the factors listed in subsection (1) and in addition determine:

(a) the number of existing practitioners and the approximate number of people who would be licensed in the future;

(b) the number of people who are likely to use the services of the occupation or profession;

(c) the manner and degree of improved quality of service;

(d) the degree to which licensing will facilitate clients' access to reimbursement for government assistance programs;

(e) whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence;

(f) whether the public can effectively be protected by other means; and

(g) whether licensing will:

(i) significantly increase the cost of goods and services provided by the occupation or profession;

(ii) adversely affect the scope of practice of other professions and occupations, whether regulated or not; or

(iii) exclude existing practitioners or otherwise reduce the number of practitioners in Montana.

(3) The committee shall consider in its assessment each of the factors in subsections (1) and (2) and shall include in its final report specific findings with respect to each of those factors.

**Section 5. Procedure.** (1) The committee shall adopt an appropriate form for use by applicants, containing a copy of [sections 1 through 7] and requiring applicants to list:

(a) proposed qualifications of licensed practitioners;

(b) disciplinary procedures that would be applied to practitioners;

(c) proposed requirements for continuing education, if any; and

(d) the information required by [section 4].

(2) After the committee has initiated its review under [section 3], it may request any additional information it considers necessary to complete its assessment of the proposal.

(3) The committee may in its discretion hold one or more public hearings.

(4) At least 21 days before its final report is presented to the legislature, the committee shall provide an opportunity for the applicant to review a preliminary draft of the report and prepare a response. The committee shall consider all responses in preparing its final report.

(5) At least one copy of the final report must be kept on file with the legislative auditor and made available for public inspection.

**Section 6. Application fee.** An application for review under [section 3] must include an application fee established by the committee in an amount not to exceed \$6,500. The fee must be used by the committee to pay the cost of the review, and any unused portion must be refunded to the applicant.

**Section 7. Consolidation of existing boards.** Any person or organization may propose consolidation of two or more existing boards. The provisions of [sections 2 through 6] apply to such a proposal, except that:

(1) the committee shall designate a representative of each of the occupations or professions regulated by the licensing boards proposed for consolidation, and each representative must be treated as an applicant for purposes of [sections 2 through 6]; and

(2) the committee shall weigh the merits of the proposed consolidation against the merits of retaining a separate licensing board for each affected occupation or profession and in its final report recommend to the legislature:

- (a) the proposed consolidation;
- (b) continuation of the existing licensing boards; or
- (c) a modification of the proposed consolidation.

**Section 8. Boards or licensing functions instituted by initiative.**

(1) If an initiative to establish a new licensing board or to add a new licensing responsibility to the duties of an existing licensing board is approved by the electorate, the committee shall:

(a) review the initiative to assess the degree to which it meets the criteria in [section 4(1)];

(b) request sufficient information from practitioners or other persons to make the determinations required by [section 4(2)]; and

(c) evaluate the initiative in terms of:

- (i) clarity and conciseness;
- (ii) conformity to existing statutes and principles of administrative law; and
- (iii) specificity of the delegation of authority to promulgate rules and set fees.

(2) The committee shall prepare a report to the next session of the legislature. The report must include:

(a) the committee's findings with respect to each of the criteria in [section 4];

(b) an estimate of the cost to the state of licensing the occupation or profession and a proposed schedule of fees that will cover the cost of the licensing program as required by 37-1-134;

(c) the committee's recommendation as to whether the initiative should be amended; and

(d) if amendments are recommended, a legislative proposal.

(3) Committee recommendations for amendments to the initiative must be incorporated in a bill introduced during the next session of the legislature by request of the committee.

**Section 9. Legislative audit committee report required with licensing bills.** A legislative audit committee report provided for in [section 3] must be attached to any bill reported out of a committee of the legislature that proposes to:

(1) establish a new occupational or professional licensing board as defined in [section 2];

(2) initiate a legislative or executive department study of the need for a new occupational or professional licensing board;

(3) add to the duties of an existing licensing board responsibility for licensing another occupation or profession; or

(4) consolidate two or more existing licensing boards.

**Section 10. Codification instruction.** (1) Sections 1 through 8 are intended to be codified as an integral part of Title 2, chapter 8, and the provisions of Title 2, chapter 8, apply to sections 1 through 8.

(2) Section 9 is intended to be codified as an integral part of Title 5, chapter 4, and the provisions of Title 5, chapter 4, apply to section 9.

**Section 11. Applicability.** This act applies retroactively, within the meaning of 1-2-109, to proposals for new licensing boards or consolidation of licensing boards considered by the legislature after June 30, 1987.

Approved March 29, 1987.

## CHAPTER NO. 267

[SB 144]

AN ACT TO ALLOW THE DEPARTMENT OF INSTITUTIONS TO PETITION A SENTENCING COURT FOR REVIEW OF A SENTENCE OF A MENTALLY ILL OFFENDER; CHANGING WHAT MUST BE CERTIFIED BEFORE A PETITION MAY BE FILED; AND AMENDING SECTION 46-14-312, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-14-312, MCA, is amended to read:

**"46-14-312. Sentence to be imposed.** (1) If the court finds that the defendant at the time of the commission of the offense of which he was

convicted did not suffer from a mental disease or defect as described in 46-14-311, it shall sentence him as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence him to be committed to the custody of the director of the department of institutions to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, provided the treatment of the individual and the protection of the public are provided for.

(3) *Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that:*

*(a) the defendant no longer suffers from a mental disease or defect;*

*(b) the defendant's mental disease or defect no longer renders him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law; or*

*(c) the defendant suffers from a mental disease or defect that makes him a danger to himself or others, but either there is no treatment available for his mental disease or defect or he refuses to cooperate with treatment.*

(4) The sentencing court may make any order not inconsistent with its original sentencing authority except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year."

Approved March 29, 1987.

## CHAPTER NO. 268

[SB 180]

AN ACT PROVIDING AN EXEMPTION FROM SUBDIVISION SURVEY REQUIREMENTS IN CERTAIN CIRCUMSTANCES FOR PURPOSES OF RECORDING INSTRUMENTS RELATING TO LAND; AMENDING SECTION 76-3-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 76-3-302, MCA, is amended to read:

**"76-3-302. Restrictions on recording instruments relating to land subject to surveying requirements.** (1) *Except as provided in subsection (2), the county clerk and recorder of any county may not record any*

instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by this chapter unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

(2) *Subsection (1) does not apply when the parcel or tract to be transferred was created before July 1, 1973, and the instrument of transfer for the parcel or tract includes a reference to a previously recorded instrument of transfer or is accompanied by documents which, if recorded, would otherwise satisfy the requirements of this subsection. The reference or document must demonstrate that the parcel or tract existed before July 1, 1973.*

(3) *The reference or documents required in subsection (2) do not constitute a legal description of the property and may not be substituted for a legal description of the property."*

**Section 2. Effective date.** This act is effective on passage and approval.

Approved March 29, 1987.

## CHAPTER NO. 269

[SB 186]

AN ACT TO PROVIDE FOR THE REGISTRATION OF AN INVESTMENT ADVISER REPRESENTATIVE; AND AMENDING SECTIONS 30-10-103, 30-10-110, 30-10-201, AND 30-10-209, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 30-10-103, MCA, is amended to read:

**"30-10-103. Definitions.** When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" means securities commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this definition. "Salesman" does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by subsections (1), (2), (3), (9), (10), (11), or (12) of 30-10-104;

(b) effecting transactions exempted by 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) a salesman, issuer, bank, savings institution, trust company, or insurance company; or

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(4) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(5) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(6) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(a) *an investment adviser representative;*

(b) a bank, savings institution, trust company, or insurance company;

(c) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(d) a broker-dealer;

(e) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;

(f) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(g) a person who has no place of business in this state if his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(h) such other persons not within the intent of this subsection (6) as the commissioner may by rule or order designate.

(7) (a) *"Investment adviser representative" means any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:*

(i) *makes any recommendation or otherwise renders advice regarding securities to clients;*

(ii) *manages accounts or portfolios of clients;*

(iii) *solicits, offers, or negotiates for the sale or sells investment advisory services; or*

(iv) *supervises employees who perform any of the foregoing.*

(b) *"Investment adviser representative" does not include an individual registered as a salesman pursuant to 30-10-201.*

(8) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(9) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(10) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(11) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(12) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

(13) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any



profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period.

(14) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico."

Section 2. Section 30-10-110, MCA, is amended to read:

**"30-10-110. Scope.** (1) Sections 30-10-201(1), 30-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer to buy is made and accepted in this state.

(2) Sections 30-10-201(1), 30-10-301(1), and 30-10-303 apply to persons who buy or offer to buy when an offer to buy is made in this state or an offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or buy is made in this state, whether or not either party is then present in this state, when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer, but for the purpose of 30-10-202, an offer to sell which is not directed to or received by the offeree in this state is not made in this state.

(4) For the purpose of this section, an offer to buy or sell is accepted in this state when acceptance is communicated to the offeror in this state and acceptance has not previously been communicated to the offeror, orally or in writing, outside this state. Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror to be in this state, and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.

(5) An offer to sell or to buy is not made in this state when:

(a) the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is:

(i) not published in this state; or

(ii) published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months; or

(b) a radio or television program originating outside this state is received in this state.

(6) Sections 30-10-201(3), 30-10-301(2) and (3), and 30-10-303, as far as investment advisers and *investment adviser representatives* are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state."

Section 3. Section 30-10-201, MCA, is amended to read:

**"30-10-201. Registration of broker-dealers, salesmen, investment advisers, and investment adviser representatives.** (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 30-10-105, unless he is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in transactions exempt under 30-10-105, unless the salesman is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser or as an *investment adviser representative* unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter; or

(c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.

(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser or *investment adviser representative* may apply for registration by filing an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement. Payment of the waiver fee shall be as prescribed in 30-10-209. A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(5) The application shall contain whatever information the commissioner requires.

(6) When the registration requirements are complied with, the commissioner shall approve the registration.

(7) Registration of a broker-dealer, salesman, investment adviser, or *investment adviser representative* shall be effective until December 31 following such registration or such other time as the commissioner may by rule adopt and may be renewed.

(8) The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(9) *The registration of an investment adviser representative is not effective during any period when he is not associated with an investment adviser registered under this act and specified in the application. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser shall promptly notify the commissioner.*

(10) Registration of a broker-dealer, salesman, investment adviser, or *investment adviser representative* may be renewed by filing prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, investment adviser, or *investment adviser representative* filed by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer who is not a member of NASD, inc., by filing a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(11) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(12) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, investment adviser, or *investment adviser representative* if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained

any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, investment adviser, or *investment adviser representative*;

(f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer, salesman, investment adviser, or *investment adviser representative* or the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States post office fraud order, but:

(i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1 year from the date of the order relied on; and

(ii) he may not enter any order under this subsection (f) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected.

(13) Upon the entry of the order under subsection (12) of this section, the commissioner shall promptly notify the applicant or registrant, as well

as the employer or prospective employer if the applicant or registrant is a salesman or *investment adviser representative*, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

(14) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, salesman, or *investment adviser representative* or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

(15) The commissioner may, after suspending or revoking registration of any broker-dealer, salesman, investment adviser, or *investment adviser representative*, impose a fine not to exceed \$5,000 upon such broker-dealer, salesman, investment adviser, or *investment adviser representative*. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any broker-dealer, salesman, investment adviser, or *investment adviser representative* fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of such broker-dealer, salesman, investment adviser, or *investment adviser representative* in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of a broker-dealer, salesman, investment adviser, or *investment adviser representative* to pay a fine also constitutes a forfeiture of his right to do business in this state under parts 1 through 3 of this chapter."

Section 4. Section 30-10-209, MCA, is amended to read:

**"30-10-209. Fees.** The following fees shall be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, there shall be paid to the commissioner for the first year of registration a registration fee of \$200 for the first \$100,000 of initial issue or portion thereof in this state, based on offering price, plus 1/10 of 1% for any excess over \$100,000, with a maximum of \$1,000.

(b) Each year thereafter, a registration of securities may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of an additional registration fee to be computed at 1/10 of 1% of the aggregate offering price of such securities which are to be offered in this state during that year, even though the maximum fee

was paid the preceding year. In no event shall the additional registration fee be less than \$200 or more than \$1,000. The registration statement for such securities may be amended to increase the amount of securities to be offered.

(c) If a registrant sells securities in excess of the aggregate amount registered for sale in this state, the registrant may file an amendment to the registration statement to include the excess sales. If the registrant fails to file an amendment before the expiration date of the registration order, he shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration of the excess securities is effective retroactively to the date of the existing registration.

(2) (a) For registration of a broker-dealer or investment adviser, the fee shall be \$200 for original registration and \$200 for each annual renewal.

(b) For registration of a salesman or investment adviser representative, the fee shall be \$50 for original registration with each employer, \$50 for each annual renewal, and \$50 for each transfer.

(3) For certified copies of any documents filed with the commissioner, the fee shall be the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee shall be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee shall be \$50.

(5) For waiver of the residency requirement of 30-10-201(4), the fee shall be \$50 for each original registration.

(6) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 may be refunded.

(7) All fees, examination charges, and miscellaneous charges, except fines or penalties, collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted hereunder must be deposited into the securities regulatory trust account, pursuant to 30-10-115 through 30-10-118.

(8) All fines and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted hereunder must be deposited into the general fund."

**Section 5. Extension of authority.** Any existing authority of the securities commissioner to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1987.

**CHAPTER NO. 270**

[SB 202]

AN ACT TO AMEND THE SECURITIES LAWS TO SIMPLIFY AND CLARIFY THEIR ENFORCEMENT WITH RESPECT TO COMMODITY INVESTMENT CONTRACTS AND COMMODITY OPTIONS; AND AMENDING SECTIONS 30-10-103 AND 30-10-105, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 30-10-103, MCA, is amended to read:

**"30-10-103. Definitions.** When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" means securities commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this definition. "Salesman" does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by subsections (1), (2), (3), (9), (10), (11), or (12) of 30-10-104;

(b) effecting transactions exempted by 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) a salesman, issuer, bank, savings institution, trust company, or insurance company; or

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(4) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(5) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gemstone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) *Commodity* does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of such real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(6) "Commodity Exchange Act" means the federal statute of that name as amended on the effective date of this subsection.

(7) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(8) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

(9) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.



(11) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

- (a) a bank, savings institution, trust company, or insurance company;
- (b) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;
- (c) a broker-dealer;
- (d) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;
- (e) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);
- (f) a person who has no place of business in this state if his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or
- (g) such other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.

(12) "Issuer" means any person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(13) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(14) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(15) "*Precious metal*" means the following, in coin, bullion, or other form:

- (a) *silver*;
- (b) *gold*;
- (c) *platinum*;

(d) *palladium*;

(e) *copper*; and

(f) *such other items as the commissioner may by rule or order specify.*

(16) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(17) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

(18) "Security" means any note; stock; treasury stock; bond; *commodity investment contract*; *commodity option*; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period.

(19) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico."

Section 2. Section 30-10-105, MCA, is amended to read:

**"30-10-105. Exempt transactions.** Except as in this section expressly provided, 30-10-201 through 30-10-207 shall not apply to any of the following transactions:

(1) any nonissuer isolated transaction, whether effected through a broker-dealer or not;

(2) (a) any nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

(i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to such securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., (NASDAQ) or by any other quotation system approved by the commissioner by rule; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years, or during the existence of the issuer and any predecessors if less than 3 years, in the payment of principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order.

(3) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of his official duties as such;

(6) any transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(8) (a) any transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those designated in subsection (7)) during any period of 12 consecutive months, if:

(i) the seller reasonably believes that all the buyers are purchasing for investment; and

(ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.

(b) For the purpose of the exemption provided for in subsection (8)(a), an offer to sell is made in this state, whether or not the offeror or any of the offerees is then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(9) any offer or sale of a preorganization certificate or subscription if:

(a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;

(b) the number of subscribers does not exceed 10; and

(c) no payment is made by any subscriber;

(10) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection;

(11) any offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either law;

(12) any offer (but not a sale) of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner in his discretion does not disallow the offer in writing within 10 days of such filing;

(13) the issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

(14) any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) any transaction in compliance with such rules as the commissioner in his discretion may adopt to serve the purposes of 30-10-102;

(16) any transaction pursuant to the Montana Capital Company Act, Title 90, chapter 8, provided that a Montana capital company must first file all disclosure documents, along with a consent to service of process, with the state securities commissioner. The commissioner may not charge a fee for the filing or deposit.

(17) *the sale of a commodity investment contract traded on a commodities exchange recognized by the commissioner at the time of sale;*

(18) *transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;*

(19) *a transaction that:*

(a) *involves the purchase of one or more precious metals; and*

(b) *requires, and under which the purchaser receives within 7 calendar days after payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by such payment is delivered into the possession of a depository (other than the seller) that:*

(i) (A) *is a financial institution (meaning a bank, savings institution, or trust company organized under or supervised pursuant to the laws of the United States or of this state);*

(B) *is a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission; or*

(C) *is a storage facility licensed by the United States or any agency of the United States; and*

(ii) *issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that such quantity of precious metals has been delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than:*

(A) *liens of the purchaser;*

(B) *tax liens;*

(C) *liens agreed to by the purchaser; or*

(D) *liens of the depository for fees and expenses that previously have been disclosed to the purchaser.*

(20) *a transaction involving a commodity investment contract solely between persons engaged in producing, processing, using commercially, or handling as merchants each commodity subject to the contract or any byproduct of the commodity."*

**Section 3. Extension of authority.** Any existing authority of the securities commissioner to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1987.

## CHAPTER NO. 271

[SB 220]

AN ACT REVISING FEES OF THE CLERK OF DISTRICT COURT FOR CERTAIN CHARGES; AMENDING SECTION 25-1-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 25-1-201, MCA, is amended to read:

**"25-1-201. (Temporary) Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, from the plaintiff or petitioner, \$25; for filing a complaint in intervention, from the intervenor, \$25; and for filing a petition for dissolution of marriage, an additional fee of \$30;

(b) from each defendant or respondent, on his appearance, \$15;

(c) on the entry of judgment, from the prevailing party, \$10;

(d) for preparing copies of papers on file in his office, 50 cents per page for the first five pages of each file, per request, and 25 cents per page thereafter;

(e) for each certificate, with seal, \$2;

(f) for oath and jurat, with seal, \$1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of \$25;

(h) for filing and docketing a transcript of judgment or abstract of judgment from all other courts, \$5;

(i) for issuing an execution or order of sale on a foreclosure of a lien, \$2;

(j) for transmission of records or files or transfer of a case to another court, \$5;

(k) for filing and entering papers received by transfer from other courts, \$10;

(l) for issuing a marriage license, \$30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of

a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$35, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$35;

(o) for filing a declaration of marriage without solemnization, \$30.

(2) Except as provided in subsections (3) and (4), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the general fund of the county. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) Of the additional fee for filing a petition for dissolution of marriage, \$25 must be deposited in the state general fund and \$5 must be deposited in the children's trust fund account established by 41-3-702.

**25-1-201. (Effective January 1, 1990) Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, from the plaintiff or petitioner, \$25; for filing a complaint in intervention, from the intervenor, \$25; and for filing a petition for dissolution of marriage, an additional fee of \$25;

(b) from each defendant or respondent, on his appearance, \$15;

(c) on the entry of judgment, from the prevailing party, \$10;

(d) for preparing copies of papers on file in his office, 50 cents per page for the first five pages of each file and 25 cents per page thereafter;

(e) for each certificate, with seal, \$2;

(f) for oath and jurat, with seal, \$1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of \$25;

(h) for filing and docketing a transcript of judgment or abstract of judgment from all other courts, \$5;

(i) for issuing an execution or order of sale on a foreclosure of a lien, \$2;

(j) for transmission of records or files or transfer of a case to another court, \$5;

(k) for filing and entering papers received by transfer from other courts, \$10;

(l) for issuing a marriage license, \$30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$35, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$35;

(o) for filing a declaration of marriage without solemnization, \$30.

(2) Except as provided in subsection (3), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the general fund of the county. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) The additional fee for filing a petition for dissolution of marriage must be deposited in the state general fund."

Section 2. **Effective date.** This act is effective July 1, 1987.

Approved March 29, 1987.

## CHAPTER NO. 272

[SB 247]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO SECURITIES; AMENDING SECTIONS 30-10-103 THROUGH 30-10-105, 30-10-201, 30-10-204, 30-10-206, 30-10-207, 30-10-209, 30-10-301, 30-10-304, 30-10-307, AND 90-8-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 30-10-103, MCA, is amended to read:

**"30-10-103. Definitions.** When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" means securities commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this definition. "Salesman" does not include an individual who represents an issuer in:



(a) effecting a transaction in a security exempted by subsections (1), (2), (3), (8), (9), (10), or (11) of 30-10-104;

(b) effecting transactions exempted by 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) a salesman, issuer, bank, savings institution, trust company, or insurance company; or

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(4) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(5) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(6) (a) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) *The term includes a financial planner or other person who:*

(i) *as an integral component of other financially related services, provides the investment advisory services described in subsection (6)(a) to others for compensation, as part of a business; or*

(ii) *represents himself as providing the investment advisory services described in subsection (6)(a) to others for compensation.*

(c) "Investment adviser" does not include:

(i) a bank, savings institution, trust company, or insurance company;

(ii) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(iii) a broker-dealer;

(iv) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist

*of the rendering of advice on the basis of the specific investment situation of each client;*

(v) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1); or

(vi) such other persons not within the intent of this subsection (6) as the commissioner may by rule or order designate.

(7) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(8) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(9) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(10) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(11) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "*Investment Advisors Act of 1940*", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

(12) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of

production under such a title or lease; or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period.

(13) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(14) *"Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer".*

Section 2. Section 30-10-104, MCA, is amended to read:

**"30-10-104. Exempt securities.** Sections 30-10-202 through 30-10-207 do not apply to any of the following securities:

(1) any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; provided, however, 30-10-202 through 30-10-207 apply to a security issued by any of the foregoing that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless such enterprise or any security of which it is the issuer is within any of the exemptions enumerated in subsections (2) through (13) of this section;

(2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of or guaranteed by any bank organized under the laws of the United States or any bank, savings institution, or trust company organized and supervised under the laws of any state;

(4) any security issued by and representing an interest in or a debt of or guaranteed by any federal savings and loan association or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(6) any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is:

(a) subject to the jurisdiction of the interstate commerce commission;

(b) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act;

(c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or

(d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility if other securities issued by such railroad or public utility would be exempt under this subsection;

(7) any security that meets all of the following conditions:

(a) if the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus;

(b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the 3 years immediately preceding the offering date;

(c) neither the issuer nor a significant subsidiary has had a material default during the last 7 years (or the issuer's existence if less than 7 years) in the payment of:

(i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or

(ii) rentals under leases with terms of 3 years or more;

(d) the issuer has had consolidated net income (before extraordinary items and the cumulative effect of accounting changes) of at least \$1 million in 4 of its last 5 fiscal years, including its last fiscal year; and if the offering is of interest-bearing securities, has had for its last fiscal year such net income, but before deduction for income taxes and depreciation, of at least 1 ½ times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year" as used in this subsection (7)(d), means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement of the offering.

(e) if the offering is of stock or shares, other than preferred stock or shares, such securities have voting rights and such rights include the right to have at least as many votes per share and the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law;

(f) if the offering is of stock or shares, other than preferred stock or shares, such securities are owned beneficially or of record on any date within 6 months prior to the commencement of the offering by at least

1,200 persons and on such date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least \$3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

(8) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes if the issuer pays a fee of \$50 and files with the commissioner 20 days prior to the offering a written notice specifying the terms of the offer and the commissioner does not disallow the exemption in writing within such 20-day period;

(9) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction and which evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited or any guarantee of such paper or of any such renewal, when such commercial paper is sold to the banks or insurance companies;

(10) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(11) any security for which the commissioner determines by order that an exemption would better serve the purposes of 30-10-102 than would registration. The fee for this exemption must be as prescribed in 30-10-209(4).

(12) any security listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;

(13) any national market system security listed or approved for listing upon notice of issuance on the national association of securities dealers automated quotation system or any other national quotation system approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the securities listed in this subsection."

Section 3. Section 30-10-105, MCA, is amended to read:

**"30-10-105. Exempt transactions.** Except as in this section expressly provided, 30-10-201 through 30-10-207 shall not apply to any of the following transactions:

(1) any nonissuer isolated transaction, whether effected through a broker-dealer or not. *A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.*

(2) (a) any nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

(i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to such securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., (NASDAQ) or by any other quotation system approved by the commissioner by rule; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years, or during the existence of the issuer and any predecessors if less than 3 years, in the payment of principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order.

(3) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of his official duties as such;

(6) any transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(8) (a) any transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those designated in subsection (7)) during any period of 12 consecutive months, if:

(i) the seller reasonably believes that all the buyers are purchasing for investment; and

(ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.

(b) For the purpose of the exemption provided for in subsection (8)(a), an offer to sell is made in this state, whether or not the offeror or any of the offerees is then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(9) any offer or sale of a preorganization certificate or subscription if:

(a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;

(b) the number of subscribers does not exceed 10; and

(c) no payment is made by any subscriber;

(10) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection;

(11) any offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop, refusal, *denial*, *suspension*, or *revocation* order is in effect and no public proceeding or examination looking toward such an order is pending under either law;

(12) any offer (but not a sale) of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner in his discretion does not disallow the offer in writing within 10 days of such filing;

(13) the issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

(14) any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) any transaction in compliance with such rules as the commissioner in his discretion may adopt to serve the purposes of 30-10-102. *The commissioner may in his discretion require that 30-10-201 through 30-10-207 apply to any or all transactional exemptions adopted by rule.*

(16) any transaction by a certified Montana capital company as defined in 90-8-104, provided that such company first files all disclosure documents, along with a consent to service of process, with the commissioner. The commissioner may not charge a fee for the filing."

Section 4. Section 30-10-201, MCA, is amended to read:

**"30-10-201. Registration of broker-dealers, salesmen, and investment advisers.** (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 30-10-105, unless he is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in transactions exempt under 30-10-105, unless the salesman is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser unless:

- (a) he is so registered under parts 1 through 3 of this chapter;
- (b) he is registered as a broker-dealer under parts 1 through 3 of this chapter;
- (c) his only clients in this state are:
  - (i) investment companies, as defined in the Investment Company Act of 1940, or insurance companies;
  - (ii) other investment advisers;
  - (iii) broker-dealers;
  - (iv) banks;
  - (v) trust companies;
  - (vi) savings and loan associations;
  - (vii) employee benefit plans with assets of not less than \$1 million;
  - (viii) governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control; or
  - (ix) other institutional investors as are designated by rule or order of the commissioner; or

(d) he has no place of business in this state and during any 12 consecutive months does not direct business communications in this state in any manner to more than five present or prospective clients, other than those specified in subsection (3)(c), whether or not he or any of the persons to whom the communications are directed are then present in this state.



(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser may apply for registration by filing an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(5) The application shall contain whatever information the commissioner requires. *No registration application of a broker-dealer, salesman, investment adviser, or investment adviser representative may be withdrawn before the commissioner approves or denies such registration, without the express written consent of the commissioner.*

(6) When the registration requirements are met, the commissioner shall make the registration effective. *No effective registration of a broker-dealer, salesman, investment adviser, or investment adviser representative may be withdrawn without the express written consent of the commissioner.*

(7) Registration of a broker-dealer, salesman, or investment adviser shall be effective until December 31 following such registration or such other time as the commissioner may by rule adopt and may be renewed. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(8) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing, prior to the expiration thereof, an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser filed by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer who is not a member of NASD, inc., by filing a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(9) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or

from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(10) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an *adjudication or determination, within the past 5 years, by a securities or commodities agency or administrator of another state or a court of competent jurisdiction, that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act or the securities or commodities law of any other state;*

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected; or

*(k) has failed to reasonably supervise his salesmen or employees, if he is a broker-dealer, or his investment adviser representatives or employees, if he is an investment adviser, to assure their compliance with this act.*

*(11) The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within 30 days after the date on which the registration became effective.*

*(12) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.*

*(13) Upon the entry of the order under subsection (10) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.*

*(14) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, or salesman or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.*

*(15) The commissioner may, after suspending or revoking registration of any broker-dealer, salesman, or investment adviser under subsection (10), impose a fine not to exceed \$5,000 upon such broker-dealer, salesman, or investment adviser. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any broker-dealer, salesman, or investment adviser fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of such broker-dealer, salesman, or investment adviser in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of a broker-dealer, salesman, or investment adviser to pay a fine also constitutes a forfeiture of his right to do business in this state under parts 1 through 3 of this chapter."*

Section 5. Section 30-10-204, MCA, is amended to read:

**"30-10-204. Registration by coordination.** (1) Any security for which a registration statement has been filed under the Securities Act of 1933 or any securities for which filings have been made pursuant to regulation A or regulation E, and amendments thereto, of the general rules and

regulations of the United States securities and exchange commission, adopted pursuant to subsection (b) of section 3 of said Securities Act of 1933, in connection with the same offering, may be registered by coordination. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) *one copy* of the prospectus or offering circular and letter of notification filed under the Securities Act of 1933 or the general rules and regulations thereunder, together with all amendments thereto;

(b) the amount of securities to be offered in this state;

(c) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(d) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission;

(e) if the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) if the commissioner requests, any other information, or copies of any other documents, filed under the Securities Act of 1933;

(g) an undertaking to forward promptly all amendments to the federal registration statement or offering circular and letter of notification, other than an amendment which merely delays the effective date;

(h) a consent to service of process meeting the requirements of 30-10-208; and

(i) such other information as the commissioner may require.

(2) A registration statement by coordination under this section automatically becomes effective at the moment the federal registration statement or other filing becomes effective if all the following conditions are satisfied:

(a) no stop order is in effect and no proceeding is pending under 30-10-207;

(b) the registration statement has been on file with the commissioner for at least 10 business days; and

(c) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for 2 business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations.

(3) The registrant shall promptly notify the commissioner of the date and time when the federal registration statement or other filings became effective and the content of the price amendment, if any, and shall

promptly file a posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(4) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment referred to in subsection (2) of this section, the commissioner may enter a *denial* order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subsection (2) of this section, if he promptly notifies the registrant of the issuance of the order. If the registrant proves compliance with the requirements as to notice and posteffective amendment, the *denial* order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subsections (2)(b) and (2)(c) of this section. If the federal registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement or other filing is expected to become effective the commissioner shall promptly advise the registrant whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under 30-10-207; but this advice by the commissioner does not preclude the institution of such a proceeding at any time."

Section 6. Section 30-10-206, MCA, is amended to read:

**"30-10-206. General provisions regarding registration of securities.** (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under parts 1 through 3 of this chapter or a predecessor law within 3 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) (a) The commissioner may require as a condition of registration by qualification or coordination:

(i) that any security issued within the past 3 years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and

(ii) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

(b) The commissioner may determine the conditions of any escrow or impounding required hereunder, but he may not reject a depository solely because of location in another state.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. Every registration shall remain effective for a period of 1 year unless it is revoked by the commissioner, terminated upon request of the registrant with the consent of the commissioner, or renewed under 30-10-209(1)(b); however, said registration shall be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to said securities and shall continue suspended so long as such proceedings are pending and until the registration or filing with the securities and exchange commission is effective. All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding.

(4) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which:

(a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940; or

(b) are being offered and sold directly by or for the account of the issuer.

(5) *No securities registration statement may be withdrawn, whether or not such statement has become effective, without the express written consent of the commissioner."*

Section 7. Section 30-10-207, MCA, is amended to read:

**"30-10-207. Denial, suspension, and revocation of registration of securities.** (1) The commissioner may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds that the order is in the public interest and that:

(a) the registration statement, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) any provision of parts 1 through 3 of this chapter or any rule, order, or condition lawfully imposed under parts 1 through 3 of this chapter has been willfully violated, in connection with the offering, by:

(i) the person filing the registration statement;

(ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the

person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or

(iii) any underwriter;

(c) the security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state law applicable to the offering, but:

(i) the commissioner may not institute a proceeding against an effective registration statement under this subsection (c) more than 1 year from the date of the injunction relied on; and

(ii) he may not enter an order under this subsection (c) on the basis of an injunction entered under any other state law unless that order or injunction was based on facts which would currently constitute a ground for an order under this section;

(d) the issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(e) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(f) when a security is sought to be registered by notification, it is not eligible for such registration;

(g) when a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by 30-10-204(1)(g);

(h) the applicant or registrant has failed to pay the proper registration fee, but the commissioner may enter only a denial order under this subsection, and he shall vacate any such order when the deficiency has been corrected; or

(i) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options.

(2) The commissioner may not enter a *suspension or revocation* order against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective.

(3) Upon the entry of an order under subsection (1) of this section, the commissioner shall promptly notify the issuer of the securities and the applicant or registrant that an order has been entered and of the reasons therefor and that, if requested by the issuer or registrant within 15 days after the receipt of the commissioner's notification, the matter will be set promptly down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order."

Section 8. Section 30-10-209, MCA, is amended to read:

**"30-10-209. Fees.** The following fees shall be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, there shall be paid to the commissioner for the first year of registration a registration fee of \$200 for the first \$100,000 of initial issue or portion thereof in this state, based on offering price, plus 1/10 of 1% for any excess over \$100,000, with a maximum of \$1,000.

(b) Each year thereafter, a registration of securities may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of an additional registration fee to be computed at 1/10 of 1% of the aggregate offering price of such securities which are to be offered in this state during that year, even though the maximum fee was paid the preceding year. In no event shall the additional registration fee be less than \$200 or more than \$1,000. The registration statement for such securities may be amended to increase the amount of securities to be offered.

(c) If a registrant sells securities in excess of the aggregate amount registered for sale in this state, the registrant may file an amendment to the registration statement to include the excess sales. If the registrant fails to file an amendment before the expiration date of the registration order, he shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration of the excess securities is effective retroactively to the date of the existing registration.

(2) (a) For registration of a broker-dealer or investment adviser, the fee shall be \$200 for original registration and \$200 for each annual renewal.

(b) For registration of a salesman, the fee shall be \$50 for original registration with each employer, \$50 for each annual renewal, and \$50 for each transfer.

(3) For certified copies of any documents filed with the commissioner, the fee shall be the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee shall be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee shall be \$50.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 may be refunded.

(6) All fees, examination charges, and miscellaneous charges, except fines or penalties, collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted hereunder must be deposited into the securities regulatory trust account, pursuant to 30-10-115 through 30-10-118.

(7) All fines and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted hereunder must be deposited into the general fund."



Section 9. Section 30-10-301, MCA, is amended to read:

**"30-10-301. Fraudulent and other prohibited practices.** (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, in, into, or from this state, to:

- (a) employ any device, scheme, or artifice to defraud;
- (b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (c) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) (a) It is unlawful for any person who receives, *directly or indirectly*, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analysis or reports or otherwise:

(i) to employ any device, scheme, or artifice to defraud the other person;

(ii) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or

(iii) *without disclosing to the client in writing before the completion of the transaction the capacity in which he is acting and obtaining the consent of the client to the transaction:*

(A) *acting as principal for his own account, to knowingly sell any security to or purchase any security from a client; or*

(B) *acting as agent for a person other than such client, to knowingly effect the sale or purchase of any security for the account of such client.*

(b) *The prohibitions of subsection (2)(a)(iii) do not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not being compensated for rendering investment advice in relation to such transaction.*

(3) *In the solicitation of advisory clients, it is unlawful for a person to:*

- (a) *make a false statement of a material fact; or*
- (b) *omit a material fact necessary to make a statement not misleading in light of the circumstances under which it is made.*

(4) *Except as permitted by rule or order of the commissioner, it is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing that:*

(a) *the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;*

(b) *no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and*

(c) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(5) Subsection (4)(a) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. "Assignment", as used in subsection (4)(b), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(6) *It is unlawful for an investment adviser to take or have custody of any securities or funds of any client if:*

(a) *the commissioner by rule prohibits such custody; or*

(b) *in the absence of rule, the investment adviser fails to notify the commissioner that he has or may have such custody."*

Section 10. Section 30-10-304, MCA, is amended to read:

**"30-10-304. Investigations and subpoenas.** (1) The commissioner in his discretion may:

(a) make such public or private investigations or examinations within or without this state as he deems necessary to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate any provision of parts 1 through 3 of this chapter or any rule or order hereunder or to aid in the enforcement of parts 1 through 3 of this chapter or in the prescribing of rules and forms hereunder;

(b) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner may determine, as to all the facts and circumstances concerning the matter to be investigated; and

(c) publish information concerning any violation of parts 1 through 3 of this chapter or any rule or order hereunder.

(2) (a) For the purpose of any investigation or proceeding under parts 1 through 3 of this chapter, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(b) *The commissioner may issue and apply to enforce subpoenas in this state at the request of a securities agency or administrator of another state if the activities constituting an alleged violation for which the information*

*is sought would be a violation of the Securities Act of Montana if the activities had occurred in this state.*

(3) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring him to appear before the commissioner or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by him, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence may be used against the witness in any criminal case. Nothing in this section prohibits the commissioner from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the commissioner determines, in his sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena."

Section 11. Section 30-10-307, MCA, is amended to read:

**"30-10-307. Civil liabilities.** (1) Any person who offers or sells a security in violation of 30-10-202 or offers or sells a security by means of fraud or misrepresentation is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at 10% per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less:

- (a) the value of the security when the buyer disposed of it; and
- (b) interest at 10% per annum from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1), every partner, officer, or director (or person occupying a similar status or performing similar functions) or employee of such a seller, and every broker-dealer or salesman who participates or materially aids in the sale is liable jointly and severally with and to the same extent as the seller if the nonseller knew, or in the exercise of reasonable care could have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution among the several persons so liable.

(3) Any tender specified in this section may be made at any time before entry of judgment. A cause of action under this statute survives the death

of any person who might have been a plaintiff or a defendant. No person may sue under this section:

(a) if the buyer has received a written offer, at a time when he owned the security, to refund the consideration paid, together with interest at 10% per annum from the date of payment, less the amount of any income received on the security and he failed to accept the offer within 30 days of its receipt; or

(b) if the buyer has received a written offer at a time when he did not own the security in the amount that would be recoverable under subsection (1) upon a tender less:

(i) the value of the security when the buyer disposed of it; and

(ii) interest at 10% per annum from the date of disposition.

(4) No person who has made or engaged in the performance of any contract in violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of parts 1 through 3 of this chapter or any rule or order hereunder is void as against public policy and in the public interest."

Section 12. Section 90-8-304, MCA, is amended to read:

**"90-8-304. Application of securities law.** In lieu of registration under Title 30, chapter 10, a *certified* Montana capital company may file all disclosure documents, along with a consent to service of process, with the state securities commissioner. The commissioner may not charge a fee for such filing."

Section 13. **Coordination instruction.** If SB Bill No. 186 is not passed and approved, section 4 of this act, amending 30-10-201, is amended so that 30-10-201(5) and (6) read as follows:

"(5) The application shall contain whatever information the commissioner requires. *No registration application of a broker-dealer, salesman, or investment adviser may be withdrawn before the commissioner approves or denies such registration, without the express written consent of the commissioner.*

(6) When the registration requirements are *met*, the commissioner shall *make the registration effective. No effective registration of a broker-dealer, salesman, or investment adviser may be withdrawn without the express written consent of the commissioner.*"

Section 14. **Extension of authority.** Any existing authority of the securities commissioner to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 15. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1987.

**CHAPTER NO. 273**

[SB 263]

AN ACT TO REMOVE THE REQUIREMENT FOR HOLDING PUBLIC HEARINGS ON PROJECTS FINANCED UNDER THE MONTANA ECONOMIC DEVELOPMENT BOND ACT OF 1983 IF THE INTEREST ON BONDS FINANCING THE PROJECT IS SUBJECT TO FEDERAL INCOME TAXES; AMENDING SECTIONS 17-5-1526 AND 17-5-1527, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-5-1526, MCA, is amended to read:

**"17-5-1526. Procedure prior to financing projects.** (1) The board may finance projects, other than major projects, under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;

(b) the financing to be provided by the board for a project does not exceed either \$800,000 or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to 17-5-1519;

(e) an applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401(4), in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance such project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county must, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the board's guarantee under 17-5-1519 or the capital reserve account authorized by 17-5-1515.

*(6) The hearing requirements of subsections (2) through (4) do not apply to projects financed with bonds the interest on which is subject to federal income taxes."*

Section 2. Section 17-5-1527, MCA, is amended to read:

**"17-5-1527. Procedure prior to financing major projects.** (1) The board may finance major projects under this part only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a project does not exceed either \$10 million or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project if the cost or appraised value is less than \$1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over \$1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to 17-5-1519;

(e) any contracts to construct the projects require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401(4), in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially

equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance such project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located shall be notified, and within 14 days must advise the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the board's guarantee under 17-5-1519 or the capital reserve account authorized by 17-5-1515.

*(6) The hearing requirements of subsections (2) through (4) do not apply to major projects financed with bonds the interest on which is subject to federal income taxes."*

**Section 3. Extension of authority.** Any existing authority of the Montana economic development board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Effective date.** This act is effective on passage and approval.

Approved March 29, 1987.

**CHAPTER NO. 274**

[SB 277]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE ESTABLISHMENT AND OPERATION OF A STATEWIDE POOLING ARRANGEMENT AS A METHOD OF PAYMENT OF PRODUCER MILK PRICES; AMENDING SECTION 81-23-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 81-23-302, MCA, is amended to read:

**"81-23-302. Establishment of minimum prices.** (1) The board shall fix minimum producer, wholesale, jobber, and retail prices for class I milk and minimum producer prices only for class II and class III milk by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

(2) The board shall establish such prices by means of flexible formulas which shall be devised so that they bring about such automatic changes in all minimum prices as are justified on the basis of changes in production, supply, processing, distribution, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states so that minimum prices which are fair and equitable to producers, distributors, jobbers, retailers, and consumers may result.

(4) The board shall, when publishing notice of proposed rulemaking under authority of this section, set forth the specific factors which shall be taken into consideration in establishing the formulas and in particular in determining costs of production and distribution and of the actual dollars and cents costs of production and distribution which preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing so that all interested parties will have opportunity to be heard and to question or rebut such considerations as a matter of record.

(5) Such specific factors may include but shall not be limited to the following items:

(a) current and prospective supplies of milk in relation to current and prospective demands for such milk for all purposes;

(b) the ability and willingness of consumers to purchase, which shall include among other things per capita disposable income statistics, consumer price indexes, and wholesale price indexes;

(c) the cost factors in producing milk, which shall include among other things the prices paid by farmers generally (as used in parity calculations of the United States department of agriculture), prices paid by farmers for dairy feed in particular, and farm wage rates in this state;



(d) the alternative opportunities, both farm and nonfarm, open to milk producers, which shall include among other things prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(e) the prices of butter, nonfat dry milk, and cheese;

(f) the cost factors in distributing milk, which shall include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;

(g) the cost factors in jobbing milk, which shall include among other things raw product and ingredient costs, carton or other packaging cost, processing cost, and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk, and prevailing wage rates in the state;

(h) the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk.

(6) If the board at any time proposes to base all or any part of any official order establishing or revising any milk pricing formulas upon facts within its own knowledge, as distinguished from evidence which may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rulemaking under authority of this section, cause notice to be given to the consuming public and the milk industry of the specific facts within its own knowledge which it will consider, so that all interested parties will have opportunity to be heard and to question or rebut such facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule the formula whereby minimum:

(a) producer prices for milk in classes I, II, and III shall be computed;

(b) wholesale prices for milk in class I shall be computed;

(c) jobber prices for milk in class I shall be computed;

(d) retail prices for milk in class I shall be computed.

(8) This section shall not be construed as requiring the board to promulgate any specific number of formulas, but shall be construed liberally so that the board may adopt any reasonable method of expression to accomplish the objective set forth in subsection (7). If the evidence presented to the board at any public hearing for the establishment or revision of milk pricing formulas is found by the board to require the establishment of separate and varying wholesale prices for any particular uses, the board shall designate the reasons therefor and establish such separate formulas.

(9) Each rule establishing or revising any milk pricing formulas shall classify milk by forms, classes, grades, or uses as the board may deem advisable and shall specify the minimum prices therefor.

(10) The board shall adopt rules after notice and hearing in the manner prescribed by the Montana Administrative Procedure Act to regulate transportation rates which distributors, contract haulers, and others charge producers for both farm-to-plant and interplant transportation of milk. No allowance for transportation of milk between plants may be permitted unless it is found by the board to be necessary to permit the movement of milk in the public interest.

(11) All milk purchased by a distributor shall be purchased on a uniform basis. The basis to be used shall be established by the board after the producers and the distributors have been consulted.

(12) The board may amend any official rule in the same manner provided herein for the original establishment of milk pricing formulas. The board may in its discretion, when it determines the need exists, give notice of and hold statewide public hearings affecting establishment or revision of milk pricing formulas.

(13) Upon petition of a distributor or a majority of his producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices; and if the board finds that the evidence adduced at such hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the same.

(14) (a) *Upon petition by 10% or 20 of the licensed producers in Montana, whichever is less, or upon petition by any licensed producer-distributor or distributor, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a statewide pooling arrangement as a method of payment of producer prices, provided that at such hearing the board shall among other things specifically receive and consider evidence concerning production and marketing practices which have historically prevailed statewide. If the board finds that the evidence adduced at such hearing warrants the establishment of a statewide pooling arrangement, the board shall proceed by official order to establish the same; but such official order shall be of no force or effect until it is approved in a referendum conducted by the board by mail and by secret ballot among affected producers, producer-distributors, and distributors. The board shall keep confidential the vote of each producer, producer-distributor, and distributor voting in the referendum. The official order must be approved by a majority of the producers, producer-distributors, and distributors voting representing more than 50% of the milk produced in Montana that is to be included in the proposed pool, based on each producer's average monthly production for the 12 months immediately preceding the referendum. If the board finds it necessary, the board may conduct more than one referendum on any order.*

(b) *The order of the board establishing the statewide pooling arrangement may include other provisions as the board considers necessary for the proper and efficient operation of the pool. These provisions may include but are not limited to:*

(i) *a statewide base or quota plan contemplated in subsection (13);*

(ii) *the establishment of a pool settlement fund to be administered by the department for the purpose of receiving payments from pool distributors or making payments to them as necessary in order to operate and administer the statewide pool; and*

(iii) *the establishment of a pool expense fund for the purpose of offsetting the costs to the department of administering the pool, funded by a special levy assessed against each pool producer.*

(c) *During the initial startup of a statewide pool, the department may draw from existing cash reserves to fund a pool settlement fund and a pool expense fund, but any withdrawals from the cash reserve must be reimbursed.*

(d) *An order of the board establishing a statewide pooling arrangement that has been approved in a referendum may be rescinded in the same manner as provided for approval of the order under subsection (14)(a). Such order may be amended without a referendum if, prior to amending the order, the board gives written notice of its intended action and holds a public hearing as required under the Montana Administrative Procedure Act.*

(15) The requirements hereinabove set forth concerning notices of hearings for the establishment of milk pricing formulas shall apply to any hearings regarding base or quota plans or statewide pooling arrangements or abandonment thereof.

(16) Rules adopted pursuant to this section shall be enforced and audited for compliance by the milk control bureau of the department of commerce."

**Section 2. Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved March 29, 1987.

## CHAPTER NO. 275

[SB 288]

AN ACT CLARIFYING THE APPLICABILITY OF THE TOWN MEETING FORM OF GOVERNMENT; AND AMENDING SECTION 7-3-601, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-3-601, MCA, is amended to read:

**"7-3-601. Town meeting form.** (1) The town meeting form consists of an assembly of the qualified electors of a town (known as a town meeting), an elected town chairman, who shall be a qualified elector, and an optional elected town meeting moderator.

(2) The town meeting form may be adopted only by incorporated cities of less than 2,000 persons and incorporated towns of less than 2,000 persons, as determined by the most recent decennial census as conducted by the United States bureau of the census unless a more recent enumeration of inhabitants be made by the state, in which case such enumeration shall be used for the purposes of this part. Any unit of local government which adopts this form may retain it even though its population increases to more than 2,000.

(3) All legislative powers of the town shall vest in the town meeting. The town meeting may enact rules, resolutions, and ordinances."

Approved March 29, 1987.

## CHAPTER NO. 276

[SB 382]

AN ACT TO EXEMPT FROM SPECIAL ASSESSMENTS CERTAIN PROPERTY OWNED BY A NONPROFIT WATER COMPANY, WATER USERS' ASSOCIATION, IRRIGATION COMPANY, IRRIGATION DISTRICT, CANAL COMPANY, DITCH COMPANY, RESERVOIR COMPANY, OR SIMILAR NONPROFIT WATER USER ENTITY; AMENDING SECTION 85-7-2011, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Water user entities exempt from special assessments.** Rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and other personal property owned by a nonprofit water company, water users' association, irrigation company, canal company, ditch company, reservoir company, or similar nonprofit water user entity are exempt from every special assessment imposed by any improvement or maintenance district created under Title 7, chapter 12.

**Section 2.** Section 85-7-2011, MCA, is amended to read:

**"85-7-2011. Exemption of irrigation district property.** The bonds issued under the provisions of this part, rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and all other personal property belonging to any irrigation district organized under the laws of Montana and not operating for profit may not be taxed for state, county, or municipal purposes *and may not be assessed costs for any improvement or maintenance district created under Title 7, chapter 12.*"

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 7, chapter 12, parts 11, 21, 41, and 43 through 46, and the provisions of those parts apply to section 1.

**Section 4. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 5. Effective date — applicability.** (1) This act is effective on passage and approval.

(2) This act applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1986.

(3) This act does not apply to any special assessments for the repayment of bonded indebtedness incurred before the effective date of this act if the bonds were issued on representations that the property exempted from special assessments by this act would be liable for repayment of the bonded indebtedness.

Approved March 29, 1987.

## CHAPTER NO. 277

[HB 188]

AN ACT REVISING THE LAWS RELATING TO THE ADOPTION OF CHILDREN TO CLARIFY THE PROCEDURE FOR ADOPTION; AND AMENDING SECTIONS 40-8-109 AND 40-8-121 THROUGH 40-8-124, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-8-109, MCA, is amended to read:

**“40-8-109. Placement for adoption by parents.** (1) No parent may make a placement of a child for adoption with an individual who is not a stepparent or a member of the child's extended family unless the parent files with the district court for the county in which the prospective adoptive parent or the parent making the placement resides:

(a) a notice of parental placement; and

(b) a relinquishment of parental rights to the prospective adoptive parents executed voluntarily and in accordance with 40-6-135(2) through (4).

(2) The notice of parental placement and the relinquishment shall be filed prior to a parent's placement of the child with an individual who intends to adopt the child. The notice of parental placement shall contain the following information:

(a) the name and address of each birth parent, if known, and if unknown, the steps taken to ascertain the whereabouts of the parent or parents;

(b) the name and address of each prospective adoptive parent;

(c) the name and address or expected date and place of birth of the child; and

(d) the name and address of counsel, guardian ad litem, or other representative, if any, for each of the parties in (a) through (c) of subsection (2).

(3) Upon receipt of a notice of parental placement and a relinquishment, the court shall require that the department examine the child and conduct interviews with the birth parents and prospective adoptive parents and report to the court within 30 days but not earlier than 5 days after the birth of the child. The report must state whether the following requirements for placement have been met:

(a) that the decision to place was voluntarily made by the birth parents;

(b) that the department has no temporary authority to investigate or provide protective services to the family under 41-3-402;

(c) that the birth parents, the prospective adoptive parents, and their representatives have agreed in writing to provide the court with sworn affidavits containing itemized statements of all fees charged or to be charged, expenses incurred or to be incurred, and payments received or to be received in connection with the proposed adoptive placement;

(d) that the prospective adoptive parents have been provided a medical and social history of the child and birth parents; and

(e) that the proposed placement is in the child's best interest.

(4) Within 45 days of filing of the notice of parental placement and the relinquishment, the court shall schedule a hearing to consider the proposed placement.

(5) (a) At least 5 days' notice of the time and place of the hearing must be given to the birth parents, the prospective adoptive parents, any named guardian ad litem, and the *department*.

(b) The hearing shall be closed to all persons except those persons entitled to notice and their representatives or counsel.

(6) If the court finds that all requirements for placement have been met, the court may issue an order or schedule a hearing for the purpose of terminating parental rights and granting temporary custody to the prospective adoptive parents. The prospective adoptive parents must file their petition to adopt within 30 days of the order.

(7) If the court finds that all requirements for the adoptive placement have not been met, the court may issue any order appropriate to protect the child."

Section 2. Section 40-8-121, MCA, is amended to read:

**"40-8-121. Petition for adoption.** (1) A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specify:

(a) the full names, ages, and place of residence of the petitioners and, if married, the place and date of the marriage;

(b) when the petitioners acquired or intend to acquire custody of the child and from what person or agency;

- (c) the date and place of birth of child, if known;
  - (d) the name used for the child in the proceeding and, if a change in name is desired, the new name;
  - (e) that it is the desire of the petitioners that the relationship of parent and child be established between them and the child;
  - (f) a full description and statement of value of all property owned or possessed by the child;
  - (g) facts, if any, which excuse consent on the part of a parent to the adoption.
- (2) One copy of the petition shall be retained by the court. The other shall be sent to the department *or to the child placing agency* participating in the adoption proceeding.
- (3) Any written consent required by this part may be attached to the petition or may be filed after the filing of the petition, with the consent of the court.
- (4) Except as provided in 40-8-109, a petition for adoption must be filed within 1 year of the time the child was placed for adoption with the petitioner."

Section 3. Section 40-8-122, MCA, is amended to read:

**"40-8-122. Investigation.** (1) Upon the filing of a petition for adoption, the court shall order an investigation to be made by the department or by a licensed child placing agency or other person named by the court, *unless an investigation has been made prior to the filing as provided in subsection (4).* The investigation may be waived if the petitioner is a step-parent of the child or if one of the petitioners is a member of the child's extended family. The report of investigation shall be filed with the court by the investigator *at the time the petition is filed or* within 30 days from the issuance of the order for investigation, unless time therefor is extended by the court. The report of the investigation shall state:

- (a) whether the child is legally free for adoption;
  - (b) whether the proposed home is a suitable one for the child;
  - (c) that medical and social histories have been provided to the adoptive parent; and
  - (d) any other circumstances and conditions which may have a bearing on the adoption and of which the court should have knowledge.
- (2) The court may order agencies named in subsection (1) located in one or more counties to make separate investigations on separate parts of the inquiry as may be appropriate.
- (3) The report of the investigation shall become a part of the files in the case and shall contain a definite recommendation stating the reasons for or against the proposed adoption.

(4) (a) *If an investigation has been made within the 6 months immediately preceding the filing of the petition, the court does not have to order a new investigation to be made.*

(b) *The report of the earlier investigation must contain the information and recommendation specified by subsections (1) and (3) and be filed with the petition for adoption."*

Section 4. Section 40-8-123, MCA, is amended to read:

**"40-8-123. Summary decree.** (1) If the child is a member of the extended family of one of the petitioners or is a stepchild of the petitioner or the court finds that the best interests of the child will be furthered thereby, the court in its discretion, after examination of a report ordered or received pursuant to 40-8-122, may waive the entry of an interlocutory decree and the waiting period of 6 months provided in 40-8-124 and grant a final decree of adoption if satisfied that the adoption is in the best interests of the child.

(2) *The department or the child placing agency may recommend in the investigation report filed with the petition for adoption that the court issue a summary decree as provided for in subsection (1) if:*

(a) *a period of 6 months has elapsed since the department or licensed child placing agency placed the child for adoption; and*

(b) *the department or licensed child placing agency conducted an investigation during that period."*

Section 5. Section 40-8-124, MCA, is amended to read:

**"40-8-124. Interlocutory and final decree.** (1) Upon examination of the report described in 40-8-122, if such report has been considered necessary by the court, and after hearing, the court may issue an interlocutory decree giving the care and custody to the petitioners pending the further order of the court.

(2) When a petition has been filed seeking the adoption of a child, the court must cause service of process to be made on the parent or parents of the child, except in those cases hereinafter provided, in the following manner:

(a) The court shall order a citation to issue to the parent or parents in the name of the state of Montana and under the seal of the court directing such parent or parents to appear in court at a time to be fixed by the court and show cause why the petition should not be granted.

(b) Such citation, together with a copy of the petition for adoption, shall be personally served upon such parent or parents. If, however, any such parent or parents cannot be found within this state, service may be had by publication of a copy of the citation in the manner provided for the publication of summons by Rule 4, M.R.Civ.P.

(3) If, after completion of such service, any parent so served does not appear, the court may act upon the petition and the order of the court thereon shall be binding upon all persons so served; provided that any such



person may appeal from the order in the manner and form provided for appeals from a judgment in civil actions.

(4) The petitioners and the child shall appear at the hearing, unless the presence of the child is waived by the court.

(5) Service of process, as aforesaid, need not be made on a parent who has consented in writing to an adoption or on any parent whose consent to adoption is not required under the provisions of 40-8-111, and service of process shall not be made on any parent who has relinquished his child to the department of social and rehabilitation services or an adoption agency licensed by the department.

(6) After an interlocutory decree has been issued by the court *or after the date of placement for adoption*, the investigator, if any, shall observe the child in his adoptive home and report in writing to the court within 6 months on any circumstances or conditions which may have a bearing on the adoption. After 6 months from the date of the interlocutory decree *or the date of placement for adoption*, the petitioners may apply to the court for a final decree of adoption. The court shall thereupon set a time and place for final hearing. Notice of the time and date of the hearing shall be served on the department *or the licensed child placing agency or any other person named by the court*. The investigator, if any, shall file with the court a written report of his findings and recommendations and certify that the described investigation, if any, has been made since the granting of the interlocutory decree *or the date of placement for adoption*. After hearing on said application, at which the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court may enter a final decree of adoption if satisfied that the adoption is for the best interests of the child. If the adoption is denied, an appropriate order shall be made as to the future custody of the child."

Section 6. **Extension of authority.** Any existing authority of the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1987.

## CHAPTER NO. 278

[HB 240]

AN ACT PROVIDING A CAUSE OF ACTION FOR AND THE SUSPENSION OF LEGAL PROCEEDINGS IN CERTAIN INSURANCE CLAIM SETTLEMENT CASES; INCREASING THE FINE THAT MAY BE IMPOSED FOR VIOLATION OF THE INSURANCE CODE; AMENDING SECTION 33-1-317, MCA; REPEALING SECTION 33-18-241, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-1-317, MCA, is amended to read:

**"33-1-317. Penalty imposed by commissioner.** The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine

not to exceed the sum of \$25,000 upon a person found to have violated any provision of this code, except 33-30-1012, or regulation duly promulgated by the commissioner, except that the fine imposed upon agents or adjusters shall not exceed \$500. Said fine shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the commissioner in the name of the state of Montana. Imposition of any fine hereunder shall be an order from which an appeal may be taken, pursuant to the provisions of 33-1-711."

**Section 2. Repealer.** Section 33-18-241, MCA, is repealed.

**Section 3. Independent cause of action — burden of proof.** (1) An insured or a third-party claimant has an independent cause of action against an insurer for actual damages caused by the insurer's violation of subsection (1), (4), (5), (6), (9), or (13) of 33-18-201.

(2) In an action under this section, a plaintiff is not required to prove that the violations were of such frequency as to indicate a general business practice.

(3) An insured who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not under any other theory or cause of action. An insured may not bring an action for bad faith in connection with the handling of an insurance claim.

(4) In an action under this section, the court or jury may award such damages as were proximately caused by the violation of subsection (1), (4), (5), (6), (9), or (13) of 33-18-201. Exemplary damages may also be assessed in accordance with 27-1-221.

(5) An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue.

(6) (a) An insured may file an action under this section, together with any other cause of action the insured has against the insurer. Actions may be bifurcated for trial where justice so requires.

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

(7) The period prescribed for commencement of an action under this section is:

(a) for an insured, within 2 years from the date of the violation of 33-18-201; and

(b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of judgment on the underlying claim.

(8) As used in this section, an insurer includes a person, firm, or corporation utilizing self-insurance to pay claims made against them.

**Section 4. Codification instruction.** Section 3 is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to section 3.

Section 5. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. **Applicability.** This act applies to causes of action arising after the effective date of this act.

Section 7. **Effective date.** This act is effective on July 1, 1987.

Approved March 29, 1987.

## CHAPTER NO. 279

[HB 273]

AN ACT TO ALLOW THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO ADOPT RULES FOR THE CALCULATION OF TUITION FOR SPECIAL EDUCATION PUPILS; AND AMENDING SECTIONS 20-5-305 AND 20-5-312, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-5-305, MCA, is amended to read:

**"20-5-305. Elementary tuition rates.** (1) Whenever a pupil of an elementary district has been granted approval to attend a school outside of the district in which he resides, under the provisions of 20-5-301 or 20-5-302, such district shall pay tuition to the elementary district where the pupil attends school. *Except as provided in subsection (2),* the basis of the rate of tuition *shall be* determined by the attended district. The rate of tuition shall be determined by:

(a) totaling the actual expenditures from the district general fund, the debt service fund, and, if the pupil is a resident of another county, the retirement fund;

(b) dividing the amount determined in subsection (1)(a) by the ANB of the district for the current fiscal year, as determined under the provisions of 20-9-311; and

(c) subtracting the total of the per-ANB amount allowed by 20-9-316 through 20-9-321 that represents the foundation program as prescribed by 20-9-303 plus the per-ANB amount determined by dividing the state financing of the district permissive levy by the ANB of the district, from the amount determined in subsection (1)(b).

(2) *The tuition for a full-time elementary special education pupil must be determined under rules adopted by the superintendent of public instruction for the calculation of elementary tuition for full-time elementary special education pupils as designated in 20-9-311 for funding purposes."*

Section 2. Section 20-5-312, MCA, is amended to read:

**"20-5-312. Reporting, budgeting, and payment for high school tuition.** (1) *Except as provided in subsection (2), at the close of the school term of each school fiscal year, the trustees of each high school district shall determine the rate of tuition for the current school fiscal year by:*

(a) totaling the actual expenditures from the district general fund, the debt service fund, and, if the pupil is a resident of another county, the retirement fund;

(b) dividing the amount determined in subsection (1)(a) above by the ANB of the district for the current fiscal year, as determined under the provisions of 20-9-311; and

(c) subtracting the total of the per-ANB amount allowed by 20-9-316 through 20-9-321 that represents the foundation program as prescribed by 20-9-303 plus the per-ANB amount determined by dividing the state financing of the district permissive levy by the ANB of the district, from the amount determined in subsection (1)(b) above.

(2) *The tuition for a full-time high school special education pupil must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for full-time high school special education pupils as designated in 20-9-311 for funding purposes.*

(3) Before July 15, the trustees shall report to the county superintendent of the county in which the district is located:

(a) the names, addresses, and resident districts of the pupils attending the schools of the district under an approved tuition agreement;

(b) the number of days of school attended by each pupil;

(c) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, shall have the authority to waive; and

(d) the rate of current school fiscal year tuition, as determined under the provisions of this section.

(4) When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the superintendent of each district in which the reported pupils reside.

(5) When the district superintendent receives a tuition report or reports for high school pupils residing in his district and attending an out-of-district high school under approved tuition agreements, he shall determine the total amount of tuition due such out-of-district high schools on the basis of the following per-pupil schedule: the rate of tuition, number of pupils attending under an approved tuition agreement, and other information provided by each high school district where resident district pupils have attended school.

(6) The total amount of the high school tuition, with consideration of any tuition waivers, for pupils attending a high school outside the county of residence shall be financed by the county basic special tax for high schools as provided in 20-9-334. In December, the county superintendent shall cause the payment by county warrant of at least one-half of the high

school tuition obligations established under this section out of the first moneys realized from the county basic special tax for high schools. The remaining obligations must be paid by June 15 of the school fiscal year. The payments shall be made to the county treasurer of the county where each high school entitled to tuition is located. The county treasurer shall credit such tuition receipts to the general fund of the applicable high school district, and the tuition receipts shall be used in accordance with the provisions of 20-9-141.

(7) For pupils attending a high school outside their district of residence but within the county of residence, the total amount of the tuition, with consideration of any tuition waivers, must be paid during the ensuing school fiscal year. The trustees of the sending high school district shall include the tuition amount in the tuition fund of the preliminary and final budgets. This budgeted tuition amount is not subject to the budget adjustment provisions of 20-9-132. The county superintendent shall report the net tuition fund levy requirement for each high school district to the county commissioners on the second Monday of August, and a levy on the district shall be made by the county commissioners in accordance with 20-9-142. This levy requirement shall be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget the sum of the cash balance in the tuition fund at the end of the immediately preceding school fiscal year plus any other anticipated money that may be realized in the tuition fund. The trustees shall pay by warrants drawn on the tuition fund the tuition amounts owed to each district included in the county superintendent's notification. Payments shall be made whenever there is a sufficient amount of cash available in the tuition fund but no later than the end of the school fiscal year for which the budget is adopted. However, if the trustees of either the sending or receiving high school feel the transfer privilege provided by this subsection is being abused they may appeal to the county superintendent of schools who shall hold a hearing and either approve or disapprove the transfer."

Approved March 29, 1987.

## CHAPTER NO. 280

[HB 370]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE  
OPENCUT MINING ACT; AND AMENDING SECTIONS 82-4-402,  
82-4-403, 82-4-423, 82-4-431, 82-4-433, 82-4-434, AND 82-4-441, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82-4-402, MCA, is amended to read:

**"82-4-402. Policy.** It is the policy of this state to provide for the reclamation and conservation of land subjected to opencut *mineral* mining. Therefore, it is the purpose of this part to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard and

reclaim through effective means and methods all agricultural, recreational, home, and industrial sites subjected to or which may be affected by open-cut *mineral* mining to protect and perpetuate the taxable value of property, to protect scenic, scientific, historic, or other unique areas, and to promote the health, safety, and general welfare of the people of this state."

Section 2. Section 82-4-403, MCA, is amended to read:

**"82-4-403. Definitions.** When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Affected land" means the area of land and land covered by water that is disturbed by open-cut mining operations, including the area from which overburden or mineral is to be or has been removed and upon which the overburden is to be or has been deposited, roads constructed to gain access to the mineral, areas of processing facilities on or contiguous to the open-cut mine, treatment and sedimentation ponds, and mineral stockpile areas on or contiguous to the open-cut mine.

(2) "Board" means the state board of land commissioners.

(3) "Contract" means a mined land reclamation contract prepared by the board to meet the requirements of this part.

(4) "Final cut" means the last pit created in an open-cut-mined area.

(5) "Landowner" means the owner of land directly affected by an open-cut-mining operation.

(6) "Minerals" means bentonite, clay, scoria, phosphate rock, sand, or gravel.

(7) "Open-cut mining" means the mining of minerals by:

(a) removing the overburden lying upon natural deposits thereof and mining directly from the natural deposits thereby exposed;

(b) mining directly from natural deposits of such minerals; or

(c) removing overburden for the purpose of determining the location, quality, or quantity of any natural deposit of minerals.

(8) "Operator" means a person engaged in or controlling an open-cut-mining operation.

(9) "Overburden" means all of the earth and other materials which lie above a natural deposit of minerals. "Spoil" is the overburden disturbed from its natural state in the process of open-cut mining.

(10) "Person" means a natural person or a firm, association, partnership, cooperative, or corporation or any department, agency, or instrumentality of the state or any governmental subdivision or any other entity whatever.

(11) "Processing facilities" means all crushers, screens, and asphalt or concrete plants.

(12) "Progress report" means a report showing the land which the operator has affected by open-cut mining during the year. The report shall show the number of acres of affected land and all reclamation accomplished.

(13) "Public notice" means notice given by publication in a newspaper in the general area where the affected land is located. The notice shall be given once a week for 3 successive weeks.

(14) "Reclamation" means the reconditioning of the area of land affected by opencut-mining operations to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential and industrial sites.

(15) "Reclamation plan" means the description of current land use, topographical data, water data, soils data, leased areas, intended mine areas, and an explanation of proposed reclamation of the land with appropriate maps.

(16) "Refuse" means all waste material directly connected with the open-cut-mining operations.

(17) "Soils materials" are those horizons containing topsoil or other soils leached free of deleterious salts and capable of sustaining plant growth and recognized as such by standard authorities."

Section 3. Section 82-4-423, MCA, is amended to read:

**"82-4-423. Contracts for reclamation.** The board is hereby authorized to enter into contracts with operators in the name of the state of Montana which will provide for the reclamation of lands on which opencut mining of *minerals* has been or is to be conducted. The board is authorized to sue and be sued in the name of the state of Montana to enforce the provisions of any contract, and the board shall bring such court actions and take such other steps and actions as may be necessary to enforce the provisions of such contracts."

Section 4. Section 82-4-431, MCA, is amended to read:

**"82-4-431. Contract for reclamation required.** (1) After March 16, 1973, no operator may conduct opencut-mining operations which will result in the removal of 10,000 cubic yards or more of product or overburden until he has entered into a contract with the board for the reclamation of the land affected. An operator conducting a number of operations, each of which results in the removal of less than 10,000 cubic yards of product or overburden but which result in the removal of 10,000 cubic yards or more of product or overburden in the aggregate, is subject to the provisions of this part, *except as provided in this section.*

(2) (a) *Except as provided in or conditioned under subsections (2)(b) and (2)(c), an operator who holds a contract for reclamation may operate an opencut mine without first securing an additional contract or an amendment to the existing contract or bond if the mine meets the following criteria:*

(i) *the total amount of material and overburden removed does not exceed 1,000 cubic yards; and*

(ii) *the operator notifies the department of state lands prior to beginning such operations and, within 30 days of notifying the department, submits a completed site information form, salvages and stockpiles all root-bearing*

*soil materials, regrades the affected area to 3:1 or flatter slope and blends the reclaimed area into the adjacent topography, and during the first appropriate growing season replaces all topsoil and reseeds or revegetates as required by the department.*

*(b) The department may refuse to allow the operator to operate an opencut mine under subsection (2)(a) if, at the time of notification by the operator to the department, the operator has a pattern of violations or is in current violation of this part or rules adopted under this part or provisions of a contract for reclamation.*

*(c) The department may require an additional bond as a condition for the operation of an opencut mine under subsection (2)(a).*

*(3) Opencut mines described in subsection (2) may not be placed in flowing, ephemeral, or intermittent streams, in the bottom or head of a confined drainage, in an area where the operation will intercept ground water or intercept any slope that is naturally steeper than 3:1, or in any area where mining would be restricted by other laws."*

Section 5. Section 82-4-433, MCA, is amended to read:

**"82-4-433. Bond.** (1) A bond required to be filed in this part by the operator shall be in such form as the board prescribes, payable to the state of Montana and conditioned upon the operator's full compliance with all requirements of this part and all rules of the board. The bond shall be signed by the landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety licensed to do business in the state of Montana, as surety. The bond shall be in an amount not to exceed the costs of restoration required by this part as determined by the board. The amount of the bond may not be less than \$200 or more than \$1,000 per acre unless the department determines, in writing, that the cost of restoration of the land exceeds \$1,000 per acre. Upon such a determination, the bond amount must be set by the board at the cost of restoring the land.

(2) In lieu of the bond, the operator may deposit with the board cash and government securities or a bond with property sureties in an amount equal to that of the required bond on conditions as above prescribed. In the discretion of the board, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities thereon as security, in which event no surety may be required. The penalty of the bond or amount of cash and securities shall be increased or reduced from time to time as provided in this part. The bond or security remains in effect until the *affected land* has been reclaimed as provided under the contract and the reclamation has been approved and the bond or security has been released by the board. The bond or security shall cover only actual *affected land* and may be increased or reduced to cover only such acreages as remain unreclaimed.

(3) If the license of a surety upon a bond filed with the board pursuant to this part is suspended or revoked, the operator, within 30 days after receiving notice thereof from the board, shall substitute for that surety a good and sufficient surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the board may suspend the



contract of the operator to conduct operations upon the land described in the contract until the substitution has been made.

(4) The board shall cause the reclamation of any affected land with respect to which a bond has been forfeited.

(5) Whenever an operator has completed all of the requirements under the provisions of this part as to any affected land, he shall notify the board thereof. If the board releases the operator from further obligation regarding such affected land, the penalty of the bond shall be reduced proportionately."

Section 6. Section 82-4-434, MCA, is amended to read:

**"82-4-434. Reclamation plan part of contract — requirements.** The contract shall meet the following requirements:

(1) The operator shall submit a reclamation plan to the board before commencing any opencut mining and may not commence mining before the plan receives approval from the board. The operator may request and receive a meeting with the board prior to submission of the plan. If the board does not notify the operator that it has approved or disapproved a plan within 30 days after the board has received the plan, the board is considered to have approved the plan. The board, however, for sufficient cause, may extend its period of consideration for an additional 30 days if it notifies the operator prior to the end of the original 30-day period. The board shall submit each reclamation plan or amendments to the reclamation plan to the landowner for his recommendations and shall consider those recommendations in deciding whether to approve or disapprove any plan or amendments. The board may seek technical help from any state or federal agency. The board shall submit the plan immediately to the director of the university of Montana statewide archaeological survey for evaluation of possible archaeological or historical values in the area to be mined. The board may approve a reclamation plan only if the board has found that the plan provides for the best possible reclamation procedures available under the circumstances at the time, so that after mining operations are completed the affected land will be reclaimed to a productive use. Once the reclamation plan is accepted in writing by the board, it shall become a part of the contract but is subject to annual review and modification by the board.

(2) The board may not approve any reclamation plan unless the plan provides:

(a) that the land will be reclaimed for one or more specified uses, including but not limited to forest, pasture, orchard, cropland, residence, recreation, industry, habitat for wildlife, including food, cover, or water, or other uses;

(b) that to the extent reasonable and practicable, the operator will establish vegetative cover commensurate with the proposed land use;

(c) whenever operations result in a need to prevent acid drainage or sedimentation on or in adjoining lands or streams, for the construction of earth dams or other reasonable devices to control water drainage, provided

the formation of such impoundments or devices will not interfere with other landowners' rights or contribute to water pollution;

(d) that to accomplish practical utilization of soil materials, such material will be utilized for placement on affected areas, if required by the reclamation plan after completion or termination of that particular phase of the mining operations, at a depth sufficient for plant growth on slopes of 3:1 or less;

(e) that grading will be commensurate with the topography sought and land use designated;

(f) that metal and other waste will be removed or buried;

(g) that all access, haul, and other support roads will be located, constructed, and maintained in such a manner as to control and minimize channeling and other erosion;

(h) that the operator will submit a progress report annually to the board;

(i) that all operations will be conducted so as to avoid range and forest fires and spontaneous combustion and that open burning of carbonaceous materials will be in accordance with suitable practices for fire prevention and control;

(j) that archaeological and historical values in areas to be mined will be given appropriate protection;

(k) that except for rock faces, bench faces, and excavations used for water impoundments, each surface area of the mined premises which will be disturbed will be revegetated when its use for extractive purposes is no longer required;

(l) that seeding and planting will be done in a manner to achieve a permanent suitable vegetative cover for wildlife, livestock, and retardation of erosion and that all seed will be drilled unless otherwise provided in the plan;

(m) that reclamation will be as concurrent with mining operations as feasible and will be completed within a specified length of time; and

*(n) that surface and ground water will be given appropriate protection, consistent with state law, from deterioration of water quality and quantity that may arise as a result of the operation.*

(3) If reclamation according to the plan has not been completed in the time specified, the board after 30 days' written notice shall order the operator to cease mining and, if the operator does not cease, shall institute an action to enjoin further operation and may sue for damages for breach of contract, for payment of the performance bond, or for both.

(4) (a) At any time during the period of reclamation the operator may for good reason submit to the board a new reclamation plan or amendment to the existing plan, including extensions of time.

(b) The board may approve the proposed new reclamation plan or amendments to the existing plan if:

(i) the operator has in good faith carried on reclamation according to the existing plan and the proposed new plan or amendments to the existing plan will result in reclamation as or more desirable than the reclamation proposed under the existing plan; or

(ii) it is highly improbable reclamation will be successful unless the existing plan is replaced or amended.

(c) When accepted, the proposed new reclamation plan or the proposed amendments to the existing plan become a part of the contract.

(5) The operator shall provide a performance bond or an alternative acceptable to the board in an amount commensurate with the estimated cost of reclamation, but in no case may the bond be less than \$200 per acre. The estimated cost of reclamation shall be set forth in the reclamation plan.

(6) The contract, reclamation plan, and amendments accepted by the board shall be a public record and open to inspection.

(7) The contract shall become effective when signed by the board and the operator and shall remain in force until terminated by mutual consent or by the board upon 6 months' notice."

Section 7. Section 82-4-441, MCA, is amended to read:

**"82-4-441. Penalty — enforcement.** (1) A person who violates any of the provisions of this part or rules adopted thereunder *or provisions of a contract for reclamation* shall pay a civil penalty of not less than \$100 or more than \$1,000 for the violation and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues following the service of notice of the violation, and the person may be enjoined from continuing such violation as provided in this section. These penalties are recoverable in an action brought in the name of the state of Montana by the attorney general in the district court having jurisdiction of the defendant or by mutual agreement of the parties involved, in the district court of the first judicial district. Penalty money shall be credited to the general fund.

(2) The attorney general shall, upon the request of the department, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

(3) *The civil penalties provided for in this section may be waived for a minor violation if it is determined that the violation does not represent potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection."*

Section 8. **Extension of authority.** Any existing authority of the department of state lands and the board of land commissioners to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1987.

## CHAPTER NO. 281

[HB 499]

AN ACT PROHIBITING LENDERS FROM USING OR DISCLOSING INFORMATION WITH RESPECT TO A LOAN OR EXTENSION OF CREDIT INVOLVING CREDIT INSURANCE; AND AMENDING SECTION 33-18-501, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-18-501, MCA, is amended to read:

**"33-18-501. Lenders — restrictions on solicitation, rejection, charges, and disclosure — favoring agent prohibited.** (1) No person may require as a condition precedent to the lending of money or extension of credit or any renewal thereof that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance negotiate any contract of insurance or renewal thereof through a particular insurer or group of insurers or agent or solicitor or group of agents or solicitors.

(2) No person who lends money or extends credit may:

(a) solicit insurance for the protection of real property, after a person indicates interest in securing a first-mortgage credit extension, until such person has received a commitment in writing from the lender as to a loan or credit extension;

(b) unreasonably reject a contract of insurance furnished by the borrower for the protection of the property securing the credit or lien. A rejection is not unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards may not discriminate against any particular type of insurer or call for rejection of an insurance contract because the contract contains coverage in addition to that required by the credit transaction.

(c) require that any borrower, mortgagor, purchaser, insurer, solicitor, or agent pay a separate charge in connection with the handling of any contract of insurance required as security for a loan on real estate or pay a separate charge to substitute the insurance policy of one insurer for that of another. This subsection (2)(c) does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document.

(d) use or disclose information relative to a contract of insurance which is required by the credit transaction:

(i) for the purpose of replacing such insurance; and

(ii) *without the prior written consent of the borrower;*

(e) require any procedures or conditions of licensed agents, solicitors, or insurers not customarily required of those agents, solicitors, or insurers affiliated or in any way connected with the person who lends money or extends credit.

(3) Each person who lends money or extends credit and who solicits insurance on real and personal property subject to subsection (2) of this section must explain to the borrower in writing that the insurance related to such credit extension may be purchased from an insurer or agent of the borrower's choice, subject only to the lender's right to reject a given insurer or agent as provided in subsection (2)(b). Compliance with disclosures as to insurance required by truth-in-lending laws or comparable state laws shall be compliance with this subsection.

(4) The commissioner may examine and investigate those insurance-related activities of any person which may be in violation of this section. Any affected person may submit to the commissioner a complaint or material pertinent to the enforcement of this section.

(5) Nothing herein prevents a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

(6) Nothing contained in this section applies to credit life or credit accident and health insurance."

Section 2. **Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1987.

## CHAPTER NO. 282

[HB 541]

AN ACT CLARIFYING THE TERMS OF BOARD OF NURSING MEMBERS; CLARIFYING EDUCATIONAL REQUIREMENTS FOR NURSING SPECIALTY AREAS; CLARIFYING THE BOARD'S AUTHORITY TO DEFINE UNPROFESSIONAL CONDUCT; CLARIFYING THE BOARD'S PROCEDURES FOR DENIAL, REVOCATION, OR SUSPENSION OF A LICENSE; AND AMENDING SECTIONS 2-15-1844, 37-8-202, 37-8-441, AND 37-8-442, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-1844, MCA, is amended to read:

**"2-15-1844. Board of nursing.** (1) There is a board of nursing.

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) four registered professional nurses; at least one such member shall have had at least 5 years in administrative, teaching, or supervisory experience in one or more schools of nursing and at least one such member must be currently engaged in the administration, supervision, or provision of direct client care. Each member shall:

- (i) be a graduate of an approved school of nursing;
- (ii) be a licensed registered professional nurse in this state;
- (iii) have had at least 5 years' experience in nursing following graduation; and

(iv) be currently engaged in the practice of professional nursing and have practiced for at least 5 years.

(b) three practical nurses. Each shall:

- (i) be a graduate of a school of practical nursing;
- (ii) be a licensed practical nurse in this state;
- (iii) have had at least 5 years' experience as a practical nurse; and
- (iv) be currently engaged in the practice of practical nursing and have practiced for at least 5 years.

(c) two public members who are not medical practitioners, involved in the practice of nursing or employment of nursing, or administrators of Montana health care facilities.

(3) All members shall have been residents of this state for at least 1 year before appointment and be citizens of the United States.

(4) *All members* shall serve staggered 4-year terms, and a member may not be appointed for more than two consecutive terms. The governor may remove a member from the board for neglect of a duty required by law or for incompetency or unprofessional or dishonorable conduct.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 37-8-202, MCA, is amended to read:

**"37-8-202. Organization — meetings — powers and duties.** (1) The board shall meet annually and shall elect from among the nine members a president and a secretary. The board shall hold other meetings when necessary to transact its business. A majority of the board constitutes a quorum at any meeting. The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board.

(2) The board may make rules necessary to administer this chapter. The board shall prescribe standards for schools preparing persons for registration and licensure under this chapter. It shall provide for surveys of schools at times it considers necessary. It shall approve programs that meet the requirements of this chapter and of the board. The department shall, subject to 37-1-101, examine and issue to and renew licenses of qualified applicants. The board shall conduct hearings on charges which may call for

discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this chapter and may incur necessary expenses for this.

(3) The board may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper administration of this chapter, and the board may fix reasonable fees for incidental services, all within the subject matter delegated by this chapter.

(4) The board may participate in and pay fees to a national organization of state boards of nursing to assure interstate endorsement of licenses.

(5) The board of nursing may define the educational requirements and other qualifications applicable to specialty areas of nursing. Specialty areas of nursing are those that require additional professional education beyond the basic nursing degree required of a registered nurse, which additional education is obtained in courses offered in a university setting or its equivalent. *The applicant must be certified by a specialty area certifying body.* Specialty areas of nursing include nurse practitioners, nurse-midwives, and nurse-anesthetists."

Section 3. Section 37-8-441, MCA, is amended to read:

**"37-8-441. Denial, revocation, or suspension of license — grounds.** Only after compliance with 37-8-442, the board may deny, revoke, or suspend a license to practice nursing or discipline a licensee on proof that the person:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;

(2) is unfit or incompetent by reason of negligence, habit, or other causes;

(3) is habitually intemperate or is addicted to the use of habit-forming drugs;

(4) is mentally or physically incompetent;

(5) is guilty of unprofessional conduct *as defined by rules of the board*;

(6) has willfully or repeatedly violated this chapter."

Section 4. Section 37-8-442, MCA, is amended to read:

**"37-8-442. Denial, revocation, or suspension of license — procedure.** (1) *Upon receipt of a written complaint charging a person with violation of 37-8-441 as a ground for disciplinary action or on other information that a licensee may be in violation of 37-8-441, the board shall investigate, and if it finds reasonable cause to believe that a violation has occurred, it shall initiate proceedings under the Montana Administrative Procedure Act.*

(2) If the person charged is found guilty of the charges, the board may refuse to grant a license to the applicant or may revoke or suspend a license issued to a licensee.

(3) A revoked or suspended license may be reissued after 1 year, in the discretion of the board."

Section 5. **Extension of authority.** Any existing authority of the board of nursing to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1987.

## CHAPTER NO. 283

[HB 555]

AN ACT AUTHORIZING THE BOARD OF MEDICAL EXAMINERS TO ESTABLISH A PROGRAM FOR IMPAIRED PHYSICIANS; AMENDING SECTION 37-3-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-3-203, MCA, is amended to read:

**"37-3-203. Powers and duties.** The board may:

(1) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter; the rules shall be fair, impartial, and nondiscriminatory;

(2) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(3) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter; and

(4) *establish a program to assist and rehabilitate licensed physicians who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance."*

Section 2. **Extension of authority.** Any existing authority of the board of medical examiners to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective July 1, 1987.

Approved March 29, 1987.



**CHAPTER NO. 284**

[HB 569]

AN ACT EXPANDING THE APPLICABILITY OF THE RESIDENCY DEFINITION USED IN THE PREFERENCE LAWS CONCERNING AWARDING OF PUBLIC CONTRACTS; AMENDING SECTIONS 18-1-103 AND 18-1-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 18-1-103, MCA, is amended to read:

**"18-1-103. Residence defined.** (1) For the purpose of 18-1-102, 18-1-103, *18-1-111*, and 18-1-112, the word "resident" shall include actual residence of an individual within this state for a period of more than 1 year immediately prior to bidding.

(2) In a partnership enterprise or an association, the majority of all partners or association members shall have been actual residents of the state of Montana for more than 1 year immediately prior to bidding.

(3) Domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents, but this qualification may be set aside and a successful bid disallowed where it is shown to the satisfaction of the board, commission, officer, or individual charged with the responsibility for the execution of such contract that said corporation is a wholly owned subsidiary of a foreign corporation or that said corporation was formed for the purpose of circumventing the provisions relating to residence.

(4) Notwithstanding the foregoing, any bidder on a contract for purchase of products, materials, supplies, or equipment, whether an individual, partnership, or corporation, foreign or domestic and regardless of ownership thereof, whose offered materials, supplies, or equipment are manufactured or produced in this state by industry located in Montana and Montana labor shall be deemed to be a resident for the purpose of 18-1-102, 18-1-103, *18-1-111*, and 18-1-112."

Section 2. Section 18-1-111, MCA, is amended to read:

**"18-1-111. Impartiality to be shown in letting contracts — preference to residents.** The department may not show any partiality or favoritism in making awards or contracts and shall be absolutely fair and impartial. Where both the bids and quality of goods offered are the same, preference shall be given to articles of local and domestic production and manufacture, and where both the bids and the quality of goods offered are the same, preference shall be given to resident bidders *as defined in 18-1-103* over nonresident bidders."

Section 3. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1987.

## CHAPTER NO. 285

[HB 580]

### AN ACT ALLOWING A FLASHING AMBER LIGHT ON A MAIL DELIVERY VEHICLE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Flashing amber light on mail delivery vehicle.** (1) A vehicle engaged in delivery of United States mail may be equipped with a blinker-type or revolving amber light mounted on the top of the vehicle, and the light may be illuminated while the vehicle is engaged in delivery of mail.

(2) A person delivering the United States mail and illuminating an amber light on a privately owned motor vehicle shall carry attached to the motor vehicle an identification card showing the name of the owner of the vehicle and signed by the postmaster authorizing the use of the amber light.

Section 2. **Extension of authority.** Any existing authority of the department of justice to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1987.

## CHAPTER NO. 286

[HB 589]

### AN ACT TO PROVIDE FOR THE APPOINTMENT OF A CITY COUNCIL BY THE BOARD OF COUNTY COMMISSIONERS IF ALL POSITIONS ON THE COUNCIL BECOME VACANT; AMENDING SECTION 7-4-4112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-4-4112, MCA, is amended to read:

**"7-4-4112. Filling of vacancy.** (1) When any vacancy occurs in any elective office, this position shall be considered open and subject to nomination and election at the next general municipal election in the same

manner as the election of any other person holding the same office, except the term of office shall be limited to the unexpired term of the person who originally created the vacancy. Pending such election and qualification the council shall, by a majority vote of the members, appoint a person within 30 days of the vacancy to hold the office until his successor is elected and qualified. *If all council positions become vacant at one time, the board of county commissioners shall appoint persons within 5 days to hold office as aldermen. The appointed aldermen shall then appoint persons to any other vacant elective offices.*

(2) A vacancy in the office of alderman must be filled from the ward in which the vacancy exists."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1987.

## CHAPTER NO. 287

[HB 605]

AN ACT AUTHORIZING DISCLOSURE OF CHILD ABUSE AND NEGLECT RECORDS TO CERTAIN NAMED PERSONS AND ENTITIES; GRANTING AUTHORITY TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO ADOPT RULES ON THE DISCLOSURE OF SUCH RECORDS; AMENDING SECTIONS 41-3-205 AND 41-3-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 41-3-205, MCA, is amended to read:

**"41-3-205. Confidentiality.** (1) The case records of the department of social and rehabilitation services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect shall be kept confidential except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds such disclosure to be necessary for the fair resolution of an issue before it.

(3) *Records may also be disclosed to the following persons or entities in this state or any other state:*

*(a) a department, agency, or organization including federal agencies legally authorized to receive, inspect, or investigate reports of child abuse or neglect;*

(b) *a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records;*

(c) *a licensed health or mental health professional who is treating the family or child who is the subject of a report in the records;*

(d) *a parent or guardian of the child who is the subject of a report in the records, or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;*

(e) *a child named in the records who was allegedly abused or neglected or his guardian ad litem;*

(f) *the members of an interdisciplinary child protective team authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;*

(g) *a department or agency investigating an applicant for a license to operate a youth care facility, day-care facility, or child-placing agency if the investigation is based on a substantiated report and the applicant is notified of the investigation;*

(h) *an employee of the department if disclosure of the records is necessary for administration of programs designed to benefit the child;*

(i) *an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;*

(j) *a county attorney or peace officer if disclosure is necessary for the investigation or prosecution of a case involving child abuse or neglect; or*

(k) *a foster care review committee established under 41-3-1115.*

(4) *A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a).*

(5) *Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies."*

Section 2. Section 41-3-208, MCA, is amended to read:

**"41-3-208. Rulemaking authority.** (1) *The department of social and rehabilitation services shall adopt rules to govern the procedures used by department personnel and by employees of county welfare departments in preparing and processing reports and in making investigations authorized by this chapter or 41-3-1123.*

(2) *The department may adopt rules to govern the disclosure of case records containing reports of child abuse and neglect."*

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1987.

**CHAPTER NO. 288**

[HB 615]

AN ACT GENERALLY REVISING THE LAWS REGULATING THE PRACTICE OF PODIATRY; AMENDING SECTIONS 37-6-101, 37-6-102, 37-6-301 THROUGH 37-6-305, AND 37-6-311, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-6-101, MCA, is amended to read:

**"37-6-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) *"Podiatry"* means the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of ailments of the human foot.

(2) *"Podiatrist"* means a physician or surgeon of the foot licensed to treat ailments of the foot.

(3) *"Board"* means the board of medical examiners provided for in 2-15-1841.

(4) *"Department"* means the department of commerce provided for in Title 2, chapter 15, part 18."

Section 2. Section 37-6-102, MCA, is amended to read:

**"37-6-102. Limitation on practice.** A podiatrist may treat ailments of the human foot or toe but may not amputate the human foot or toe or administer any anesthetic other than a local anesthetic."

Section 3. Section 37-6-301, MCA, is amended to read:

**"37-6-301. License required for practice.** It is unlawful for a person to profess to be a podiatrist, to practice or assume the duties incident to podiatry, or to advertise in any form or hold himself out to the public as a podiatrist, or in a sign or advertisement to use the word podiatrist, foot correctionist, or any other term, terms, or letters indicating to the public that he is holding himself out as a podiatrist or foot correctionist in any manner, without first obtaining from the board a license authorizing the practice of podiatry in this state, except under this chapter."

Section 4. Section 37-6-302, MCA, is amended to read:

**"37-6-302. Qualifications for licensure — exemptions from examination — temporary licenses.** (1) Persons who wish to begin the practice of podiatry in this state shall make application, on a form authorized by the board and furnished by the department, for a license to practice podiatry.

(2) *No person may be granted a license to practice podiatry in this state unless he:*

(a) *is of good moral character as determined by the board;*

- (b) *is a graduate of a school of podiatry approved by the board;*
  - (c) *has completed at least 1 year of postgraduate training or has had equivalent experience or training approved by the board;*
  - (d) *has made a personal appearance before the board;*
  - (e) *has passed an examination administered by the national board of podiatry examiners and is a diplomate of the national board of podiatry examiners; and*
  - (f) *has obtained a score of at least 75% on an examination administered by the board.*
- (3) *The board may waive the requirements described in subsections (2)(d) and (2)(f).*
- (4) A license without written examination may be granted to podiatrists of other states maintaining equal statutory requirements for the practice of podiatry and extending the same reciprocal privilege to this state if they have had a valid license and practiced for at least 2 preceding years in that state prior to filing for reciprocal privilege and by payment of a fee prescribed by the board to the department.
- (5) *The board may authorize the department to issue a temporary license to practice podiatry in appropriate cases, but no person may be granted a temporary license unless he:*
- (a) *is of good moral character as determined by the board;*
  - (b) *is a graduate of a school of podiatry approved by the board;*
  - (c) *has completed at least 1 year of postgraduate training or has had equivalent experience or training approved by the board; and*
  - (d) *has made a personal appearance before at least one member of the board.*
- (6) *The board may authorize the department to issue a temporary or permanent license subject to probation or other conditions or limitations imposed by the board or may refuse to issue a license if the applicant has engaged in unprofessional conduct or is otherwise unqualified."*

Section 5. Section 37-6-303, MCA, is amended to read:

**"37-6-303. Examination — subjects — fees — reexamination.**

(1) A person not exempt from examination under 37-6-302 and desiring a license to practice podiatry shall be examined in the following subjects: anatomy, chemistry, dermatology, *physical* diagnosis, materia medica, pathology, physiology, therapeutics, *orthopedics*, histology, bacteriology, pharmacy, neurology, surgery, shoe therapy, physiotherapy, roentgenology, and *podiatric medicine*. *The minimum passing score is 70% for each subject tested and an average of 75% for all subjects tested.*

(2) An examination and license fee prescribed by the board shall be paid to the department.

(3) An applicant failing the examination and being refused a license is entitled within 6 months of the refusal to a reexamination, but one

reexamination exhausts his privilege under the original examination. *An additional fee shall be paid to the department for a reexamination.*"

Section 6. Section 37-6-304, MCA, is amended to read:

**"37-6-304. Designations on license — recording — renewal — display.** (1) A license issued under this chapter shall be designated as a "registered podiatrist's license" or a "temporary podiatrist's license".

(2) Licenses shall be recorded by the department the same as other medical licenses.

(3) A license renewal fee set by the board shall be paid annually on July 1 of each year.

(4) *The department shall mail renewal notices no later than May 1 of each year and shall issue a receipt acknowledging payment of an annual renewal fee.*

(5) *If annual renewal fees are not paid on or before October 1 of each year, the board may revoke the licensee's certificate after giving 30 days' notice to the licensee. A certified letter addressed to the delinquent licensee's last-known address as it appears on the records of the department constitutes notice of intent to revoke the certificate. No certificate may be revoked for nonpayment of a renewal fee if the licensee pays the annual renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.*

(6) *A license revoked for nonpayment of the annual renewal fee may be reissued only on original application and payment of an additional fee prescribed by the board.*

(7) Licenses shall be conspicuously displayed by podiatrists at their offices or other places of practice."

Section 7. Section 37-6-311, MCA, is amended to read:

**"37-6-311. Refusal or revocation of license — investigation — reinstatement.** (1) After notice and opportunity for a hearing, the board may deny, revoke, or refuse to renew a license to practice podiatry if the consensus of the board is that an applicant is not of good moral character or has engaged in unprofessional conduct. The department shall notify the applicant of the board's intent to deny, revoke, or refuse to renew a license by mailing a letter to the applicant's last-known address stating the board's intent and setting a time and place for a hearing. If the applicant fails without cause to appear at the hearing or if the board determines that the applicant is not entitled to a license, the board shall deny, revoke, or refuse to renew the applicant's license.

(2) *The board may investigate whenever it is brought to its attention that a licensed podiatrist:*

(a) *is mentally or physically unable to engage safely in the practice of podiatry;*

(b) *has procured his license by fraud, misrepresentation, or through error;*

(c) *has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent;*

(d) *has a condition that impairs his intellect or judgment to the extent that it incapacitates him in the safe performance of his professional duties;*

(e) *has been found guilty of unprofessional conduct;*

(f) *has practiced podiatry while his license was suspended or revoked;*

(g) *has had his license suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or*

(h) *while under probation has violated its terms.*

(3) *The investigation shall be for the purpose of determining the probability that the alleged conditions exist or that the alleged offenses were committed. The investigation may include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interest of the public that this evaluation be secured. The board may examine the hospital records and reports of a licensee as part of the examination, and copies shall be released to the board on written request. If the board has reasonable cause to believe that the alleged conditions exist or that the alleged offenses were committed, the department shall mail to the person at his last-known address a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice.*

(4) *A person, including a member of the board, may file a sworn complaint with the department against a person having a license to practice podiatry in this state charging him with the commission of any of the offenses set forth in [section 8] or with any of the offenses or conditions set forth in subsection (1) or (2) of this section. The complaint shall set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person complained against, at his last-known address, together with a written citation of the time and place of the hearing on the complaint.*

(5) *At the hearing the board shall adopt a resolution finding the person complained against guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in [section 8] or subsection (1) or (2) of this section do not exist with respect to the person complained against or if he is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in [section 8] or in subsection (1) or (2) of this section do exist or the person is found guilty, the board shall:*

(a) *revoke his license;*

(b) *suspend his right to practice for a period not exceeding 1 year;*

(c) *suspend its judgment of revocation on the terms and conditions to be determined by the board;*



(d) *place him on probation; or*

(e) *take any other action in relation to disciplining him as the board in its discretion considers proper.*

(6) *In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent measures taken by the board with respect to that action.*

(7) *On the expiration of the term of suspension, the licensee shall be reinstated by the board if he furnishes the board with evidence that he is then of good moral character and conduct or restored to good health and that he has not practiced podiatry in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced podiatry in this state during the term of suspension, the board shall revoke the license at a hearing held in accordance with the notice and procedure provided in subsection (1). The revocation is final.*

(8) *If a person holding a license to practice podiatry under this chapter is by a final order or adjudication of a court of competent jurisdiction determined to be mentally incompetent, seriously mentally ill, or addicted to the use of narcotics, his license may be suspended by the board. The suspension continues until the licensee is found by the court to be restored to reason or cured or until he is discharged as restored to reason or cured and his professional competence has been proven to the satisfaction of the board."*

Section 8. Section 37-6-305, MCA, is amended to read:

**"37-6-305. Deposit of moneys collected.** All fees shall be collected by the department and deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6)."

Section 9. **Unprofessional conduct.** As used in this chapter, "unprofessional conduct" means:

(1) *resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this chapter;*

(2) *obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;*

(3) *willful disobedience of the rules of the board;*

(4) *final conviction of an offense involving moral turpitude;*

(5) *administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;*

(6) *final conviction of a violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal food and drug administration;*

(7) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

(8) conduct unbecoming a person licensed to practice podiatry or detrimental to the best interest of the public;

(9) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization;

(10) testifying in court on a contingency basis;

(11) conspiring to misrepresent or willfully misrepresenting medical conditions to increase or decrease a settlement, award, verdict, or judgment;

(12) aiding or abetting in the practice of medicine a person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(13) gross malpractice or negligent practice;

(14) practicing podiatry as the partner, agent, or employee of or in joint venture with a person who does not hold a license to practice podiatry within this state; however, this does not prohibit the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4, nor does this apply to a single consultation with or a single treatment by a person or persons licensed to practice podiatry in another state or territory of the United States or foreign country;

(15) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by parts 1 through 3; or

(16) any other act, whether specifically enumerated or not, which, in fact, constitutes unprofessional conduct.

**Section 10. Extension of authority.** Any existing authority of the board of medical examiners to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 11. Codification instruction.** Section 9 is intended to be codified as an integral part of Title 37, chapter 6, part 1, and the provisions of Title 37, chapter 6, apply to section 9.

**Section 12. Applicability.** This act applies to applications for a license to practice podiatry received by the board of medical examiners after September 30, 1987.

Approved March 29, 1987.

**CHAPTER NO. 289**

[HB 669]

AN ACT PROVIDING NOTICE PROCEDURES FOR THE DISPOSITION OF RURAL COOPERATIVE PROPERTY; REQUIRING A VOTE OF TWO-THIRDS OF ALL OF THE MEMBERS OF THE RURAL COOPERATIVE FOR DISSOLUTION OF THE RURAL COOPERATIVE; AND AMENDING SECTIONS 35-18-317 AND 35-18-405, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 35-18-317, MCA, is amended to read:

**“35-18-317. Disposition or encumbrance of property.** (1) *Except as provided in subsection (2), a cooperative may not sell, mortgage, lease, or otherwise dispose of or encumber all or any substantial portion of its property unless such sale, mortgage, lease, or other disposition or encumbrance is authorized at a duly held meeting of members thereof by the affirmative vote of not less than two-thirds of all the members of the cooperative and unless the notice of such proposed sale, mortgage, lease, or other disposition or encumbrance shall have been contained in the notice of the meeting.*

(2) *The board of trustees of a cooperative, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon or the pledging or encumbrancing of any or all of the property, assets, rights, privileges, licenses, franchises, and permits of the cooperative, whether acquired or to be acquired and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of trustees shall determine, to secure any indebtedness of the cooperative to the United States of America or any instrumentality or agency thereof or to any other financing sources within the United States.*

(3) *Before a meeting is held to vote on authorization of disposition of cooperative property, the board of trustees shall:*

(a) *have the property appraised by three appraisers chosen by the board and not associated with the cooperative or a proposed buyer of cooperative property;*

(b) *notify all cooperative members, at least 90 days in advance, of a meeting to vote on disposition of cooperative property. Detailed proposals for disposition of such property must accompany the notice.*

(c) *at least 30 days before the meeting, notify all other cooperatives situated and operating in the state that the property is available for disposition and include with the notice one copy of each appraisal on the cooperative property; and*

(d) *at least 30 days before the meeting, mail to all members any alternative proposal made by cooperative members if it has been submitted to the board and signed by 50 or more members.*

(4) *The vote on property disposition may take place at an annual meeting if the board notifies the members as provided in this section.*

(5) *This section does not apply to the transfer of cooperative property in a merger or consolidation of cooperatives."*

Section 2. Section 35-18-405, MCA, is amended to read:

**"35-18-405. Dissolution and winding up of cooperative which has commenced business.** A cooperative which has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

(1) The board of trustees shall first recommend that the cooperative be dissolved voluntarily, and thereafter the proposition that the cooperative be dissolved shall be submitted to the members of the cooperative at any annual or special meeting, the notice of which shall set forth such proposition. The proposed voluntary dissolution shall be deemed to be approved upon the affirmative vote of not less than two-thirds of *all of the members of the cooperative*.

(2) Upon such approval, a certificate of election to dissolve, hereinafter designated the "certificate", shall be executed on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The certificate shall state the name of the cooperative, the address of its principal office, the names and addresses of its trustees, and the total number of members who voted for and against the voluntary dissolution of the cooperative. The president or vice-president executing the certificate shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such certificate and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

(3) Upon the filing of the certificate and affidavit by the secretary of state, the cooperative shall cease to carry on its business except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed by the secretary of state.

(4) After the filing of the certificate and affidavit by the secretary of state, the board of trustees shall immediately cause notice of the winding up proceedings to be mailed to each known creditor and claimant and to be published once a week for 2 successive weeks in a newspaper of general circulation in the county in which the principal office of the cooperative is located.

(5) The board of trustees shall have full power to wind up and settle the affairs of the cooperative and shall proceed to collect the debts owing to the cooperative, convey and dispose of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities, and do all other things required to liquidate its business and affairs and after paying or adequately providing for the payment of all its debts, obligations, and liabilities shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each such member during the 7 years next preceding the date of such filing of the certificate or, if the

cooperative shall not have been in existence for such period, during the period of its existence.

(6) When all debts, liabilities, and obligations of the cooperative have been paid and discharged or adequate provision shall have been made therefor and all of the remaining property and assets of the cooperative shall have been distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution, which shall thereupon be executed on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary. Such articles of dissolution shall recite in the caption that they are executed pursuant to this chapter and shall state:

- (a) the name of the cooperative;
- (b) the address of the principal office of the cooperative;
- (c) that the cooperative has heretofore delivered to the secretary of state a certificate of election to dissolve and the date on which the certificate was filed by the secretary of state in the records of his office;
- (d) that all debts, obligations, and liabilities of the cooperative have been paid and discharged or that adequate provision has been made therefor;
- (e) that all the remaining property and assets of the cooperative have been distributed among the members in accordance with the provisions of this section; and
- (f) that there are no actions or suits pending against the cooperative. The president or vice-president executing the articles of dissolution shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such articles of dissolution and affidavit, accompanied by proof of the publication required in this subsection, shall be submitted to the secretary of state for filing as provided in this chapter."

Approved March 29, 1987.

## CHAPTER NO. 290

[HB 689]

AN ACT PROVIDING THAT UNDER THE WORKERS' COMPENSATION ACT AN INDEPENDENT CONTRACTOR'S ELECTION OF EXEMPT STATUS REMAINS IN EFFECT UNTIL THE INDEPENDENT CONTRACTOR NOTIFIES THE WORKERS' COMPENSATION DIVISION OF A CHANGE IN HIS STATUS; AND AMENDING SECTION 39-71-401, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-71-401, MCA, is amended to read:

**"39-71-401. Employments covered and employments exempted.**

(1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all

employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

- (a) household and domestic employment;
- (b) casual employment as defined in 39-71-116(3) except employment of a volunteer under 67-2-105;
- (c) employment of members of an employer's family dwelling in the employer's household;
- (d) employment of sole proprietors or working members of a partnership other than those who consider themselves or hold themselves out as independent contractors and who are not contracting for agricultural services to be performed on a farm or ranch, or for broker or salesman services performed under a license issued by the board of realty regulation, or for services as a direct seller engaged in the sale of consumer products to customers primarily in the home;
- (e) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;
- (f) any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;
- (g) employment with any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter;
- (h) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district.

(3) (a) A sole proprietor or working member of a partnership who holds himself out or considers himself an independent contractor and who is not contracting for agricultural services to be performed on a farm or ranch, or for broker or salesman services performed under a license issued by the board of realty regulation, or for services as a direct seller engaged in the sale of consumer products to customers primarily in the home must elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3, but he may apply to the division for an exemption from the Workers' Compensation Act for himself.

(b) The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor.

(c) When an application is approved by the division, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

*(d) When an election of an exemption is approved by the division, the election remains effective and the independent contractor retains his status as an independent contractor until he notifies the division of any change in his status and provides a description of his present work status.*

(4) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the division, distributed through insurers or directly by the division, and posted by employers in accordance with rules adopted by the division. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

Section 2. **Extension of authority.** Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 29, 1987.

## CHAPTER NO. 291

[SB 141]

AN ACT ALLOWING COUNTIES THE OPTION OF USING A 55-MILL ALL-PURPOSE LEVY; DESIGNATING CERTAIN LEVIES TO BE REPLACED BY THE ALL-PURPOSE LEVY; ESTABLISHING PERMISSIBLE USES OF THE REVENUE DERIVED FROM THE ALL-PURPOSE LEVY; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **All-purpose levy authorized for counties.** A county may at its option levy an all-purpose levy as provided in [sections 1 through 6].

Section 2. **All-purpose levy — maximum.** (1) The all-purpose levy is an annual levy upon the taxable value of all property in the county subject to taxation for county purposes in lieu of the levies specified in [section 3]. The all-purpose levy may not exceed the lesser of:

(a) 55 mills on the dollar; or

(b) the total number of mills levied in the prior year pursuant to the levies set forth in [section 3] as certified by the department of revenue under 15-10-202.

(2) If the county governing body determines that the interests of the county would be served by an all-purpose levy, it shall specify its intent to

impose the all-purpose levy in the resolution approving and adopting the annual budget.

**Section 3. Special service levies replaced by all-purpose levy.** A county using the all-purpose levy may not impose any of the following levies:

- (1) general fund levy, as provided in 7-6-2501;
- (2) bridge levy, as provided in 7-14-2502;
- (3) recreation levy, as provided in 7-16-101;
- (4) county fair levy, as provided in 7-21-3410;
- (5) weed levy, as provided in 7-22-2142;
- (6) insect pest levy, as provided in 7-22-2306;
- (7) poor fund levy, as provided in 53-2-321; or
- (8) developmental disabilities facility levy, as provided in 53-20-208.

**Section 4. Changes from all-purpose levy.** A county adopting the all-purpose levy provided for in [sections 1 through 6] is bound by that adoption during the ensuing fiscal year, but may abandon the method in succeeding fiscal years.

**Section 5. Distribution of all-purpose levy.** (1) The money received from the all-purpose levy must be accounted for in a common fund known as the all-purpose fund.

(2) The all-purpose fund may be used only for purposes that are authorized for revenue derived from the individual levies set forth in [section 3], but the county governing body may allocate the revenue from the fund, in accordance with county budget law, to fund any enumerated purpose that it considers appropriate.

**Section 6. Future levies.** Any statutory mill levy authorized for county governments that is not specifically included in levies replaced by the all-purpose levy, as specified in [section 3], is in addition to the all-purpose levy.

**Section 7. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 8. Effective date.** This act is effective July 1, 1987.

Approved March 30, 1987.



**CHAPTER NO. 292**

[HB 359]

AN ACT TO PROVIDE THAT \$54,000 OF THE FUEL TAX REVENUES APPROPRIATED FOR CITIES AND COUNTIES BE DESIGNATED FOR THE MONTANA RURAL TECHNICAL ASSISTANCE TRANSPORTATION PROGRAM; AMENDING SECTION 15-70-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-70-101, MCA, is amended to read:

**"15-70-101. Disposition of funds.** All taxes, interest, and penalties collected under this chapter shall be turned over promptly to the state treasurer who shall place the same in the state special revenue fund to the credit of the department of highways. Those funds hereinbelow allocated to cities, towns, and counties shall be paid by the department of highways from the state special revenue fund to such cities, towns, and counties.

(1) \$14,000,000 of the funds collected under this chapter is statutorily appropriated, as provided in 17-7-502, to the department of highways and shall be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (1)(a) through (1)(c):

(a) \$54,000 shall be designated for the purposes and functions of the Montana rural technical assistance transportation program in Bozeman.

(b) \$6,323,000 shall be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state;

(c) \$7,623,000 shall be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system,

within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds hereby allocated to counties, cities, and towns shall be used for the construction, reconstruction, maintenance, and repair of rural roads, city or town streets and alleys or for the share which such city, town, or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets which are part of the federal-aid primary or secondary highway system or urban extensions thereto, except that the governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.

(3) Upon receipt of the allocation provided herein, the governing bodies of the recipient counties, cities, and towns shall inform the department of highways of the purposes for which the funds will be expended so that the county commissioners, the governing body, and the department of highways may coordinate the expenditure of public funds for road improvements.

(4) All funds hereby allocated to counties, cities, and towns shall be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases where the contract for construction, reconstruction, maintenance, or repair is in excess of \$4,000.

(5) For the purposes of this section where distribution of funds is made on a basis related to population, the population shall be determined by the last preceding official federal census.

(6) For the purposes of this section where determination of mileage is necessary for distribution of funds, it shall be the responsibility of the cities, towns, and counties to furnish to the department of highways a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted shall be subject to review and approval by the department of highways.

(7) Except by a town or third-class city as provided in subsection (2), none of the funds authorized by this section shall be used for the purchase of capital equipment.

(8) Funds authorized by this section shall be used for construction and maintenance programs only."

**Section 2. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective July 1, 1987.

Approved March 30, 1987.

**CHAPTER NO. 293**

[HB 574]

AN ACT REQUIRING CERTAIN LIQUOR VENDORS TO EMPLOY A REPRESENTATIVE TO PROMOTE THE SALE OF THE VENDOR'S PRODUCTS IN THE STATE; PERMITTING EMPLOYMENT OF AN ADDITIONAL REPRESENTATIVE; AND REQUIRING A REPRESENTATIVE TO BE OR BECOME A RESIDENT OF THE STATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Resident representatives required.** (1) For the purposes of this section, "vendor" means a person, partnership, association, or corporation that sells liquor to the department.

(2) A vendor who desires to promote the sale of his product in the state shall employ one representative and may employ an additional representative to promote the sale of the vendor's product. A representative must be or become after employment a resident of the state. If a vacancy occurs in a representative position, the vendor shall fill the position within 60 days after the vacancy occurs.

**Section 2. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 16, chapters 1 through 6, and the provisions of Title 16, chapters 1 through 6, apply to section 1.

Approved March 30, 1987.

**CHAPTER NO. 294**

[HB 722]

AN ACT REQUIRING CERTIFICATION OF PUBLIC WATER SUPPLY AND SEWAGE DISPOSAL SYSTEMS FOR SUBDIVISIONS UNDER TITLE 76, CHAPTER 4; AMENDING SECTION 76-4-107, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-4-107, MCA, is amended to read:

**"76-4-107. Authority to inspect and monitor — certification.** (1) In order to carry out the objectives of this part, to monitor the installation of sewage disposal and water supply systems, and to prevent the occurrence of water pollution problems associated with subdivision development, the reviewing authority whenever any water supply or sewage disposal system is proposed or has been constructed may:

(a) enter upon any public or private property, at reasonable times and after presentation of appropriate credentials by an authorized representative of the reviewing authority, to inspect such systems in order to assure that the plans and specifications approved for the system have been adhered to and that the provisions of this part, rules, or orders are being satisfied;

(b) require as a condition of approval that records concerning the operation of a sewage disposal or water supply system be maintained or that monitoring equipment or wells be installed, used, and maintained for the collection of data related to water quality.

(2) *The reviewing authority shall require certification from a registered professional engineer that a public water supply system or a public sewage disposal system has been constructed according to approved specifications."*

Section 2. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective July 1, 1987.

Approved March 30, 1987.

## CHAPTER NO. 295

[SB 114]

AN ACT TO REQUIRE THAT NOTICE OF A TITLE 71 AGRICULTURAL LIEN AND A TERMINATION STATEMENT OF THE LIEN BE FILED WITH THE SECRETARY OF STATE; AMENDING SECTIONS 71-3-402, 71-3-404, 71-3-408, 71-3-703, 71-3-704, 71-3-712, 71-3-713, 71-3-802, 71-3-808, 71-3-902, AND 71-3-908, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Notice of agricultural lien.** (1) Unless a notice of an agricultural lien has been filed in the office of the secretary of state as provided in this chapter, a buyer who, in ordinary course of business (30-1-201(9)), buys a farm product takes it free of any lien created by this chapter even though the lien is otherwise perfected.

(2) A notice of an agricultural lien is sufficient if it:

- (a) gives the names and addresses of the debtor and lienor;
- (b) describes the type of lien and its statutory authority;
- (c) describes the collateral;

(d) contains the notation by the county clerk and recorder of the date of filing; and

(e) is signed by the lienor.

(3) Such notice must be in the form prescribed by the secretary of state.

(4) The secretary of state shall:

(a) record such notice on the centralized computer system as set forth in 30-9-403; and

(b) establish fees for such recordings as set forth in 30-9-403.

(5) For the purposes of this section, an agricultural lien means a lien under parts 4, 7, 8, or 9 of this chapter.

Section 2. Section 71-3-402, MCA, is amended to read:

**"71-3-402. How lien obtained.** (1) In order to acquire a lien, as specified in 71-3-401, the person performing such services shall, within 30 days after the services are fully performed, file in the office of the clerk and recorder in the county in which any of the real estate is situated on which any crop is grown, upon which a lien is claimed, a statement verified by affidavit of the person claiming such lien, his duly authorized agent, or attorney having knowledge of the facts, setting forth the terms of employment, the name of the employer, the time when the services were commenced and when ended, the wages agreed upon, if any, and if not agreed upon then the reasonable value of the same, the terms of payment, if any, and a description of the real estate on which any crop is grown or has been grown or harvested on which a lien is claimed, the amount paid him, if any, and the amount remaining unpaid and that said laborer claims a lien for the same and the address to which notice shall be directed as required by 71-3-404.

(2) *Notice of the lien also must be filed in the office of the secretary of state as required by [section 1]."*

Section 3. Section 71-3-404, MCA, is amended to read:

**"71-3-404. Notice to other lienholders.** (1) Every person intending to foreclose a lien secured under the provisions of this part must give a written notice to the owner or the person against whom the lien is claimed and all chattel mortgagees, encumbrancers, and all other lienholders who appear on record in the office of the county clerk and recorder *or secretary of state* that in not less than 10 days from the date of said lien notice he will institute proceedings for the foreclosure of his lien, and all other labor lienholders to whom notice is given shall have the right to join in said foreclosure proceedings and be entitled to a pro rata share of the proceeds of the foreclosure sale, as hereinafter provided. However, if the notified labor lienholders do not join in said proceedings, they shall not be entitled to share pro rata in the proceeds of the sale.

(2) The lien notice required herein must be given by registered or certified mail and directed to the last-known address of the owner or the person against whom the lien is claimed and to the addresses of the chattel mortgagees, encumbrancers, and all other lienholders as their addresses appear of record. The return of the foreclosure sale must be accompanied by due proof of the giving of such notice as required to be given herein."

Section 4. Section 71-3-408, MCA, is amended to read:

**"71-3-408. Acknowledgment of satisfaction of lien — penalty.**

(1) Whenever the indebtedness which is a lien upon any of such crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge said lien within 30 days after being requested to do so by a person having a property interest in such crops, he is liable to any person injured thereby in the amount of such injury and costs of action.

(2) *A termination statement as described in 30-9-404 must be filed with the secretary of state with the same obligations and penalties described in subsection (1)."*

Section 5. Section 71-3-703, MCA, is amended to read:

**"71-3-703. How to obtain lien.** (1) Any person who is entitled to a lien under 71-3-701 shall, within 90 days after the seed or grain is furnished or the funds, means, or moneys advanced therefor, file in the office of the county clerk and recorder of the county in which such seed or grain is to be planted or used a statement in writing verified under oath showing the kind and quantity of the seed or grain furnished, its value, or the amount of the funds or money advanced to pay therefor, the name of the person or persons to whom furnished, and a description of the land and of each tract of land upon which the same is to be or has been planted or sown or used in the production of a crop. Unless the person entitled to such lien shall file such statement within the time aforesaid, he shall be deemed to have waived the right thereto.

(2) *Notice of the lien also must be filed in the office of the secretary of state as required by [section 1]."*

Section 6. Section 71-3-704, MCA, is amended to read:

**"71-3-704. Acknowledgment of satisfaction of lien — penalty.**

(1) Whenever the indebtedness which is a lien upon such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid within 30 days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of the action.

(2) *A termination statement as described in 30-9-404 must be filed with the secretary of state with the same obligations and penalties described in subsection (1)."*

Section 7. Section 71-3-712, MCA, is amended to read:

**"71-3-712. How lien obtained.** (1) Any person who is entitled to a lien under 71-3-711 shall, within 30 days after the insurance is issued, file in the office of the county clerk and recorder of the county in which the crop so insured is located a statement in writing verified under oath giving the description of the land upon which the crop is planted, together with the kind of crop insured; provided that with a mutual company it may file

a lien for the largest amount that may become due under its assessment power, and in the event that the amount assessed shall not be as large as the amount of the lien claimed, then the amount assessed and due shall be the amount the mutual insurance company shall be entitled to under this lien. Unless the person, company, association, or corporation entitled to such a lien shall file such statement within the time aforesaid, he or it shall be deemed to have waived the right thereto.

*(2) Notice of the lien also must be filed in the office of the secretary of state as required by [section 1]."*

Section 8. Section 71-3-713, MCA, is amended to read:

**"71-3-713. Acknowledgment of satisfaction of lien — penalty.**

(1) Whenever the indebtedness, which is a lien upon such grain or other crops, is paid or satisfied on or before November 1 of the current year, it is the duty of the lienor to acknowledge satisfaction thereof within 20 days after receiving payment and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid, he is liable to any person injured thereby in the amount of such injury and the costs of action. If any hail lien is not satisfied on or before March 1 of the next succeeding year after the insurance was carried on the crop, the same shall be deemed satisfied and released of record.

*(2) A termination statement as described in 30-9-404 must be filed with the secretary of state with the same obligations and penalties described in subsection (1)."*

Section 9. Section 71-3-802, MCA, is amended to read:

**"71-3-802. How lien obtained.** (1) Every person intending to avail himself of the benefits of this part must file with the county clerk of the county in which said grain or other crops were grown, within 10 days after the last service was rendered or labor performed in the threshing of said grain or other crops or the cutting and harvesting and threshing by said combined harvester and thresher, a notice that within 20 days a lien, as specified in 71-3-801, will be claimed and within 20 days thereafter shall file with the county clerk and recorder of the county in which said grain or other crops were grown a just and true account of the amount due him or them for such services or labor after allowing all just credits and offsets and containing a correct description of the grain or other crops to be charged with such lien, the price agreed upon for such threshing or cutting and harvesting, the name of the person, firm, or corporation for whom such labor and services were performed, and a description of the lands as nearly as possible upon which said grain or other crops were raised, and a description of the legal subdivision of land upon which said grain is stored and, if said grain is stored in an elevator, the locality of the elevator, which statements of facts shall be verified by affidavit of the person claiming such lien or his duly authorized agent or attorney having knowledge of the facts. Any error or mistake in the account or description of the grain or other crops or of the property upon which it was raised shall not invalidate such lien.

(2) If the grain or other crops so cut, harvested, and threshed are being hauled from the machine or combine direct to the elevator or to any other

purchaser, then the threshermen or owner of the combine desiring to claim such lien shall also serve written notices upon the elevatorman or other private purchaser that he will claim and file a lien upon said grain or other crops for his services or labor performed in threshing or combining and threshing the same.

*(3) Notice of the lien also must be filed in the office of the secretary of state as required by [section 1]."*

Section 10. Section 71-3-808, MCA, is amended to read:

**"71-3-808. Acknowledgment of satisfaction of lien — penalty.**

*(1) Whenever the indebtedness which is a lien upon any such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof and to discharge the lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid within 30 days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of action.*

*(2) A termination statement as described in 30-9-404 must be filed with the secretary of state with the same obligations and penalties described in subsection (1)."*

Section 11. Section 71-3-902, MCA, is amended to read:

**"71-3-902. How lien obtained.** *(1) Any person, firm, corporation, or partnership who is entitled to a lien under this part shall, within 60 days after the last labor or service was performed or material furnished in crop dusting or spraying grains or crops, file in the office of the county clerk and recorder of the county in which said grains or crops were grown a just and true account of the amount due for such services, labor, or material after allowing all proper credits and offsets and containing a description of the grain or crops to be charged with such lien, the price agreed upon for such labor or service or material or, if no price was agreed upon, the reasonable value of the same, together with the name of the person, firm, or corporation for whom such labor or services were performed or material furnished and a description of the lands as nearly as possible upon which said grains or crops were raised, which statements of fact shall be verified by affidavit of the person, firm, corporation, or partnership claiming such lien or his, their, or its duly authorized agent or attorney having knowledge of the facts.*

*(2) Notice of the lien also must be filed in the office of the secretary of state as required by [section 1]."*

Section 12. Section 71-3-908, MCA, is amended to read:

**"71-3-908. Acknowledgment of satisfaction and discharge of lien — penalty.** *(1) Whenever the indebtedness which is a lien upon any grain or crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge said lien within 30 days after being requested to do so by a person having a property interest in such grain or crops, he is liable to any person injured thereby in the amount of such injury and the costs of action.*



(2) *A termination statement as described in 30-9-404 must be filed with the secretary of state with the same obligations and penalties described in subsection (1).*"

**Section 13. Extension of authority.** Any existing authority of the secretary of state to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 14. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 71, chapter 3, part 1, and the provisions of Title 71, chapter 3, part 1, apply to section 1.

**Section 15. Applicability.** This act applies to liens filed after the effective date of this act.

Approved March 31, 1987.

## CHAPTER NO. 296

[SB 196]

### AN ACT REQUIRING CERTAIN PROFESSIONALS TO BECOME MEMBERS OF THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTION 19-4-302, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-4-302, MCA, is amended to read:

**"19-4-302. Active membership.** (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system, with the exception that those persons who became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members:

(a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) any person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system;

(c) any person employed as a *speech therapist, school nurse, or school psychologist* or in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) any person who is an administrative officer or a member of the instructional staff of the board of public education;

(e) any person who has elected not to become a member of the retirement system and is reentering service in a capacity prescribed by (a), (b), (c), or (d) of this subsection (1);

(f) any person who has elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by (a), (b), (c), or (d) of this subsection (1) since the time of such election, and who may thereafter elect to become a member of the retirement system.

(2) In order to be eligible for active membership, any person described in subsection (1) must:

(a) be employed in the capacity prescribed for his eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for his creditable service totally paid by an employer as defined herein.

(3) At any time a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine his eligibility for membership. All persons in similar circumstances shall be treated alike."

**Section 2. Extension of authority.** Any existing authority of the teachers' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective July 1, 1987.

**Section 4. Applicability.** This act applies to any speech therapist, school nurse, or school psychologist who was hired on or after July 1, 1987.

Approved March 31, 1987.

## CHAPTER NO. 297

[SB 245]

AN ACT TO ALLOW THE COMPUTATION OF FINANCE CHARGES ON RETAIL CHARGE ACCOUNT AGREEMENTS TO BE BASED ON THE AVERAGE DAILY BALANCE OF THE ACCOUNT OR THE ENDING BALANCE; AMENDING SECTIONS 31-1-202 AND 31-1-241, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 31-1-202, MCA, is amended to read:

**"31-1-202. Definitions.** (1) Unless the context requires otherwise, in this part the following definitions apply:

(a) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services which are the subject matter of the retail installment transaction, if

the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees and cash sale prices for services, if any, and for accessories and their installation and for delivering, servicing, repairing, or improving the goods.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(c) "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(d) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal but not including money or things in action. The term includes goods which, at the time of the sale or subsequently, are to be so affixed to realty as to become a part thereof, whether or not severable from it.

(e) "Holder" means the retail seller of the goods or services under the retail installment contract or retail charge account agreement or a person who establishes and administers retail charge account agreements with retail buyers; the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred; or any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

(f) "Manufactured structure" means any structure, transportable in one or more sections, designed to be used as a single-family dwelling or commercial building with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

(g) "Motor vehicle" means any new or used automobile, motorcycle, quadricycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway, excepting, however, any vehicle which runs only on rails or tracks or in the air.

(h) "Official fees" means the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(i) "Person" means an individual, partnership, corporation, association, and any other group, however organized.

(j) "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made therefor and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's down payment in money or goods.

(k) "Recreational vehicle" means a vehicular type unit that either has its own motor power or is mounted on or drawn by another vehicle, primarily designed as temporary living quarters for recreational, camping, or travel use.

(l) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

(m) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions which may be made under it from time to time under which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller and under the terms of which a finance charge as defined in this section may be computed in relation to the buyer's *average daily balance* in the account *during the billing cycle or the buyer's balance* from time to time.

(n) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state under which a buyer promises to pay in one or more deferred installments the time sale price of goods or services, or both. The term includes a chattel mortgage, conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(o) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.

(p) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

(q) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, or savings and loan association, if so engaged. The term does not include a person who makes only isolated purchases of retail installment contracts, which purchases are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(r) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

(s) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits, if a separate identified charge is made therefor, and the amounts of the official fees and the finance charge.

(2) This part does not apply to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending institutions. However, this part pertains to the extension of credit by those banks or other lending institutions under retail installment contracts or credit cards issued by those banks or other lending institutions."

Section 2. Section 31-1-241, MCA, is amended to read:

**"31-1-241. Finance charge limitation.** (1) Notwithstanding the provisions of any other law, the finance charge included in a retail installment contract shall be at a rate agreed upon by the retail seller and the buyer.

(2) Notwithstanding the provisions of any other law, the finance charge included in a retail charge account agreement shall be at a rate agreed upon by the retail seller and the buyer.

(a) *Except as provided in subsection (2)(b), the finance charge shall be computed from month to month (which need not be a calendar month) or other regular billing cycle period by using the average daily balance of the account during the billing cycle without including in the computation the amount of purchases charged to the account during that billing cycle.*

(b) *Nothing in this section prevents a retail seller and a buyer from agreeing to the computation of the finance charge by using the ending balance of the account as of the last day of the billing cycle period less the amount of purchases charged to the account during that billing cycle.*

(3) A seller may change the terms of a revolving charge account whether or not the change is authorized by prior agreement. The seller shall give the buyer written notice of any change in the two billing cycles prior to the effective date of the change.

(4) If the retail seller increases his finance charge on a retail charge account agreement, then such increased rate may only be applied to the balance consisting of purchases on other charges incurred on or after the effective date of the increase.

(5) For purposes of determining the balance to which the increased rate applies, all payments may be considered to be applied to the balance existing prior to the change in rate until that balance is paid in full.

(6) If the finance charge determined pursuant to subsection (2) for a monthly period is less than 50 cents, a maximum finance charge not in excess of 50 cents may be charged and collected for such period."

Section 3. **Applicability.** This act applies to finance charges computed on or after October 1, 1987.

Approved March 31, 1987.

**CHAPTER NO. 298**

[SB 260]

AN ACT TO GENERALLY REVISE, CLARIFY, AND UPDATE THE ELECTION LAWS; AMENDING SECTIONS 13-2-102, 13-2-202, 13-2-207, 13-10-209, 13-13-116, 13-13-117, 13-13-119, 13-13-204, 13-13-205, 13-13-241, 13-13-311, 13-15-101, 13-15-104, 13-27-105, 13-27-303, 13-27-402, AND 13-27-403, MCA; REPEALING SECTION 13-13-242, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 13-2-102, MCA, is amended to read:

**"13-2-102. Deputy registrars.** (1) A notary public who fulfills the requirements of subsection (4) may *act as a deputy registrar in the county in which he resides without having been appointed by the county governing body. If a notary public fails to fulfill the requirements of subsection (4), he may not act as a deputy registrar.*

(2) (a) The governing body of each county may at its discretion appoint two or more deputy registrars for each precinct in the county before March 1 of each even-numbered year.

(b) The number of deputy registrars, if appointed, shall be equally divided between the political parties meeting the requirements of 13-10-601 unless one or more of the parties fail to submit the list required in subsection (3) or submit an incomplete list. A political party which qualifies under 13-10-501 may request the appointment of deputy registrars and shall submit a list for such appointments within 30 days of such qualification.

(c) An appointed deputy registrar must be a resident elector in the precinct for which appointed but may register electors in all precincts in the state.

(3) Deputy registrars shall be appointed from lists of individuals recommended by the qualified political parties, submitted by February 1 of even-numbered years. If no lists are submitted by political parties, the governing body may appoint two deputy registrars for each precinct without party recommendations. *Failure of the governing body to make appointments in all precincts does not preclude making appointments in some precincts.*

(4) Each election administrator shall provide training in registration procedures to all appointed deputy registrars and any notary public requesting the training and shall issue a certificate to each on successful completion of the training. *The training and certification must be completed by March 15 of each even-numbered year. No one is a qualified deputy registrar without a current certificate.* All certificates expire on March 15 of the following even-numbered year.

(5) Each election administrator shall certify to the secretary of state the name of each deputy registrar to whom a certificate has been issued. The

secretary of state shall then compile a list of deputy registrars with current certificates and make that list available to each election administrator and the public.

*(6) Deputy registrars shall forward all completed cards to the county registrar within 3 days. Registration cards properly executed before a deputy registrar prior to the close of registration shall be accepted for 3 days after the close of registration."*

Section 2. Section 13-2-202, MCA, is amended to read:

**"13-2-202. Registration by personal appearance.** An elector may register by appearing before the registrar or a deputy registrar and:

(1) answering any questions asked by the official concerning items of information called for in the registration form;

(2) signing and verifying or affirming the affidavit or affidavits on the form."

Section 3. Section 13-2-207, MCA, is amended to read:

**"13-2-207. Notice of registration.** (1) The election administrator shall give or mail to each elector a notice, affirming registration and giving the location of the elector's polling place. Mailed notices must conform to postal regulations to ensure return, not forwarding, of undelivered notices.

(2) The election administrator must investigate the reason for the return of any mailed notices and correct the address on the registration form and mail a new notice or cancel the registration of the elector if a diligent effort fails to locate the elector named on the registration form."

Section 4. **Write-in elections — general election.** (1) An individual elected by having his name written in at the general election and receiving the largest number of votes shall:

(a) file with the secretary of state or election administrator, not later than 10 days after the official canvass, a written declaration indicating his acceptance of the position for which he was elected; and

(b) comply with the provisions of 13-37-225.

(2) If an individual fails to file the declaration as required under subsection (1)(a), he may not assume the position for which he was elected.

Section 5. Section 13-10-209, MCA, is amended to read:

**"13-10-209. Arrangement of ballots.** (1) (a) Ballots for a primary election shall be arranged and printed in the same manner and number as provided in chapter 12 for general election ballots, except there shall be separate ballots for each political party entitled to participate. The name of the political party shall be printed at the top of the separate ballot for that party and need not be printed opposite each candidate's name.

(b) *Nonpartisan offices and ballot issues may be printed on separate ballots or may appear on the same ballot as partisan offices if:*

(i) *each section is clearly identified as separate; and*

(ii) *such nonpartisan offices and ballot issues appear on each party's ballot.*

(2) It is not necessary to print a primary ballot for a political party which does not have candidates for more than half of the offices on the ballot in even-year elections if no more than one candidate files for nomination by that party for any of the offices on the ballot. The secretary of state shall certify that no primary election is necessary for that party if such is the case and shall certify or instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.

(3) The separate ballots for each party shall be the same size and color. The stubs of each set of party ballots shall bear the same number. *If printed as a separate ballot, the nonpartisan ballot shall be a different size or color than the party ballots, but the stubs shall be numbered in the same order as the party ballots.*

(4) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may be a different size and color than the other ballots in the election, but the stubs shall be numbered in the same order.

(5) Each elector shall receive a set of party ballots and a nonpartisan and a ballot issue ballot if such ballots are printed."

Section 6. Section 13-13-116, MCA, is amended to read:

**"13-13-116. Ballots to be stamped — one ballot to elector.** (1) Before delivering ballots to an elector, the election judges shall stamp the words "official ballot" on the ballot. No part of the stamp may appear on the stub. They shall also stamp the name of the county, the number of the precinct, the date of the election, and any other information the election administrator believes necessary to distinguish the ballots from those used in any other election.

(2) Each elector shall receive from the election judges one of each type of ballot being used at the election."

Section 7. Section 13-13-117, MCA, is amended to read:

**"13-13-117. Method of voting.** (1) On receipt of his ballot, the elector must immediately retire to one of the booths and prepare his ballot.

(2) He shall prepare his ballot by marking an "x" in the square before the name of the individual or individuals for whom he intends to vote.

(3) If the ballot contains a ballot issue, he shall mark an "x" in the applicable square indicating his vote either for or against the issue.

(4) The elector may write the name of an individual for whom he wishes to vote in the blank space or affix a preprinted label in the blank space and may vote for that individual by marking an "x" before the name. When the ballot is marked in this manner, it must be counted the same as though the name were printed upon the ballot and marked by the elector.



(5) *An elector voting a ballot that will be counted by an optical scan ballot tabulating device shall mark his ballot in the manner prescribed on his ballot. However, his ballot must not be invalidated if he marks the voting positions with an "x".*

(6) After preparing his ballot, the elector must fold it so the face of the ballot will be concealed and the official stamp may be seen and hand it to the election judges.

(7) The judge receiving the ballots shall remove the stubs in sight of the elector and deposit each ballot in the ballot box and each stub in a box for detached stubs. The judge must place the ballots in the ballot box immediately without opening or examining them.

(8) No individual except an election judge may put a ballot, any paper resembling a ballot, or anything other than a ballot in a ballot box.

(9) Any elector who spoils his ballot may, on returning the spoiled ballot, receive another in place of it."

Section 8. Section 13-13-119, MCA, is amended to read:

**"13-13-119. Aid to disabled elector.** (1) The election judges or an individual chosen by the disabled elector as specified in subsection (4) may aid an elector who, because of physical disability or inability to read or write, needs assistance in marking his ballot.

(2) The election judges shall require the declaration of disability by the elector to be under oath and may administer the oath.

(3) The elector may be assisted by two judges who represent different parties. The judges must certify on the precinct register opposite the disabled elector's name that the ballot was marked with their assistance. The judges may not reveal information regarding the ballot.

(4) Instead of assistance as provided in subsection (3), the elector may request the assistance of any individual whom he designates to the judges to aid him in the marking of his ballot, and the individual chosen shall sign his name on the precinct register beside the name of the elector assisted. *The individual chosen may not be the elector's employer, an agent of his employer, or an officer or agent of the elector's union.*

(5) No elector other than the one who requires assistance may divulge to anyone within the polling place the name of any candidate for whom he intends to vote or may ask or receive the assistance of any individual within the polling place in the preparation of his ballot."

Section 9. Section 13-13-204, MCA, is amended to read:

**"13-13-204. Authority to vote in person — printing error or ballot destroyed — failure to receive ballot — effect of absentee elector's death.** (1) If an elector has voted by absentee ballot but the absentee ballot contains printing errors or omissions, the elector may vote in person in any manner at his polling place.

(2) *If an elector does not receive his absentee ballot or if the absentee ballot was destroyed, he may appear at his polling place on election day and*

*vote in person after signing an affidavit, in the form prescribed by the secretary of state, swearing that his ballot has not been received or was destroyed. Before the ballot is given to the elector, the election judge shall write upon the back of the ballot the number of the ballot. The ballot may be cast out if it appears to the court to have been wrongfully or illegally voted.*

(3) If an elector votes by absentee ballot and dies between the time of balloting and election day, his ballot does not count."

Section 10. Section 13-13-205, MCA, is amended to read:

**"13-13-205. When ballots to be available.** (1) The election administrator shall ensure that ballots are printed and available for absentee voting at least 45 days prior to an election *for those elections held in compliance with 13-1-104(1) and 13-1-107(1).*

(2) *For elections held in compliance with 13-1-104(2) and (3), and 13-1-107(2), the election administrator shall ensure that ballots are printed and available for absentee voting at least 20 days prior to an election."*

Section 11. Section 13-13-241, MCA, is amended to read:

**"13-13-241. Examination of absentee ballot envelopes and affirmations while polls open — deposit of absentee and unvoted ballots.** (1) While the polls are open, the election judges may compare the signature of the elector on the absentee ballot request and affirmation. If they find that the signatures correspond, that the affirmation is sufficient, and that the absentee elector is qualified, they *may open the absentee ballot envelope.*

(2) If the absentee ballot does not meet the requirements specified in subsection (1), it *must* be rejected. The election judges, without opening the absentee ballot envelope, shall mark across it the reason for rejection and a majority of the judges shall sign their initials. Unopened rejected absentee ballot envelopes *must* be handled in the same manner as provided for rejected ballots in 13-13-243.

(3) *After opening the absentee envelope and without unfolding the ballots or permitting them to be examined, the election judges shall ascertain whether the stubs are attached or enclosed and whether the numbers correspond to the numbers in the certificate of the election administrator. If so, they shall detach the stubs and deposit the stubs and ballots in the proper ballot boxes. In a primary election, the unvoted ballots must be deposited in the unvoted ballot box without being removed from their enclosure envelope.*

(4) *If upon opening the absentee ballot envelope it is found that the number does not correspond to the number on the certificate of the election administrator, the ballot must be rejected. The reason for rejection must be marked on the back of the ballot or ballots, and the statement must be initialed by a majority of the election judges."*

Section 12. Section 13-13-311, MCA, is amended to read:

**"13-13-311. Vote by challenged elector.** (1) Whenever an individual's right to vote at an election is challenged under 13-2-404 or 13-13-301

and the challenge has been determined in favor of the individual challenged as provided in 13-13-307, an election judge shall write in the pollbook at the end of the individual's name the words "challenged and sworn", with the name of the challenger, if known. The elector so challenged *must be allowed to vote*. The election judge shall then write upon the back of the ballot offered by the challenged elector the number of his ballot. The ballot may be cast out if it appears to the court to have been for any reason wrongfully or illegally voted.

(2) Placing information on a ballot or pollbook under *the provisions of subsection (1) or of 13-13-204(2)* or divulging such information in a legal proceeding subsequent to the election does not constitute a violation of 13-35-202 or 13-35-207."

Section 13. Section 13-15-101, MCA, is amended to read:

**"13-15-101. Votes to be publicly counted upon closing of polls.**

(1) When the polls are closed, the election judges shall immediately count the votes. The count shall be public and continue without adjournment until completed and the result is publicly declared.

(2) Immediately after all the ballots are counted by precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the return forms furnished by the election administrator.

(3) The election judges shall immediately post one of the return forms at the place of *counting* and return a copy to the election administrator. Both forms shall be signed by all the election judges completing the count."

Section 14. Section 13-15-104, MCA, is amended to read:

**"13-15-104. Counting board for absentee ballots.** (1) The election administrator shall:

(a) give special instructions to any counting board for absentee ballots appointed under 13-4-101 on the proper procedures for counting the absentee ballots; and

(b) provide the forms and supplies necessary for the board to perform its duties.

(2) The counting board for absentee ballots shall:

(a) be sequestered in a room separate from where ballots are being cast;

(b) at any time prior to the closing of the polls but not before the polls open, start the count of the absentee votes cast; and

(c) follow the procedures outlined in 13-13-241 and 13-15-103 for the counting of the votes cast.

(3) No election judge or other individual having access to any results of early counting may disclose the information while the polls are open, and he must remain sequestered until the closing of the polls.

(4) (a) In addition to the official oath taken and subscribed to by the election judges, the members of the counting board for absentee ballots

shall complete and sign the following affirmation: "I, ....., will not discuss or disclose or allow anyone else to discuss or disclose to anyone the results of the early counting of votes while the polls are open."

(b) The chief election judge shall witness and sign the affirmation."

**Section 15. Withdrawal of signatures.** (1) Signatures may be withdrawn from a petition for constitutional amendment, constitutional convention, initiative, or referendum up to the time of final submission of petition sheets as provided in 13-27-301.

(2) The secretary of state shall prescribe the form to be used by an elector desiring to have his signature withdrawn from a petition.

**Section 16.** Section 13-27-105, MCA, is amended to read:

**"13-27-105. Effective date of initiative and referendum issues.**

(1) Unless the petition placing an initiative issue on the ballot states otherwise, an initiative issue, other than a constitutional amendment, approved by the people is effective on October 1 following approval. *If the issue delegates rulemaking authority, it is effective no sooner than October 1 following approval.*

(2) A constitutional amendment proposed by initiative or by the legislature and approved by the people is effective on July 1 following approval *unless the amendment provides otherwise.*

(3) Unless specifically provided by the legislature in an act referred by it to the people or until suspended by a petition signed by at least 15% of the qualified electors in a majority of the legislative representative districts, an act referred to the people is in effect as provided by law until it is approved or rejected at the election. An act that is rejected is repealed effective the date the result of the canvass is filed by the secretary of state under 13-27-503. An act referred to the people that was in effect at the time of the election and is approved by the people remains in effect. An act that was suspended by a petition and is approved by the people is effective the date the result of the canvass is filed by the secretary of state under 13-27-503. An act referred by the legislature that contains an effective date following the election becomes effective on that date if approved by the people. An act that provides no effective date and whose substantive provisions were delayed by the legislature pending approval at an election and that is approved is effective October 1 following the election."

**Section 17.** Section 13-27-303, MCA, is amended to read:

**"13-27-303. Verification of signatures by county official — allocating voters following reapportionment — duplicate signatures.** (1) *Except as required by 13-27-104, within 4 weeks after receiving the sheets or sections of a petition, the county official shall check the names of all signers to verify they are registered electors of the county. In addition, the official shall randomly select signatures on each sheet or section and compare them with the signatures of the electors as they appear in the registration records of the office. If all the randomly selected signatures appear to be genuine, the number of signatures of registered electors on the sheet or section may be certified to the secretary of state*

without further comparison of signatures. If any of the randomly selected signatures do not appear to be genuine, all signatures on that sheet or section must be compared with the signatures in the registration records of the office.

(2) For the purpose of allocating the signatures of voters among the several legislative representative districts of the state as required to certify a petition for a ballot issue under the provisions of this chapter following the filing of a districting and apportionment plan under 5-1-111 and before members of the house of representatives have been elected and qualified under the plan, the legislative representative districts among which the signatures must be allocated must be those in existence when the plan was filed.

*(3) Upon discovery of fraudulent signatures or duplicate signatures of an elector on any one issue, the election administrator may submit the name of the elector or the petition circulator, or both, to the county attorney to be investigated under the provisions of 13-27-106 and 13-35-207."*

Section 18. Section 13-27-402, MCA, is amended to read:

**"13-27-402. Committees to prepare arguments for and against ballot issues.** (1) The arguments advocating approval or rejection of the ballot issue and rebuttal arguments shall be submitted to the secretary of state by committees appointed as provided in this section.

(2) The following committees shall be composed of one senator known to favor the measure, appointed by the president of the senate; one representative known to favor the measure, appointed by the speaker of the house of representatives; and one individual who need not be a member of the legislature, appointed by the first two members:

*(a) the committee advocating approval of an act referred to the people or of a constitutional amendment proposed by the legislature; or*

*(b) the committee advocating approval of an act referred to the people by referendum petition.*

(3) The committee advocating rejection of an act referred to the people or of a constitutional amendment proposed by the legislature shall be composed of one senator appointed by the president of the senate; one representative appointed by the speaker of the house of representatives; and one individual who need not be a member of the legislature, appointed by the first two members. Whenever possible, the members shall be known to have opposed the issue.

(4) The following shall be three-member committees and shall be appointed by the person submitting the petition to the secretary of state under the provisions of 13-27-202:

*(a) the committee advocating approval of a ballot issue proposed by any type of initiative petition; and*

*(b) the committee advocating rejection of any ballot issue that is a legislative act referred to the people by referendum petition.*

(5) A committee advocating rejection of a ballot issue proposed by any type of initiative petition shall be composed of five members. The governor, attorney general, president of the senate, and speaker of the house of representatives shall each appoint one member, and the fifth member shall be appointed by the first four members. All members shall be known to favor rejection of the issue.

(6) No person may be required to serve on any committee under this section, *and the person making an appointment must have written acceptance of appointment from the appointee.*"

Section 19. Section 13-27-403, MCA, is amended to read:

**"13-27-403. Appointment to committee.** (1) Appointments to committees advocating approval or rejection of an act referred to the people or a constitutional amendment proposed by the legislature shall be made no later than 6 months before the election at which the ballot issue will be voted on by the people.

(2) Appointments to committees advocating approval or rejection of a ballot measure referred to the people by referendum petition or proposed by any type of initiative petition shall be made no later than 30 days after the measure is *approved for circulation by the secretary of state*. All persons responsible for appointing members to the committee shall submit to the secretary of state the names and addresses of the appointees no later than *the date set by this subsection*. *Such submission must include the written acceptance of appointment from each appointee required by section 13-27-402(6).*

(3) All appointees to a committee pursuant to subsection (1) must be notified by the secretary of state by certified mail, with return receipt requested, *no later than 5 days after the deadline set for appointment of committee members, of the deadlines for submission of the committee's arguments.*

(4) All appointees to a committee pursuant to subsection (2) must be notified by the secretary of state by certified mail, with return receipt requested, *no later than 35 days after the petition has been approved for circulation, of the deadlines for submission of the committee's arguments.*

(5) *Committees appointed under subsections (2)(b), (4), and (5) of 13-27-402 must be vacated and have no further obligation if the ballot measure for which they were appointed fails to receive sufficient signatures to place it on the ballot. The secretary of state shall notify the committee members of the failure of a ballot measure to receive sufficient signatures no later than 3 days after the filing deadline set in 13-27-104."*

Section 20. **Repealer.** Section 13-13-242, MCA, is repealed.

Section 21. **Extension of authority.** Any existing authority of the secretary of state to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 22. **Codification instructions.** (1) Section 4 is intended to be codified as an integral part of Title 13, chapter 15, part 1, and the provisions of Title 13, chapter 15, part 1, apply to section 4.

(2) Section 15 is intended to be codified as an integral part of Title 13, chapter 27, part 3, and the provisions of Title 13, chapter 27, part 3, apply to section 15.

Section 23. **Effective date.** This act is effective on passage and approval.

Approved March 31, 1987.

## CHAPTER NO. 299

[SB 276]

AN ACT TO PROVIDE THAT ANY PETITION FOR THE TRANSFER OF TERRITORY FROM ONE HIGH SCHOOL DISTRICT TO ANOTHER MUST BE ACTED UPON BY THE BOARD OF COUNTY COMMISSIONERS TO CERTIFY COMPLIANCE WITH CERTAIN CRITERIA; AND AMENDING SECTION 20-6-320, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-6-320, MCA, is amended to read:

**"20-6-320. Transfer of territory from one high school district to another.** (1) A majority of electors of any high school district who are qualified to vote under the provisions of 20-20-301 and who reside in territory that is a part of a high school district may petition the county superintendent to transfer such territory to another high school district if:

- (a) the territory adjoins the district to which it is to be attached;
- (b) the territory is not located within 3 miles, over the shortest practical route, of an operating school of the district from which it is to be detached;
- (c) the transfer of such territory will not reduce the taxable value of the district to less than \$300,000 unless the remaining territory of the district contains not less than 50,000 acres of nontaxable Indian land; and
- (d) the board of trustees of the school district that would receive the territory has approved the transfer.

(2) The petition must be addressed to the county superintendent and shall:

- (a) describe the territory that is requested to be transferred and to what district it is to be transferred;
- (b) state the reasons why such transfer is requested; and
- (c) state the number of high-school-age children residing in such territory.

(3) On receipt of a valid petition for a territory transfer, the county superintendent shall:

(a) *present the petition to the board of county commissioners for certification that the criteria set forth in subsection (1) have been met. The board*

*shall, within 10 days of receiving the petition, return it to the county superintendent with certification, signed by a majority of the board, that such criteria have been met or with a notation, signed by a majority of the board, that the criteria have not been met. The board's certification is binding on the county superintendent unless the county superintendent believes that the certification is in error. A dispute between the board and the county commissioners must be decided by the superintendent of public instruction and the decision of the superintendent of public instruction on the matter is final.*

- (b) file the petition as certified by the board of county commissioners;
- (c) set a hearing place, date, and time for consideration of the petition that is not more than 40 days after receipt of the petition; and
- (d) give notice of the place, date, and time of the hearing. The notices must be posted in the districts affected by the request in the manner prescribed in this title for school elections, with at least one notice posted in the territory to be transferred.

(4) The county superintendent shall conduct the hearing as scheduled, and any resident or taxpayer of either affected district must be heard. If the county superintendent considers it advisable and in the best interests of the residents of the territory, he shall grant the petitioned request and order the change of district boundaries to coincide with the boundary description in the petition. Otherwise, he shall by order deny the request. Either of the orders shall be final 20 days after its date unless it is appealed to the superintendent of public instruction by a resident of either district affected by the territory transfer. The decision of the superintendent of public instruction, after consideration of the material presented at the county superintendent's hearing, is final 30 days after its date.

(5) If a petition to transfer territory from one high school district to another high school district would create a joint high school district or affect the boundary of any existing joint high school district, the petition must be presented to the county superintendent of the county where the territory is located. The county superintendent shall notify any other county superintendents of counties with districts affected by the petition, and the duties prescribed in this section for the county superintendent must be performed jointly by such county officials."

Approved March 31, 1987.

## CHAPTER NO. 300

[SB 306]

AN ACT TO REQUIRE THE BOARD OF PARDONS TO MEET MONTHLY AT THE MONTANA STATE PRISON; AND AMENDING SECTION 46-23-104, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-23-104, MCA, is amended to read:

**"46-23-104. Board of pardons.** (1) The board of pardons is responsible for executive clemency and parole as provided in this chapter.



(2) The board shall meet *monthly, and at such other times as the board considers necessary*, at the state prison.

(3) The principal office of the board shall be in Deer Lodge.

(4) The board may designate one of its members, one of its staff members, or any other adult correctional releasing authority to conduct interviews relative to:

- (a) parole eligibility;
- (b) plans for release on parole; or
- (c) revocation hearings."

Approved March 31, 1987.

## CHAPTER NO. 301

[SB 379]

AN ACT PROVIDING IRRIGATION DISTRICTS AUTHORITY TO ENTER INTO CONTRACTS WITH THE STATE OF MONTANA FOR THE PURPOSE OF OBTAINING LOANS FOR IRRIGATION PROJECTS FROM VARIOUS SOURCES, INCLUDING THE COAL SEVERANCE TAX BONDING PROGRAM PROVIDED FOR IN TITLE 17, CHAPTER 5, PART 7, TO CREATE A SINKING FUND AND INVEST FUND SURPLUSES, AND TO ESTABLISH LIENS AGAINST DISTRICT LANDS AND THE IRRIGATION SYSTEM; AUTHORIZING SPECIAL TAXES AND ASSESSMENTS FOR PAYMENT OF OBLIGATIONS UNDER STATE CONTRACTS; REQUIRING APPROVAL OF IRRIGATION DISTRICT LANDOWNERS PRIOR TO THE MAKING OF A CONTRACT WITH THE STATE; AND PROVIDING FOR COURT REVIEW OF IRRIGATION DISTRICT CONTRACTS.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Contracts with the state of Montana — loans, sinking fund, and investments.** (1) The board of commissioners of any irrigation district, whenever considered advisable and in the interest of the district, may enter into any obligation or contract with the state of Montana for the purpose of obtaining a loan of money from various sources, including the coal severance tax bonding program provided for in Title 17, chapter 5, part 7, to be used by the district for:

(a) the liquidation of any bonded or outstanding indebtedness of the district; or

(b) the provision of any construction, improvement, or repair work necessary to place the irrigation system of the district in good operating condition.

(2) The board shall create, by proper levy and collection of assessments, a sinking fund that must be available for the construction of betterments to the irrigation system of the district as may be necessary during the term of any contract made with the state as provided for in subsection (1). The sinking fund must be designated the "... District Sinking Fund for Betterments" and must be created in such an amount and within such time as may be agreed upon between the district and the state of Montana.

(3) The board shall invest any surplus in the sinking fund in legal investments backed, insured, or guaranteed by the United States or the state of Montana, including federal and state agency obligations.

**Section 2. State contracts — assessments.** In any contract entered into between an irrigation district and the state of Montana under [this act], the board of commissioners shall, in compliance with such contract, levy assessments against the lands benefited by the contract within the district including such deficiency assessments as will enable the district to meet established or anticipated delinquencies in making payments to the state of Montana because of the failure of landowners to pay the assessments levied against their lands in the district.

**Section 3. Amount owed the state — lien and special tax.** All amounts owed to the state under any contract made under [this act] between the district and the state of Montana establish a general obligation of the district for payment, and any amounts to be paid to the state of Montana constitute a lien upon the irrigation system of the district. All lands now within the district or hereafter embraced within the district are subject to a special tax or assessment for the payment of all amounts owed to the state under such contract between the district and the state of Montana, and this special tax or assessment constitutes a first and prior lien on the land against which it is levied to the same extent and with the same force and effect as taxes levied for state and county purposes.

**Section 4. Majority vote or petition necessary to contract with the state.** (1) No contract may be made between an irrigation district and the state of Montana under [this act] except upon:

(a) approval by a majority vote of those voting on the question at an election conducted as prescribed in 85-7-1710; or

(b) receipt of a petition signed by at least 60% in number and acreage of the holders of title or evidence of title to lands within the district. Such petition must be addressed to the board of commissioners and must set forth the aggregate amount of money to be borrowed from various sources, including the coal severance tax bonding program provided for in Title 17, chapter 5, part 7, and the purpose for which the money will be used. The petition must include an affidavit certifying the signatures to the petition and must be filed with the secretary of the board of commissioners.

(2) In an election held for approval of a district contract under this section, the voting majority must own at least 50% of the acreage included in the district.

**Section 5. State contracts — court approval required.** (1) The board of commissioners of an irrigation district, before the making of a

contract with the state of Montana under [this act], shall commence a special proceeding in the district court. In such proceeding, the proceedings of the board and of the district leading up to the making of the contract and the validity of the terms thereof must be judicially examined and approved or disapproved.

(2) The practice and procedure for the confirmation of any step or action provided for in subsection (1) must be as nearly as possible in conformity with the practice and procedure established for the confirmation before the issuance and sale of bonds of an irrigation district. The district court may approve such proceedings in part and declare illegal or invalid other parts of the proceedings. However, insofar as possible, the court shall remedy and cure all defects in the proceedings.

**Section 6. Codification instruction.** Sections 1 through 5 are intended to be codified as an integral part of Title 85, chapter 7, and the provisions of Title 85, chapter 7, apply to sections 1 through 5.

Approved March 31, 1987.

## CHAPTER NO. 302

[HB 19]

**AN ACT FOR THE GENERAL REVISION OF LAWS RELATING TO PROPERTY EXEMPT FROM EXECUTION; AMENDING SECTIONS 25-13-614, 70-32-104, 70-32-213, AND 70-32-214, MCA; AND REPEALING SECTIONS 25-13-611, 25-13-612, 25-13-616, AND 25-13-617, MCA.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Protection of property of residents.** A resident of this state is entitled to the exemptions provided in this part.

**Section 2. Claim enforceable against exempt property.** Notwithstanding any other provision of this part, a creditor may levy against exempt property to enforce a claim for:

- (1) the purchase price of the property; or
- (2) a loan made for the express purpose of enabling the judgment debtor to purchase the property and used for that purpose.

**Section 3. Property exempt without limitation.** A judgment debtor is entitled to exemption from execution of the following:

- (1) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;
- (2) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation;
- (3) veterans' benefits;
- (4) disability or illness benefits;

(5) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;

(6) maintenance and child support; and

(7) a burial plot for the judgment debtor and his family.

**Section 4. Personal property exempt subject to value limitations.** A judgment debtor is entitled to exemption from execution of the following:

(1) the judgment debtor's interest, not to exceed \$4,500 in aggregate value, to the extent of a value not exceeding \$600 in any item of property, in household furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and other sporting goods, animals, feed, crops, and musical instruments;

(2) the judgment debtor's interest, not to exceed \$1,200 in value, in one motor vehicle;

(3) the judgment debtor's interest, not to exceed \$3,000 in value, in any implements, professional books, or tools, of the trade of the judgment debtor or a dependent of the judgment debtor; and

(4) the judgment debtor's interest, not to exceed \$4,000 in value, in any unmatured life insurance contracts owned by him.

**Section 5. Tracing exempt personal property.** (1) If money or other property exempt under [sections 3 and 4] has been sold or has been lost, damaged, or destroyed and the judgment debtor has been indemnified for it, he is entitled for 6 months to an exemption of proceeds that are traceable (for example, in a bank or savings account).

(2) Earnings exempt under 25-13-614 remain exempt for 45 days after receipt by and while in the possession of the judgment debtor in a form into which the exempt earnings are traceable (for example, in a bank or savings account).

(3) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor.

**Section 6. Tracing homestead proceeds.** (1) If property or a part thereof that could have been claimed as an exempt homestead has been sold or taken by condemnation or has been lost, damaged, or destroyed and the owner has been indemnified for it, he is entitled for 18 months to exemption of the proceeds that are traceable.

(2) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor.

**Section 7.** Section 25-13-614, MCA, is amended to read:

**"25-13-614. Earnings of judgment debtor.** (1) No earnings are exempt unless the judgment debtor complies with 25-13-411.

(2) *Except as provided in subsections (3) and (4), the maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subjected to garnishment may not exceed the lesser of:*

(a) *the amount by which his disposable earnings for the week exceed 30 times the federal minimum hourly wage in effect at the time the earnings are payable; or*

(b) *25% of his disposable earnings for that week.*

(3) *The restrictions of subsection (2) do not apply in the case of an order or judgment for the maintenance or support of any person, issued by a court of competent jurisdiction, or pursuant to an administrative procedure that is established by state law, affords substantial due process, and is subject to judicial review.*

(4) (a) *The maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subject to garnishment to enforce an order described in subsection (3) may not exceed:*

(i) *50% of the judgment debtor's disposable earnings for that week if he is supporting his spouse or dependent child (other than a spouse or child for whom the order is issued); or*

(ii) *60% of the judgment debtor's disposable earnings for that week if he is not supporting a spouse or dependent child described in subsection (4)(a)(i).*

(b) *However, the amount stated in (4)(a)(i) may be 55% and the amount stated in (4)(a)(ii) may be 65% if such earnings are being garnished to enforce an order for maintenance or support for a period prior to the 12-week period that ends with the beginning of such workweek.*

(5) *For the purposes of this section, the definitions of earnings, disposable earnings, and garnishment are as set forth in 15 U.S.C. 1672."*

Section 8. Section 70-32-104, MCA, is amended to read:

**"70-32-104. Limitation on value.** (1) *A homestead may not exceed in value \$40,000. In any proceedings instituted to determine the value of such homestead, the assessed value of the land with included appurtenances, if any, and of the dwelling house as appears on the last completed assessment roll preceding the institution of such proceedings shall be prima facie evidence of the value of the property claimed as a homestead.*

(2) *If a claimant who is an owner of an undivided interest in real property claims a homestead exemption, he is limited to an exemption amount proportional to his undivided interest."*

Section 9. Section 70-32-213, MCA, is amended to read:

**"70-32-213. Sale proceeds equal to exemption protected.** The money paid to the claimant is entitled, for the period of 18 months thereafter, to the same protection against legal process and the voluntary disposition of either spouse which the law gives to the homestead."

Section 10. Section 70-32-214, MCA, is amended to read:

**"70-32-214. Compensation of appraisers.** The court must fix a reasonable amount as compensation for the appraisers."

**Section 11. Repealer.** Sections 25-13-611, 25-13-612, 25-13-616, and 25-13-617, MCA, are repealed.

**Section 12. Codification instruction.** (1) Sections 1 through 5 are intended to be codified as an integral part of Title 25, chapter 13, part 6, and the provisions of Title 25, chapter 13, part 6, apply to sections 1 through 5.

(2) Section 6 is intended to be codified as an integral part of Title 70, chapter 32, part 2, and the provisions of Title 70, chapter 32, part 2, apply to section 6.

**Section 13. Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

**Section 14. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 31, 1987.

## CHAPTER NO. 303

[HB 180]

AN ACT REVISING THE STATE COMPETITIVE BIDDING REQUIREMENTS TO PERMIT STATE AGENCIES TO PURCHASE SUPPLIES USING ADVERTISED OR CATALOG PRICES IN CERTAIN CIRCUMSTANCES; PROVIDING SPECIAL PURCHASING PROCEDURES FOR OFFICE SUPPLIES; AMENDING SECTIONS 18-4-301 AND 18-4-302, MCA; AND PROVIDING AN APPLICABILITY DATE, AN EFFECTIVE DATE, AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 18-4-301, MCA, is amended to read:

**"18-4-301. Definitions.** As used in this part, the following definitions apply:

(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

(2) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(3) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(4) "Office supply" means an item included under the office supply commodity class codes maintained by the department.

(5) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(6) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(7) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.

(8) "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

(9) "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time."

Section 2. Section 18-4-302, MCA, is amended to read:

**"18-4-302. Methods of source selection.** (1) Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by competitive sealed bidding, pursuant to 18-4-303, except as provided in 18-4-133, 18-4-304 through 18-4-306, chapters 5 and 8 of this title, and subsections (2) and (3). Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

(2) *At the time the department or a purchasing agency mails an invitation for bids or a request for proposals for office supplies, a Montana supplier's current publicly advertised or established catalog price available to the public may be registered as a bid if it meets the specifications, terms, and delivery requirements of the invitation for bid or request for proposals. The department shall certify the exact time that the advertised or catalog price was received before the invitation for bids or request for proposals was mailed. An advertised or established catalog price registered as a bid must be available for inspection to all prospective bidders.*

(3) *Any office supply procured by the department through a bulk-purchase program or contracted for by means of a term contract may be purchased by a purchasing agency, without meeting the requirements of 18-4-303 through 18-4-306, from a Montana supplier whose publicly advertised or established catalog price available to the public, at the time of the mailing of the invitation for bids or request for proposals, is less than the price for which the office supply is available from the department or under the provisions of the term contract. All state office supply term contracts*

*must include a provision by which the contracting parties acknowledge and agree to the provisions of this subsection."*

**Section 3. Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Applicability.** This act applies to term contracts entered into after the effective date of this act.

**Section 5. Effective date.** This act is effective July 1, 1987.

**Section 6. Termination date.** This act terminates June 30, 1989.

Approved March 31, 1987.

## CHAPTER NO. 304

[HB 242]

AN ACT TO EXPAND CONSERVATION PURCHASES AND INVESTMENTS MADE BY UTILITIES THAT ARE ELIGIBLE FOR INCLUSION IN RATE BASE; AMENDING THE DEFINITION OF RESIDENTIAL BUILDING; AMENDING SECTIONS 69-3-701 AND 69-3-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 69-3-701, MCA, is amended to read:

**"69-3-701. Definitions.** As used in this part, the following definitions apply:

(1) "Avoided costs" means the incremental costs, as determined by the commission, to an electric or natural gas utility of energy or capacity, or both, which, but for the purchase of conservation, the utility would generate or supply itself or purchase from another source.

(2) "Commission" means the Montana public service commission created in 2-15-2602.

(3) "Conservation" means any reduction in electric power or natural gas consumption as a result of investment in measures that increase the efficiency of electricity or gas use in building shells, space heating or cooling equipment, water heating equipment, or refrigeration equipment or other cost-effective measures which, over its economic life meet the criteria of 69-3-702.

(4) "Residential building" means a building used for residential occupancy that:

(a) has a system for heating, cooling, or both, that uses a fuel supplied by the utility; and



(b) contains at least one but not more than four separately or centrally heated dwelling units or contains more than four separately heated or cooled or both heated and cooled units."

Section 2. Section 69-3-702, MCA, is amended to read:

**"69-3-702. Eligible conservation.** Conservation purchases or investments are eligible under this part if they are made to replace, upgrade, or enhance building shells, space heating or cooling equipment, or refrigeration equipment *that was installed and in operation in the existing residential building at least 3 years before the conservation purchases or investments are made*, and if they are determined by the commission to cost no more than the utility's avoided costs."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 31, 1987.

## CHAPTER NO. 305

[HB 388]

AN ACT TO CLARIFY THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY SELL, LEASE, OR OTHERWISE DISPOSE OF WATER PROJECTS WITHOUT REGARD TO OTHER LAWS PROVIDING FOR DISPOSITION OF STATE PROPERTY; TO CLARIFY THAT THE MARKET VALUE OF A STATE-OWNED WATER PROJECT MUST INCLUDE ALL ENCUMBRANCES AND LIMITATIONS ON THE PROJECT, AND THAT THE DEPARTMENT'S AUTHORITY HEREUNDER MAY BE EXERCISED WITHOUT REGARD TO OTHER LAWS PROVIDING FOR DISPOSITION OF STATE PROPERTIES; TO REMOVE THE REFERENCE TO THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO REFLECT THAT WATER BONDS MAY BE ISSUED BY A VARIETY OF AUTHORITIES; AMENDING SECTIONS 85-1-210 AND 85-1-211, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-1-210, MCA, is amended to read:

**"85-1-210. Disposal of property by department.** In addition to the powers conferred upon the department to sell, lease, or otherwise dispose of waters for the purpose of irrigation, development of power, watering of stock, or other purposes, the department, with the approval of the board, may sell, lease, or otherwise dispose of waters from its waterworks systems for public, domestic, industrial, and other uses and for fire protection. The department, with the approval of the board, may sell or otherwise dispose of a water project, after the discharge of all of the bonds issued to finance the construction or acquisition thereof, if any, and of all interest

thereon and costs and expenses incurred in connection with any action or proceeding by or on behalf of the holders of the bonds. The department shall make a determination of the market value of the water project prior to its sale or other disposition. *The department's determination of market value shall consider all liens, encumbrances, and other limitations on the water project.*"

Section 2. Section 85-1-211, MCA, is amended to read:

**"85-1-211. Management of property — water contracts.** (1) Subject to this chapter, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this chapter may be sold and disposed of and enter into contracts and agreements and do those things which in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this chapter, under such general rules and upon such terms, limitations, and conditions as it prescribes.

(2) The department shall enter into the contracts and fix and establish the prices, rates, and charges so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance of the works authorized by this chapter, together with necessary repairs thereto, and which will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable.

(3) This chapter does not authorize any change, alteration, or revision of those rates, prices, or charges as established by any contract entered into under this chapter except as provided by the contract.

(4) A contract made by the department for the sale of water, use of water, water storage, or other service or for the sale of any property or facilities shall provide that, in the event of a failure or default in the payment of moneys specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all obligations thereunder. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage, or other service under the contract does not deprive the department of or limit any remedy provided by the contract or by law for the recovery of moneys due or which may become due under the contract.

(5) Subject to the approval of the board under 85-1-202, the department may sell, transfer to water user associations, abandon, or otherwise dispose of any rights-of-way, easements, *properties, or interests*, or lease or rent the same or otherwise take and receive the income or profit and revenue therefrom *without regard to other laws providing for the disposition of state property. Prior to the department's sale, transfer, or other disposition, a determination shall be made by the department as to the market value of the rights-of-way, easements, properties, or interests to be sold, transferred, abandoned, or otherwise disposed of. The department's determination of market value shall consider all liens, encumbrances, and other limitations on the project properties or interests.*"

Section 3. **Extension of authority.** Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. **Effective date.** This act is effective July 1, 1987.

Approved March 31, 1987.

## CHAPTER NO. 306

[HB 389]

AN ACT TO PROVIDE A PROCESS FOR A REAL ESTATE LICENSEE TO RENEW HIS LICENSE AFTER HE HAS ALLOWED THE LICENSE TO LAPSE; AND AMENDING SECTION 37-51-310, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-51-310, MCA, is amended to read:

**"37-51-310. Annual renewal.** (1) Except as provided in subsection (2), annual fees are due and payable for the ensuing year during the month of December of each year. Failure to remit annual fees before January 1 automatically cancels the license, but otherwise the license remains in effect continuously from the date of issuance unless suspended or revoked by the board for just cause.

(2) The board may by rule change the annual renewal and automatic cancellation dates provided for in subsection (1).

(3) *A licensee who allows his license to lapse by failing to remit the annual fees before January 1 may have his license reinstated by the board by:*

*(a) within 45 days after January 1, providing a satisfactory explanation to the board for his failure to renew the license; and*

*(b) paying the current renewal fee prescribed by the board.*

*(4) The board may also charge a late fee equal to twice the current renewal fee, but no less than \$100, to a licensee who does not renew his license as required by subsection (1)."*

Section 2. **Extension of authority.** Any existing authority of the board of realty regulation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved March 31, 1987.

**CHAPTER NO. 307**

[HB 505]

AN ACT REVISING THE TRAINING AND EXAMINATION REQUIREMENTS FOR LICENSED ACUPUNCTURISTS; AMENDING SECTION 37-13-302, MCA; REPEALING SECTION 37-13-303, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-13-302, MCA, is amended to read:

**"37-13-302. Application for licensure — fee — qualifications.**

(1) Each person desiring to practice acupuncture in this state shall make application for *licensure* with the secretary of the board, upon the forms and in the manner prescribed by the board. A fee prescribed by the board shall accompany the application.

(2) A person making application shall furnish the board evidence that he is:

(a) at least 18 years of age;

(b) of good moral character, as determined by the board;

(c) a graduate of an approved school of acupuncture *that is approved by the American medical association and offers a course of at least 1,000 hours of entry-level training in recognized branches of acupuncture or an equivalent curriculum approved by the board; and*

(d) *has passed an examination prepared and administered by the board or an examination prepared and administered by the national commission for the certification of acupuncturists."*

Section 2. **Repealer.** Section 37-13-303, MCA, is repealed.

Section 3. **Applicability.** This act applies to applications for a license to practice acupuncture received by the board of medical examiners after September 30, 1987.

Approved March 31, 1987.

**CHAPTER NO. 308**

[HB 682]

AN ACT TO ALLOW THE TRUSTEES OF TWO OR MORE SCHOOL DISTRICTS TO FORM A JOINT BOARD OF TRUSTEES FOR THE PURPOSE OF SHARING SCHOOL DUTIES AND SCHOOL COSTS; AND AMENDING SECTIONS 20-3-361, 20-3-362, 20-4-201, AND 20-4-401, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-3-361, MCA, is amended to read:

**"20-3-361. Joint board of trustees organization and voting membership.** (1) *The board of trustees of two or more school districts may*

form a joint board of trustees for the purpose of coordinating *any educational program or support service of the districts. A joint board of trustees may coordinate only those programs and services agreed to by the participating boards of trustees.*

(2) When a joint board of trustees is formed, all of the members of *the districts' trustees* shall be members of the joint board of trustees and each member shall have the right to participate in the meetings, but voting on matters considered by the joint board shall be limited by the provisions of this section.

(3) At the first meeting of the joint board of trustees, there shall be a chairman of the joint board of trustees selected from among the membership. A secretary of the joint board shall be selected from the membership. The chairman, when selected as a voting member, shall not be disqualified from voting because of his position of chairman of the board. The secretary shall not be a voting member except that he shall cast the deciding vote when three successive ballots have resulted in a tie vote of the joint board of trustees.

(4) The voting membership of the joint board of trustees shall be equalized *among* the trustee membership of the participating districts. After the selection of the chairman and the secretary, if necessary, the voting membership shall be:

(a) all of the membership of the *board of trustees of the smallest class of district, according to 20-6-201 or 20-6-301*, unless one of its members is selected as secretary, in which case such member shall not be a voting member; and

(b) the members of the *board of trustees of the other district or districts* who are selected by such trustees as voting members of the joint board in a number equal to the number of voting members of the district as established under subsection (4)(a) above. The names of the voting membership selected by the trustees shall be submitted in writing to the secretary of the board and shall be the only members of such district's trustees eligible to vote on joint board matters unless such list is revised in writing by the trustees.

(5) Each voting member shall be entitled to cast one vote, individually, upon every matter submitted to the joint board for a vote.

(6) *A joint board must remain in existence for at least 1 school year and may not be dissolved until the end of a school year."*

Section 2. Section 20-3-362, MCA, is amended to read:

**"20-3-362. Powers of joint board of trustees.** (1) When a joint board of trustees is formed as provided by 20-3-361, it shall have the power to:

(a) jointly employ a district superintendent under the provisions of 20-4-401;

(b) jointly employ teachers and specialists under the provisions of 20-4-201;

(c) open a junior high school under the provisions of 20-6-505 *if the trustees of a county high school and the trustees of an elementary district have formed a joint board of trustees;*

(d) prescribe and administer joint administrative policy;

(e) *jointly provide any program or service authorized under 20-3-324; and*

(f) prorate all items of joint expense *among* the school districts, provided that a controversy over any decision by the joint board to prorate joint costs may, within 30 days, be appealed by the trustees of *any* district to the superintendent of public instruction for a final decision as to what constitutes a fair and just proration of the cost.

(2) The joint board of trustees shall not have the power to transact business that is not specifically related to the joint administration of the districts."

Section 3. Section 20-4-201, MCA, is amended to read:

**"20-4-201. Employment of teachers and specialists by contract.**

(1) The trustees of any district shall have the authority to employ any person as a teacher or specialist, but only a person who holds a valid Montana teacher or specialist certificate or for whom an emergency authorization of employment has been issued that qualifies such person to perform the duties prescribed by the trustees for the position of employment. Each teacher or specialist shall be employed under written contract, and each contract of employment shall be authorized by a proper resolution of the trustees and shall be executed in duplicate by the chairman of the trustees and the clerk of the district in the name of the district and by the teacher or specialist.

(2) No contract of employment with a teacher or specialist shall require such teacher or specialist to teach more than 5 days a week or on any holiday recognized by 20-1-305. No deduction shall be made from a teacher's or specialist's salary by reason of the fact that a holiday falls on a school day. Any teacher's or specialist's contract made in conflict with the 5-days-per-week provision of this section shall not be enforceable against the teacher or specialist.

(3) Whenever the *board of trustees of two or more school districts* form a joint board of trustees under the provisions of 20-3-361, such joint board of trustees may execute a contract of employment with a teacher or specialist who shall serve *the* districts. When such a contract is executed, the districts shall prorate the compensation provided by such contract on the basis of the total number of instructional hours expended by such teacher or specialist within each district.

(4) Any contract executed under the provisions of this section may contain the oath or affirmation prescribed in 20-4-104, and the teacher or specialist shall subscribe to such oath or affirmation before an officer authorized by law to administer oaths."

Section 4. Section 20-4-401, MCA, is amended to read:

**"20-4-401. Appointment and dismissal of district superintendent or county high school principal.** (1) The trustees of any high school district, except a county high school, and the trustees of the elementary district where its high school building is located shall jointly employ and appoint a district superintendent. The trustees of a county high school shall employ and appoint a district superintendent, except that they may employ and appoint a holder of a class 3 teacher certificate with a district superintendent endorsement as the county high school principal in lieu of a district superintendent. The trustees of any other district may employ and appoint a district superintendent.

(2) Whenever a joint board of trustees has been formed by a county high school and the elementary district where the county high school is located, such joint board shall jointly employ and appoint a district superintendent. During the term of contract of the jointly appointed district superintendent, neither district shall separately employ and appoint a district superintendent or county high school principal.

(3) *School districts other than those provided in subsection (2) that form a joint board of trustees may jointly employ and appoint a district superintendent as allowed in 20-3-361.*

(4) The written contract of employment of a district superintendent or a county high school principal shall be authorized by the proper resolution of the trustees of the district or the joint board of trustees and executed in duplicate by the chairman of the trustees or joint board of trustees and the clerks of the districts in the name of the districts and by the district superintendent or the county high school principal. Such contract shall be for a term of not more than 3 years, and after the second successive contract, the contract shall be deemed to be renewed for a further term of 1 year from year to year thereafter unless the trustees shall, by resolution passed by a majority vote of its membership, resolve to terminate the services of the district superintendent or the county high school principal at the expiration of his existing contract. The trustees shall take such termination action and notify the district superintendent or the county high school principal in writing of their intent to terminate his services at the expiration of his current contract not later than February 1 of the last year of such contract.

(5) Whenever a joint board of trustees employs a person as the district superintendent *under subsection (2) or (3)*, the *districts* shall prorate the compensation provided by the contract of employment on the basis of the number of teachers employed by each district.

(6) At any time the class 3 teacher certification or the endorsement of the certificate of a district superintendent or a county high school principal that qualifies such person to hold such position becomes invalid, the trustees of the district or the joint board of trustees shall discharge such person as the district superintendent or county high school principal regardless of the unexpired term of his contract. The trustees shall not compensate him under the terms of his contract for any services rendered subsequent to the date of the invalidation of his teacher certificate.

(7) No district superintendent or county high school principal shall engage in any work or activity which the trustees may deem to be in conflict with his duties and employment as the district superintendent or county high school principal."

Approved March 31, 1987.

## CHAPTER NO. 309

[HB 792]

AN ACT TO PROVIDE FOR THE COMPENSATION AND NECESSARY EXPENSES FOR MEMBERS OF THE MONTANA HEALTH FACILITY AUTHORITY; AMENDING SECTION 90-7-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 90-7-201, MCA, is amended to read:

**"90-7-201. Authority — quorum — mode of action — expenses.** (1) Four members of the authority constitute a quorum for the purpose of conducting business. Action may be taken by the authority upon the affirmative vote of at least four of its members. No vacancy in the membership of the authority impairs the right of a quorum to exercise all the rights and perform all the duties of the authority.

(2) Each meeting of the authority for any purpose must be open to the public. Notice of meetings must be as provided in the bylaws of the authority. Resolutions need not be published or posted.

(3) *Each member is entitled to be paid \$50 for each day he is actually and necessarily engaged in the performance of board duties plus cost of travel, lodging, and meals as provided in 2-18-501 through 2-18-503."*

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 31, 1987.

## CHAPTER NO. 310

[HB 815]

AN ACT TO GENERALLY REVISE THE LAW REGULATING ACTIVITIES RELATING TO ALFALFA LEAF-CUTTING BEES; TO REQUIRE REGISTRATION OF BEES; TO PROVIDE FOR VOLUNTARY CERTIFICATION OF BEES; AMENDING SECTIONS 80-6-1101 THROUGH 80-6-1109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 80-6-1101, MCA, is amended to read:

**"80-6-1101. Short title.** This part may be cited as the "Alfalfa Leaf-Cutting Bee Management Act"."



Section 2. Section 80-6-1102, MCA, is amended to read:

**"80-6-1102. Definitions.** As used in this part, the following definitions apply:

(1) "Bee" means any stage in the life cycle of a bee of the species *Megachile rotundata* (F), commonly known as the alfalfa leaf-cutting bee.

(2) "Certification" means the process of analyzing bees and equipment by the department to determine whether they meet required standards.

(3) "Committee" means the alfalfa leaf-cutting bee advisory committee established in 2-15-3005.

(4) "Department" means the department of agriculture established in 2-15-3001.

(5) "Equipment" means grooved boards, shelters, trays, incubators, cell removers, tumblers, and other apparatus used in rearing bees.

(6) "*Nest destroyer*" means any organism that competes with the bee larvae for nest provisions.

(7) "Nesting materials" means equipment, laminates, and other apparatus used in nesting bees.

(8) "Parasite" means an organism living in or on any stage of the alfalfa leaf-cutting bee obtaining nutriment from the body of the bee.

(9) "Pathogen" means an organism that causes disease in the alfalfa leaf-cutting bee.

(10) "Person" means an individual, association, partnership, or corporation.

(11) "*Predator*" means any organism which preys on, devours, or destroys bees.

(12) "Wild trap" means to trap bees on property not owned or leased by the trapper."

Section 3. Section 80-6-1103, MCA, is amended to read:

**"80-6-1103. Department responsibilities — adoption of rules.**

(1) The department is responsible for the administration of this part.

(2) The department shall by rule adopt minimum standards for the presence of pathogens and parasites.

(3) *The department may adopt rules establishing minimum standards for the presence of predators and nest destroyers in bees to be certified, imported, quarantined, and possessed or controlled in the state of Montana.*

(4) *The department may provide information and services relating to the rearing of alfalfa leaf-cutting bees and alfalfa seed production.*

(5) The department may enter into agreements with other governmental agencies or private associations in carrying out the provisions of this part.

(6) In performing its duties under this part, the department may:

(a) enter upon any public or private premises to inspect *equipment* and sample bees;

(b) *by rule establish quarantines to regulate the entry of bees and equipment into areas of Montana specified in the quarantines;*

(c) quarantine any bees or equipment found to be infected or contaminated at *levels exceeding importation or quarantine standards;*

(d) order the disinfection, destruction, or removal of any bees or equipment that does not meet *importation or quarantine standards.*

(7) (a) Whenever the department has reasonable cause to believe a person is in possession of any *bees* or equipment in violation of this part or rules adopted under it, the department may order a quarantine of the suspected bees or equipment and may require any person in possession of such bees or equipment to hold them under specified conditions until notified otherwise in writing by the department.

(b) The department shall release any quarantine upon finding that the bees and equipment are in compliance with this part."

Section 4. Section 80-6-1104, MCA, is amended to read:

**"80-6-1104. Duties of committee.** The committee shall advise the department with respect to any contemplated rulemaking. The committee shall meet *periodically* to review the minimum standards adopted by the department."

Section 5. **Alfalfa leaf-cutting bees — registration.** (1) No person may possess or control alfalfa leaf-cutting bees in this state unless the bees are registered annually as provided in this section.

(2) To register bees, a person must file a completed application form provided by the department, together with the registration fee set by rule. The applicant must provide the following:

(a) name and place of residence;

(b) the general location of bees to be registered; and

(c) other relevant information as may be required by department rule.

(3) One sample of the bees to be registered must be sent to the department by the beekeeper or his agent. This sample must be analyzed for pathogens and parasites at no cost to the beekeeper. Additional samples may be sent to the department for analysis on a fee-for-service basis as established by rule.

(4) The department shall specify the date by which any applicant must apply for reregistration each year. Applications for reregistration received after the date specified must be assessed a penalty equal to 50% of the applicable registration fee.

Section 6. Section 80-6-1105, MCA, is amended to read:

**"80-6-1105. Alfalfa leaf-cutting bees — certification.** (1) *A person possessing or controlling alfalfa leaf-cutting bees in the state of Montana may annually certify all or part of his bees as provided in this section.*

(2) To certify bees, a person must file a completed application form provided by the department, together with the certification fee set by department rule. The applicant must provide the following:

- (a) name and place of residence;
- (b) the general location and number of bees to be registered; and
- (c) other relevant information as may be required by department rule.

(3) After receipt of an application for certification, a sample of the total population of bees to be certified shall be selected by the department or its agent in a manner prescribed by the department. The sample shall be *analyzed* for pathogens, parasites, *predators*, *nest destroyers*, *live larvae count*, and *sex ratio*. If certification standards are *met*, the sample shall be certified.

(4) *All bees to be certified may be stored in containers which can be officially sealed after sampling to maintain their certification identity.*

(5) When the department has in its possession a completed application form, a certification fee, and a report that the sample meets certification standards, it may issue a certificate for the bees.

(6) The department shall specify the date by which any applicant must apply for recertification the following year. Applications for certification received after the date specified shall be assessed a penalty equal to 10% of the applicable certification fee but not exceeding \$50."

Section 7. Section 80-6-1106, MCA, is amended to read:

**"80-6-1106. Bee laboratory authorized.** The department or its agent may develop and maintain a laboratory for the purpose of providing analytical services required to carry out the provisions of this part. The laboratory may be authorized by the department to provide services to persons possessing any bees or equipment on a fee-for-service basis."

Section 8. Section 80-6-1107, MCA, is amended to read:

**"80-6-1107. Restrictions on importing bees and equipment.** (1) *All bees to be imported shall meet importation, quarantine, and certification requirements established under 80-6-1103 and must be registered in accordance with [section 5].*

(2) Prior to the importation of any bee, the importer must file a completed application form as required in 80-6-1105(2) and arrange an approximate date and time for *official sampling*.

(3) Every imported bee must be shipped to a storage facility designated by the department for sampling purposes. Prior to certification, each bee, container, and piece of associated equipment must be quarantined at the designated storage facility.

(4) No *bees* may be imported except in loose cells or as adults. No *bees* may be imported in a drilled board, soda straw, or other equipment that prevents adequate *sampling* of the *bees*.

(5) A representative sample of the population of bees imported shall be the basis for certification.

(6) No person may import used equipment or nesting materials.

(7) No bee may be certified unless all other requirements for certification provided in 80-6-1105 are met."

Section 9. Section 80-6-1108, MCA, is amended to read:

**"80-6-1108. Restrictions on the rearing, moving, selling, and trapping of bees.** (1) No person may rear any bee in a drilled board or a nesting material from which samples of loose larval cells cannot readily be obtained.

(2) No person may move any quarantined bee or equipment except by special permit issued by the department.

(3) No person may wild trap or attempt to wild trap bees unless that person has been issued a permit for such activity in accordance with rules adopted by the department. *The department shall by rule establish the permit fee.*

(4) *No person may sell or distribute bees in Montana unless the bees are officially certified in accordance with 80-6-1103 and 80-6-1105."*

Section 10. Section 80-6-1109, MCA, is amended to read:

**"80-6-1109. Fees to be set by rule — self-supporting program — enterprise fund established.** (1) Fees authorized to be charged by this part shall be set by department rule. Such fees shall be designed to reimburse the department for costs incurred in providing services and carrying out its duties under this part. It is the intent of the legislature that department activities under this part be self-supporting.

(2) There is an enterprise fund known as the leaf-cutting bee fund for use by the department. Fees collected under this part shall be paid into the leaf-cutting bee fund.

(3) *The department may direct the board of investments to invest money from the fund pursuant to the provisions of the unified investment program. The income from such investments must be credited to the leaf-cutting bee fund."*

Section 11. **Funding limitation.** The department shall expend only those funds which are raised by fees under [this part]. In the event that such funds are insufficient to finance the costs of services under [this part], the department may reduce services accordingly.

Section 12. **Codification instruction.** Sections 5 and 11 are intended to be codified as an integral part of Title 80, chapter 6, part 11, and the provisions of Title 80, chapter 6, part 11, apply to sections 5 and 11.

Section 13. **Effective date.** This act is effective on passage and approval.

Approved March 31, 1987.

## CHAPTER NO. 311

[HB 645]

AN ACT SPECIFYING THAT A LARGE-SCALE MINERAL DEVELOPMENT MAY CAUSE AN INFLUX OF PEOPLE DIRECTLY RELATED TO THE AREA OF THE DEVELOPMENT; REQUIRING THAT A MINERAL DEVELOPER IN CONSULTATION WITH AFFECTED LOCAL GOVERNMENT UNITS SHALL ENSURE THAT THE HARD-ROCK MINING IMPACT PLAN MEETS STATUTORY REQUIREMENTS; AND CLARIFYING THAT THE IMPACT PLAN IS APPROVED WITHOUT ANY REVIEW BY THE HARD-ROCK MINING IMPACT BOARD IF NO OBJECTIONS ARE FILED WITHIN THE 90-DAY REVIEW PERIOD; AMENDING SECTIONS 82-4-335, 90-6-301, 90-6-307, 90-6-308, AND 90-6-403, MCA, AND RULE 8.104.203A, ADMINISTRATIVE RULES OF MONTANA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82-4-335, MCA, is amended to read:

**"82-4-335. Operating permit.** (1) No person shall engage in mining, ore processing, or reprocessing of tailings or waste material or construct or operate a hard-rock mill or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the board to do so. A separate operating permit shall be required for each complex. Prior to receiving an operating permit from the board, any person must pay the basic permit fee of \$25 and must submit an application on a form provided by the board, which shall contain the following information and any other pertinent data required by the rules:

(a) name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners, and the like and its resident agent for service of process, if required by law;

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land which will be disturbed, topographic detail, the location and names

of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, location of proposed access roads to be built, and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to applicant;

(f) types of access roads to be built and manner of reclamation of road sites on abandonment;

(g) a plan which will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(h) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(i) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that such structures are safe and stable;

(j) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water; and

(k) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site.

(2) Except as provided in subsection (4), the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 shall be conditioned to provide that activities under the permit may not commence until the impact plan *is approved* under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the *approved* impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the board, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(3) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302(4) and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the board with proof that he has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that he has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the board that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the board shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(4) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons."

Section 2. Section 90-6-301, MCA, is amended to read:

**"90-6-301. Declaration of necessity and purpose.** The large-scale development of mineral deposits in the state *may cause* an influx of people *directly related to the area of the development*. This influx of people and the corresponding increase in demand for local government facilities and services *may create* a burden on the local taxpayer. There is a significant lag time between the time when additional facilities and services must be provided and the time when additional tax revenue is available as a result of the increased tax base. In addition, local government units in whatever jurisdiction the development is not located may receive substantial adverse economic impacts without benefit of a major increased tax base in the future. There is therefore a need to provide a system to assist local government units in meeting the initial financial impact of large-scale mineral development."

Section 3. Section 90-6-307, MCA, is amended to read:

**"90-6-307. Impact plan to be submitted.** (1) After an application for a permit for a large-scale mineral development is made under 82-4-335, the person seeking the permit shall submit to the affected counties and the board an impact plan describing the economic impact the large-scale mineral development will have on local government units and shall file proof of such submission to the counties with the board. Whenever an environmental impact statement on the permit application is prepared under 75-1-201, the lead agency shall cooperate to the fullest extent practicable with the affected local government units to eliminate duplication of effort in data collection. The governing bodies of the affected counties shall publish notice of the submission of an impact plan at least once in a newspaper of general circulation in the county. *The mineral developer and the affected local government units shall ensure that the impact plan includes:*

(a) a timetable for development, including the opening date of the development and the estimated closing date;

(b) the estimated number of persons coming into the impacted area as a result of the development;

(c) the increased capital and operating cost to local government units for providing services which can be expected as a result of the development;

(d) the financial or other assistance the developer will give to local government units to meet the increased need for services.

(2) In the impact plan, the developer shall commit itself to pay all of the increased capital and net operating cost to local government units that will be a result of the development, as identified in the impact plan, either from tax prepayments, as provided in 90-6-309, special industrial educational impact bonds, as provided in 90-6-310, or other funds obtained from the developer, and shall provide a time schedule within which it will do so. The plan may provide for funding from other revenue sources or funding

mechanisms if the developer guarantees that the amount to be provided from these sources will be paid.

(3) Upon request of the governing body of an affected unit of local government, the mineral developer, prior to the end of the 90-day review period, shall provide financial or other assistance as necessary to prepare for and evaluate the impact plan. The governing body of the affected county must contract with the developer to obtain the requested financial assistance for each unit of local government within the county. Any disbursements to a unit of local government under this subsection shall be credited against future tax liabilities, if any.

(4) *The governing body of the county where the fiscal impacts on local government units are forecasted in the impact plan to be most costly shall, within 90 days after receipt of the impact plan from the developer, conduct a public hearing on the impact plan.*

(5) *An affected local government unit that has not been identified in an impact plan submitted to the board as being likely to experience increased capital and operating costs for providing services which can be expected as a result of the development may object to the impact plan under the provisions of this section if the local government unit clearly demonstrates that it is likely to experience increased capital and operating costs from the mineral development.*

(6) An affected local government unit shall, within 90 days after receipt of the impact plan from the developer, notify the board in writing if that local government unit objects to the impact plan, specifying the reasons why the impact plan is objected to. During the 90-day period, an affected local government unit may petition for one 30-day extension by submitting a written request to the board stating the need and justification for the extension. The board shall grant the extension unless it finds there is no reasonable basis for the request. If no objection is received within the 90-day period or any extension thereof, the impact plan is approved without any review by the board. *An approved plan is binding and may only be altered under the amendment provisions of 90-6-311.*

(7) If objections are received from a local government unit, the board shall, within 10 days, notify the developer and forward a copy of the local government unit's objections to the developer. The local government unit and the developer have 30 days, or a longer period if both the local government unit and the developer request an extension, to resolve the objection. If the objections are not resolved, the board shall conduct a hearing on the validity of the objections, which shall be held in the affected county or, if objections are received from local government units in more than one county, shall be held in the county which, in the board's judgment, is more greatly affected. The provisions of the Montana Administrative Procedure Act shall apply to the conduct of the hearing. The impact plan filed by the developer shall carry no presumption of correctness at the hearing.

(8) Following the hearing, the board shall, within 60 days, make findings as to those portions of the impact plan which were objected to and, if appropriate, amend the impact plan accordingly. The findings and impact plan, as amended, shall be served by the board upon all parties. Any local



government unit or the developer, if aggrieved by the decision of the board, is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court in and for the judicial district in which the hearing was held.

(9) The developer shall, within 30 days of receipt of the approved impact plan, provide the board with a written guarantee that the developer will meet the increased costs of public services and facilities as specified in the approved impact plan and according to the time schedule contained in the approved impact plan.

(10) The developer may make payments as specified in the approved impact plan directly to a local government unit or to the board. The governing body of a local government unit receiving payments shall deposit the payments into an impact fund. The developer and the affected governing body shall each issue to the board written verification of each payment and its intended use in compliance with the impact plan. The board shall deposit payments received from a developer into the hard-rock mining impact account established by 90-6-304.

(11) The board shall notify the department of state lands of its receipt of the written guarantee of payment and of any failure of the developer to comply with this section.

(12) Upon receipt of evidence that an affected local government unit identified in the approved impact plan is providing or is preparing to provide an additional service or facility provided for in the approved impact plan, the board shall, if the hard-rock mining impact account is used to deliver payments to the local government unit, pay to that local government unit, in one sum or in parts, the money from the hard-rock mining impact account identified in the plan as the increased cost to the local government unit of providing that public service or facility.

(13) If it is determined that an objection filed by an affected local government unit under *subsections (5) and (6)* or 90-6-311(3) is valid and it results in some remedial order by the board or court of competent jurisdiction, the local government unit shall be awarded and the developer shall pay reasonable costs and attorney fees associated with any administrative or judicial appeals filed under this section. Any attorney fees and costs awarded shall be in addition to any amounts paid by the developer under this part.

(14) Upon a determination by the department of state lands that a permittee under 82-4-335 has become or will become a large-scale mineral developer, the permittee may petition the board for a waiver of the impact plan requirement. The board may grant a waiver or conditional waiver of this requirement only if it has provided notice and opportunity for hearing to the permittee and to all affected local government units. The board shall adopt criteria under which a waiver may be granted. A waiver issued by the board may be revoked as provided in the conditional waiver or if the permittee and contractors at the mineral development increase their payrolls from the date of the waiver by 75 or more persons, provided the revocation

is requested by an affected local government unit and notice and opportunity for hearing are given to the permittee and all affected local government units. The board shall notify the board of land commissioners of any waiver that has been revoked.

(15) When a person who holds an operating permit under 82-4-335 and who has filed an impact plan fails to comply with the review and implementation requirements in this part and part 4 of this chapter, the board shall certify to the board of land commissioners that the failure to comply has occurred and shall certify when a permittee who has previously failed to comply comes into compliance."

Section 4. Section 90-6-308, MCA, is amended to read:

**"90-6-308. Permit procedure and review of impact plan to run concurrently.** It is intended that the procedure for fulfilling the permit requirement of 82-4-335 and the review of the impact plan by the board under 90-6-307(5) and (6), *if review occurs*, are to run concurrently."

Section 5. Section 90-6-403, MCA, is amended to read:

**"90-6-403. Jurisdictional revenue disparity — conditioned exemption and reallocation of certain taxable valuation.** (1) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the board shall promptly notify the developer, all affected local government units, and the department of revenue of the disparity. Except as provided in this section and 90-6-404, the increase in taxable valuation of the mineral development that occurs after the issuance and validation of a permit under 82-4-335 is not subject to the usual application of county and school district property tax mill levies. This increase in taxable valuation must be allocated to local government units as provided in 90-6-404. The increase in taxable valuation allocated as provided in 90-6-404 is subject to the application of property tax mill levies in the local government unit to which it is allocated.

(2) The total taxable valuation of a large-scale mineral development remains subject to the statewide mill levies and basic county levies for elementary and high school foundation programs as provided in 20-9-331 and 20-9-333.

(3) The provisions of subsection (1) remain in effect until the large-scale mineral development ceases operations or until the existence of the jurisdictional revenue disparity ceases, as determined by the board."

Section 6. The Hard-Rock Mining Impact Board shall amend Rule 8.104.203A, Administrative Rules of Montana, to read:

**"8.104.203A DEFINITION** For purposes of these rules, the *term* "impacted area" means the jurisdictional area or areas of the affected local government units identified in an impact plan or in an amendment to an impact plan."

Section 7. **Extension of authority.** Any existing authority of the hard-rock mining impact board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 8. **Applicability.** This act applies to all impact plans submitted after the effective date of this act.

Section 9. **Effective date.** This act is effective on passage and approval.

Approved March 31, 1987.

## CHAPTER NO. 312

[SB 292]

AN ACT TO ELIMINATE BASELINE STUDIES OF ALTERNATIVE SITES FOR ENERGY GENERATION AND CONVERSION FACILITIES FROM THE MONTANA MAJOR FACILITY SITING ACT; TO CLARIFY RULEMAKING AUTHORITY OF THE BOARD OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 75-20-105, 75-20-211, 75-20-216, 75-20-219, 75-20-301, 75-20-304, AND 75-20-1205, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-20-105, MCA, is amended to read:

**"75-20-105. Adoption of rules.** The board may adopt rules implementing the provisions of this chapter."

Section 2. Section 75-20-211, MCA, is amended to read:

**"75-20-211. Application — filing and contents — proof of service and notice.** (1) (a) An applicant shall file with the department and department of health a joint application for a certificate under this chapter and for the permits required under the laws administered by the department of health and the board of health in such form as the board requires under applicable rules, containing the following information:

(i) a description of the *proposed* location and of the facility to be built thereon;

(ii) a summary of any studies which have been made of the environmental impact of the facility;

(iii) a statement explaining the need for the facility;

(iv) *for facilities defined in 75-20-104(10)(b) and (10)(c)*, a description of reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(v) *for facilities as defined in 75-20-104(10)(b) and (10)(c)*, baseline data for the primary and reasonable alternate locations, *or for facilities as defined in 75-20-104(10)(a), (10)(d), and (10)(e)*, baseline data for the proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;

(vi) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

(vii) such other information as the applicant considers relevant or as the board and board of health by order or rule or the department and department of health by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) above shall be filed with the department, if ordered, and shall be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination which are physically and directly attached to each other and are operationally a single operating entity.

(3) An application shall be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility *is proposed or is alternatively proposed to be located* and on the following state government agencies:

- (a) environmental quality council;
- (b) department of public service regulation;
- (c) department of fish, wildlife, and parks;
- (d) department of state lands;
- (e) department of commerce;
- (f) department of highways;
- (g) department of revenue.

(4) The copy of the application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(5) An application shall also be accompanied by proof that public notice thereof was given to persons residing in the area in which any portion of the proposed facility *is proposed or is alternatively proposed to be located*, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application."

Section 3. Section 75-20-216, MCA, is amended to read:

**"75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies.** (1) After receipt of an application, the department and department of health shall within 90 days notify the applicant in writing that:

- (a) the application is in compliance and is accepted as complete; or
- (b) the application is not in compliance and list the deficiencies therein; and upon correction of these deficiencies and resubmission by the applicant, the department and department of health shall within 30 days notify

the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503 and the department of health shall commence a study to enable it or the board of health to issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department and department of health shall use, to the extent they consider applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) The department of health shall within 1 year following the date of acceptance of an application and the board of health or department of health, if applicable, within an additional 6 months, issue any decision, opinion, order, certification, or permit required under the laws administered by the department of health or the board of health and this chapter. The department of health and the board of health shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction for the *proposed location or any proposed alternate location* in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters that the department of health and board of health administer, and any of the criteria specified in subsections (2) through (7) of 75-20-503 that are a part of the determinations made under the laws administered by the department of health and the board of health. Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive, the board retains authority to make the determination required under 75-20-301(2)(c). The decision, opinion, order, certification, or permit of the department of health or the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit shall be served upon the department and the board and shall be utilized as part of their final site selection process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules adopted by the board of health, the department of health shall provide an opportunity for public review and comment.

(4) Within 22 months following acceptance of an application for a facility as defined in (a) and (d) of 75-20-104(10) and for a facility as defined in (b) and (c) of 75-20-104(10) which is more than 30 miles in length, and within 1 year for a facility as defined in (b) and (c) of 75-20-104(10) which is 30 miles or less in length, the department shall make a report to the board which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) The departments of highways; commerce; fish, wildlife, and parks; state lands; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

Section 4. Section 75-20-219, MCA, is amended to read:

**"75-20-219. Amendments to a certificate.** (1) Within 30 days after notice of an amendment to a certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the *certificate*. If the department determines that the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After hearing, the board shall grant, deny, or modify the amendment with such conditions as it deems appropriate.

(2) In those cases where the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the board shall automatically grant the amendment either as applied for or upon such terms or conditions as the board considers appropriate unless the department's determination is appealed to the board within 15 days after notice of the department's determination is given.

(3) If the department or the board, under subsection (4), determines that a hearing is required because the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted.

(4) If the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility and a hearing is required because the department's determination is appealed to the board as provided in subsection (2), the appellant has the burden of showing by clear and convincing evidence that the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the *certificate*.

(5) If an amendment is required to a certificate which would affect, amend, alter or modify a decision, opinion, order, certification, or permit issued by the department of health or board of health, such amendment

must be processed under the applicable statutes administered by the department of health or board of health."

Section 5. Section 75-20-301, MCA, is amended to read:

**"75-20-301. Decision of board — findings necessary for certification.** (1) Within 60 days after submission of the recommended decision by the hearing examiner, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the facility as the board considers appropriate.

(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it shall find and determine:

- (a) the basis of the need for the facility;
- (b) the nature of the probable environmental impact;
- (c) that the facility *minimizes* adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;
- (d) each of the criteria listed in 75-20-503;
- (e) in the case of an electric, gas, or liquid transmission line or aqueduct:
  - (i) what part, if any, of the line or aqueduct shall be located underground;
  - (ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and
  - (iii) that the facility will serve the interests of utility system economy and reliability;
- (f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions;
- (g) that the facility will serve the public interest, convenience, and necessity;
- (h) that the department of health or board of health have issued a decision, opinion, order, certification, or permit as required by 75-20-216(3); and
- (i) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503.

(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g) of this section, the board shall consider:

- (a) the items listed in subsections (2)(a) and (2)(b) of this section;
- (b) the benefits to the applicant and the state resulting from the proposed facility;
- (c) the effects of the economic activity resulting from the proposed facility;
- (d) the effects of the proposed facility on the public health, welfare, and safety;
- (e) any other factors that it considers relevant.

(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities."

Section 6. Section 75-20-304, MCA, is amended to read:

**"75-20-304. Waiver of provisions of certification proceedings.**

(1) The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

(2) The board may waive compliance with any of the provisions of this chapter upon receipt of notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The board shall waive compliance with the requirements of subsections (2)(c), (3)(b), and (3)(c) of 75-20-301 and 75-20-501(5) and the requirements of subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3), and 75-20-303(3)(a)(iv) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the board at a public hearing that:

- (a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations causing a loss of 250 or more permanent jobs within 2 years at the employer's operations within the preceding 10-year period;
- (b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution such a waiver;
- (c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been curtailed; and



(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in subsections (10)(b), (c), (d), or (e) of 75-20-104, for an associated facility defined in 75-20-104(3), or for any portion of or process in a facility defined in subsection (10)(a) of 75-20-104 to the extent that the process or portion of the facility is not subject to a permit issued by the department of health or board of health.

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection shall be credited toward the fee paid under 75-20-215 to the extent the data or evidence presented at the hearing or the decision of the board under subsection (3) can be used in making a certification decision under this chapter.

(7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a)."

Section 7. Section 75-20-1205, MCA, is amended to read:

**"75-20-1205. Emergency approval authority invalid for nuclear facilities.** Notwithstanding the provisions of 75-20-304(2) and (3), the board may not waive compliance with any of the provisions of this part or 75-20-201 through 75-20-203 relating to certification of a nuclear facility."

Section 8. **Extension of authority.** Any existing authority of the board of natural resources and conservation, the board of health and environmental sciences, and the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 1, 1987.

## CHAPTER NO. 313

[SB 305]

AN ACT AUTHORIZING A PROPERLY QUALIFIED ORAL SURGEON WHO IS ON THE MEDICAL STAFF OF A HOSPITAL TO PERFORM A PHYSICAL EXAMINATION IN CONJUNCTION WITH A HOSPITAL ADMISSION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Hospital admissions — patient histories and examinations.** (1) For purposes of this section, "oral surgeon" means a dentist who has successfully completed a postgraduate program in oral surgery accredited by a nationally recognized accreditation body approved by the United States office of education.

(2) A qualified oral surgeon who is a member of the medical staff of a hospital and who admits a patient to the hospital for oral or maxillofacial surgery may take the history and perform a physical examination of the patient if the patient has no known medical problems.

(3) This section does not affect hospital staff privileges of any hospital and may not be construed to require that any specific privilege, including taking a history or performing a physical examination, be extended or not extended to any oral surgeon.

**Section 2. Extension of authority.** Any existing authority of the department of health and environmental sciences and the board of dentistry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 37, chapter 4, and the provisions of Title 37, chapter 4, apply to section 1.

Approved April 1, 1987.

## CHAPTER NO. 314

[SB 313]

AN ACT PROVIDING A COMMON DEFINITION FOR THE TERM "INDEPENDENT CONTRACTOR" FOR PURPOSES OF THE UNEMPLOYMENT INSURANCE LAW AND THE WORKERS' COMPENSATION ACT; REVISING AND UNIFYING THE PROCEDURE FOR DETERMINING AN INDIVIDUAL'S EMPLOYMENT STATUS AS AN INDEPENDENT CONTRACTOR; AMENDING SECTIONS 39-51-201, 39-51-203, 39-51-310, 39-51-1109, 39-71-120, AND 39-71-401, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-51-201, MCA, is amended to read:

**"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period

means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(4) "Benefit year", with respect to any individual, means the 52 consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state, except as provided under subsections (8) and (9) of 39-51-203. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(10) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(11) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required and from which all benefits provided under this chapter shall be paid.

(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or his employer.

(13) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(14) *"Independent contractor" means an individual who renders service in the course of an occupation and:*

*(a) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and*

*(b) is engaged in an independently established trade occupation, profession, or business.*

(15) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(16) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(17) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(18) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received pursuant to a dispute related to employment. The reasonable cash value of remuneration

payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made to or on behalf of an employee by an employer on account of:

(A) retirement;

(B) sickness or accident disability;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare office.

(19) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(20) An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-51-203, MCA, is amended to read:

**"39-51-203. Employment defined.** (1) "Employment", subject to other provisions of this section, means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" includes an individual's entire service performed within or both within and without this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or

(B) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) Service is considered to be localized within a state if:

(i) the service is performed entirely within such state; or

(ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment insurance law of any other state or of the federal government is considered to be employment subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the employing unit for whom such services are performed that the entire service of such individual is considered to be employment subject to this chapter.

(4) Service performed by an individual for wages is considered to be employment subject to this chapter unless and until it is shown to the satisfaction of the department that *the individual is an independent contractor*.

(5) The term "employment" includes service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. The term "employment" includes service performed after July 1, 1975, by all individuals, including without limitations those individuals who work for the state of Montana, its university, any of its colleges, public schools, components or units thereof, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term "employment" includes service performed after December 31, 1971, by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term "employment" includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, after December 31, 1971, in the employ of an American employer, other than service which is considered employment under the provisions of subsection (2) of this section or the parallel provisions of another state's law, if:

(i) the employer's principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation which is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of sections (7)(a)(i) and (7)(a)(ii) of this subsection are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(b) An "American employer", for purposes of this subsection, means a person who is:

- (i) an individual who is a resident of the United States;
- (ii) a partnership if two-thirds or more of the partners are residents of the United States;
- (iii) a trust if all of the trustees are residents of the United States; or
- (iv) a corporation organized under the laws of the United States or of any state.

(8) Agricultural labor exempted under 39-51-204 is considered employment subject to this chapter effective January 1, 1978, whenever the employing unit pays \$20,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or employs 10 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has agricultural employment, all employees are covered under the chapter regardless of the amount of money expended for agricultural purposes.

(9) Domestic service exempted under 39-51-204(1)(b) is considered employment subject to this chapter effective January 1, 1978, whenever the employing unit pays \$1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has domestic employment, all employees are covered under the chapter regardless of the amount of money expended for domestic purposes."

Section 3. Section 39-51-310, MCA, is amended to read:

**"39-51-310. Function of board.** The board shall act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws *and disputes arising under Title 39, chapter 71, not concerning benefits, regarding whether an individual is an employee or an independent contractor as defined in that chapter.*"

Section 4. Section 39-51-1109, MCA, is amended to read:

**"39-51-1109. Tax appeals.** Any person aggrieved by any decision, determination, or redetermination of the department involving contribution liability, contribution rate, application for refund, *employment status*, or the charging of benefit payments to employers making payment in lieu of contributions *may appeal to an appeals referee within 10 days after notice of the decision is mailed to that person's last-known address, except the period for timely appeal may be extended by the referee upon a showing of good cause. The decision of the appeals referee and any appeal therefrom must be made in the same manner as prescribed in 39-51-2403 and 39-51-2404.*"

Section 5. Section 39-71-120, MCA, is amended to read:

**"39-71-120. Independent contractor defined.** (1) An "independent contractor" is one who renders service in the course of an occupation and:

- (a) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

*(2) An individual performing services for remuneration is considered to be an employee under this chapter unless the requirements of subsection (1) are met."*

Section 6. Section 39-71-401, MCA, is amended to read:

**"39-71-401. Employments covered and employments exempted.**

(1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

- (a) household and domestic employment;
- (b) casual employment as defined in 39-71-116(3) except employment of a volunteer under 67-2-105;
- (c) employment of members of an employer's family dwelling in the employer's household;
- (d) employment of sole proprietors or working members of a partnership other than those who consider themselves or hold themselves out as independent contractors and who are not contracting for agricultural services to be performed on a farm or ranch, or for broker or salesman services performed under a license issued by the board of realty regulation, or for services as a direct seller engaged in the sale of consumer products to customers primarily in the home;
- (e) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;
- (f) any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;
- (g) employment with any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter;
- (h) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district.

(3) A sole proprietor or working member of a partnership who holds himself out or considers himself an independent contractor and who is not contracting for agricultural services to be performed on a farm or ranch, or for broker or salesman services performed under a license issued by the



board of realty regulation, or for services as a direct seller engaged in the sale of consumer products to customers primarily in the home must elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3, but he may apply to the division for an exemption from the Workers' Compensation Act for himself. The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor. When an application is approved by the division, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter. *If the division denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.*

(4) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the division, distributed through insurers or directly by the division, and posted by employers in accordance with rules adopted by the division. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

**Section 7. Procedure for resolving disputes regarding independent contractor status.** (1) If an individual, employer, or insurer has a dispute as to whether an individual is an independent contractor or an employee as defined in this chapter, any party may petition a department of labor and industry appeals referee for resolution of the dispute in accordance with 39-51-1109, and may appeal from a decision of the appeals referee in the same manner as prescribed in 39-51-2403 and 39-51-2404.

(2) If a claimant and insurer have a dispute over benefits and the dispute involves an issue of whether the claimant is an independent contractor or employee as defined in this chapter, either party may petition the workers' compensation judge for resolution of the dispute in accordance with 39-71-2905.

(3) Notwithstanding the provisions of subsection (1), an individual may apply to the division for an exemption from the Workers' Compensation Act in accordance with 39-71-401.

**Section 8. Extension of authority.** Any existing authority of the department of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 9. **Codification instruction.** Section 7 is intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to section 7.

Section 10. **Effective date.** This act is effective July 1, 1987.

Approved April 1, 1987.

## CHAPTER NO. 315

[HB 4]

AN ACT REVISING LAWS GOVERNING ADMINISTRATION OF THE CULTURAL AND AESTHETIC GRANTS PROGRAM BY THE MONTANA ARTS COUNCIL; ESTABLISHING PRIORITIES FOR GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; AMENDING SECTIONS 22-2-305, 22-2-306, AND 22-2-309, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 22-2-305, MCA, is amended to read:

**"22-2-305. Allocation and disbursement of funds.** (1) The Montana arts council shall allocate and disburse cultural and aesthetic project account funds as appropriated by the legislature.

(2) If the funds in the cultural and aesthetic projects account are insufficient to fund projects in the amount of the legislative appropriation for the projects, the council shall allocate and disburse the account's funds *in accordance with the provisions of the appropriation act.*"

Section 2. Section 22-2-306, MCA, is amended to read:

**"22-2-306. Grant conditions — additional funds — accounts and reports.** (1) No grant may be awarded unless the grantee accepts the Montana arts council's conditions of the grant and signs a contract stipulating those conditions.

(2) A grantee must agree in writing that:

(a) the grantee is the official and sole agency for the administration of the project described in the grant agreement; and

(b) no person will, on the grounds of race, color, national origin, sex, or age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that results from the expenditure of grant funds.

(3) The grantee must agree that the funds granted will be expended solely for the purpose and activities described in the approved proposal. All funds granted to the grantee must be spent or encumbered during the grant period.

(4) Disbursements to grantees must be as follows, based upon the cash flow needs of the projects and the revenues available:

(a) Projects that are to receive more than \$10,000 may receive an amount not exceeding 25% of the grant award in the first 6 months of the biennium, 50% in the first year of the biennium, 75% in the first 18 months of the biennium, and the balance in the remainder of the biennium. Within such limitations, the amount of each payment must be determined by the Montana arts council in its discretion. Each payment may be made only after an examination of the costs incurred in the project and the amount, if any, of the unencumbered or unexpended balance of prior grant payments for the project.

(b) Projects that are to receive \$10,000 or less may receive the total grant in any fiscal quarter if the Montana arts council determines that the cultural and aesthetic project account has funds available and that, after an examination of the costs incurred by the project, total payment is appropriate.

(c) *A grant award budget may be modified in accordance with this subsection. A grantee may modify line items in an approved budget in an amount not to exceed 10% of the total grant award. A grantee may, with permission of the Montana arts council, modify line items in an approved budget in an amount not to exceed 20% of the total grant award. No such modification may increase the grant award or change the scope or purpose of the award.*

(5) The grantee must maintain accounts, records, and other pertinent material pertaining to the costs incurred and expenditures made under the grant. The system of accounting employed by the grantee must be in accordance with generally accepted accounting principles and be applied in a consistent manner so that project costs and expenditures can be clearly identified. Accounts, records, and other pertinent material must be maintained for 3 years from the official termination date of the grant period or until an audit, approved by the council, has been completed and any questions arising from the audit have been resolved to the satisfaction of the council.

(6) Grantees must submit to the council semiannual reports of expenditures during the course of the project and such other financial and descriptive reports as the council may require. The grantee must submit, within 30 days after completion of the project, a final financial report and a narrative report stating what was accomplished with the grant. Five percent of the total grant award must be held pending receipt of final reports by the council.

(7) The council may, at the principal place of business of the grantee and during regular business hours, examine any directly pertinent records, accounts, and documents of the grantee involving transactions related to the grant."

Section 3. Section 22-2-309, MCA, is amended to read:

**"22-2-309. Grant categories.** (1) The following categories are established for grant funds:

(a) special projects which are specific cultural and aesthetic activities, services, or events of limited duration;

(b) operational support for cultural institutions that have been in existence for at least 2 years *and whose budgets reflect only the cost of continuing their current program*;

(c) capital expenditures for acquisition, construction, or renovation of facilities; and

(d) challenge grants for permanent endowments to benefit cultural non-profit grant recipients.

(2) *The Montana arts council may require a match in cash or donated services for special project and operational support grants. There is a presumption that the match must represent \$1 in value for each dollar of the grant. The Montana arts council may accept matches in excess of the presumed value or may in its discretion require a lesser amount.*

(3) Capital expenditures may not exceed 25% of the total grant funds appropriated. Capital expenditure grants require a match of at least \$3 in cash or donated goods and services, which goods and services must be donated specifically for the capital expenditure project, to receive each dollar of grant funds.

(4) Challenge grants require a match of at least \$3 in cash or irrevocable planned or deferred gifts to receive each dollar of grant funds. Challenge grants are available upon meeting the specified match. *Not less than one-third of the specified match must be in cash. Not more than one-third of the match may be in wills, devises, and bequests."*

**Section 4. Appropriation of cultural and aesthetic grant funds — priority of disbursement.** (1) The Montana arts council shall disburse money appropriated by this act with priority given to subsection (2), followed by subsections (3) and (4), respectively. The Montana arts council must include in the award contract relating to funds dispersed under this section a statement binding the grant to any contingencies established in the recommendations of the cultural and aesthetic projects advisory committee submitted to the legislature under 22-2-302 or such contingencies as modified by the long-range planning subcommittee as reflected in the official minutes of the subcommittee.

(2) If the funds in the cultural and aesthetic projects account were insufficient in the biennium ending June 30, 1987, to fund projects in the amount for which they were appropriated, the funds appropriated for such projects are reappropriated from such account until funds have been disbursed to fully cover such appropriations or until January 1, 1988, whichever comes first.

(3) The following projects are approved and amounts appropriated to the Montana arts council for the biennium ending June 30, 1989, from the cultural and aesthetic projects account:

| <u>PROJECT</u>         | <u>AMOUNT</u> |
|------------------------|---------------|
| Aleph Movement Theatre | \$ 7,500      |

| <u>PROJECT</u>                                                    | <u>AMOUNT</u> |
|-------------------------------------------------------------------|---------------|
| Archie Bray Foundation                                            | 19,200        |
| Big Fork Art and Cultural Center                                  | 6,000         |
| Billings Preservation Society, Moss Mansion<br>Museum Restoration | 25,000        |
| Billings Symphony Society                                         | 15,000        |
| Butte-Silver Bow Arts Chateau                                     | 7,752         |
| Copper Village Museum, Endowment                                  | 10,000        |
| Custer County Art Center, Operational Sup-<br>port                | 20,000        |
| Custer County Art Center, Conservation,<br>Permanent Collections  | 6,165         |
| Daly Mansion Preservation Trust                                   | 30,000        |
| Daniels County Museum Association                                 | 7,000         |
| Dull Knife Memorial College                                       | 5,000         |
| Fort Peck Tribal Museum                                           | 10,000        |
| Fox Theatre Corporation                                           | 40,000        |
| Gallatin County Historical Society, Endow-<br>ment                | 15,000        |
| Garnet Preservation Association                                   | 15,000        |
| Great Falls Symphony, Cascade Quartet                             | 7,500         |
| Great Falls Symphony, Endowment                                   | 25,000        |
| Helena Civic Center                                               | 7,500         |
| Helena Film Society                                               | 50,000        |
| Hockaday Center for the Arts                                      | 20,000        |
| Livingston Depot Foundation                                       | 20,000        |
| MSU - Media & Television Arts Department                          | 25,000        |
| MSU - Museum of the Rockies                                       | 10,000        |
| MSU - Shakespeare in the Parks, Opera-<br>tional Support          | 40,000        |
| MSU - Shakespeare in the Parks, Endow-<br>ment                    | 15,000        |
| MSU - Vigilante Players                                           | 20,000        |
| Miles Community College                                           | 12,000        |
| Milwaukee Rode Cultural Project                                   | 10,000        |
| Missoula Children's Theatre, Operational<br>Support               | 16,000        |
| Missoula Children's Theatre, Endowment                            | 20,000        |
| Missoula Mendelssohn Club                                         | 4,000         |
| Missoula Museum of the Arts                                       | 25,000        |
| Missoula Symphony Association, Endowment                          | 40,000        |
| Montana Art Gallery Directors Association                         | 22,500        |
| Montana Arts Council, Folklife Project                            | 60,000        |
| Montana Association of Symphony<br>Orchestras                     | 5,000         |
| Montana Ballet Company                                            | 10,000        |
| Montana Chorale, Endowment                                        | 10,000        |
| Montana Chorale, Operational Support                              | 6,000         |
| Montana Dance Arts Association                                    | 6,000         |
| Montana Historical Society, Oral History<br>Office                | 95,000        |

| <u>PROJECT</u>                                                   | <u>AMOUNT</u> |
|------------------------------------------------------------------|---------------|
| Montana Institute of the Arts Foundation,<br>Operational Support | 10,300        |
| Montana Performing Arts Consortium                               | 30,000        |
| Montana United Scholarship Service                               | 30,000        |
| Northern Lights Institute                                        | 20,000        |
| Northern Montana College                                         | 12,000        |
| P.S., A Partnership                                              | 14,000        |
| Salish Kootenai College                                          | 15,000        |
| St. Mary's Mission                                               | 10,000        |
| String Orchestra of the Rockies, Operational<br>Support          | 10,000        |
| Twin Bridges Public School                                       | 3,000         |
| UM - Montana Repertory Theatre                                   | 50,000        |
| UM - School of Fine Arts, Endowment                              | 60,000        |
| Yellowstone Art Center, Montana's Own                            | 20,000        |
| Yellowstone Chamber Players                                      | 8,000         |
| Young Audiences of Western Montana                               | 15,000        |
| Operating Expenses                                               | 84,400        |

(4) The Montana arts council is appropriated an amount not to exceed \$10,400 for project evaluations from any funds that revert from the projects subject to the appropriations in subsection (3). The evaluations must be done after July 1, 1988, for the purpose of preparing a report on such projects for the 51st Legislature.

Section 5. **Reversion of granted funds.** (1) On January 1, 1988, all project funds reappropriated from the 1987 biennium, but not disbursed, shall revert to the cultural and aesthetic projects account provided for in 15-35-108.

(2) On July 1, 1989, any unencumbered balance of the 1989 biennium grants shall revert to the cultural and aesthetic projects account provided for in 15-35-108.

Section 6. **Effective date.** This act is effective July 1, 1987.

Approved April 1, 1987.

## CHAPTER NO. 316

[HB 28]

AN ACT CHANGING THE DISTRIBUTION OF FINES AND FORFEITURES FOR GROSS VEHICLE WEIGHT VIOLATIONS ON ROADS NOT INCLUDED IN THE STATE MAINTENANCE SYSTEM; AMENDING SECTIONS 61-10-148 AND 61-12-701, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-12-701, MCA, is amended to read:

**"61-12-701. Disposition of fines and forfeitures.** (1) *Except as provided in 61-10-148(2), all fines and forfeitures collected in any court for*

violation of the laws and regulations relating to the use of state highways and the operation of vehicles thereon, if the apprehension or arrest was by a highway patrolman, must be paid to the state treasurer and by him credited to the general fund of the state or, if the apprehension or arrest was by a sheriff or deputy sheriff, must be paid to the county treasurer for deposit in the county general fund, except for that portion of the fines otherwise allocated by law which must be paid into the appropriate accounts in the state special revenue fund.

(2) At the time of payment of the fine or forfeiture, there must be filed with the appropriate treasurer a complete statement showing the total of the fines or forfeitures received or incurred, giving the title of the court and cause, and subscribed to by the person or officer making the payments."

Section 2. Section 61-10-148, MCA, is amended to read:

**"61-10-148. Disposition of fines and forfeited bonds.** (1) Except as provided in 61-12-701 and subsection (2), one-half of all the money collected as fines and forfeited bonds for violations of Title 61, chapter 10, must be remitted monthly by the county treasurer to the state treasurer for deposit in the state highway account in the state special revenue fund. The remaining half, less the deductions required by law, must be deposited in the county road fund.

(2) *If the apprehension or arrest was for a violation of Title 61, chapter 10, and if the offense occurred on a road or highway not included under 60-2-105 and 60-2-203, all money collected as fines and forfeited bonds must be distributed to the county treasurer for deposit in the county road fund.*"

Section 3. **Extension of authority.** Any existing authority of the department of highways or department of justice to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 1, 1987.

## CHAPTER NO. 317

[HB 66]

AN ACT REQUIRING LICENSES FOR MANUFACTURERS-DISTRIBUTORS OF VIDEO DRAW POKER MACHINES AND ASSOCIATED EQUIPMENT; IMPOSING ANNUAL LICENSE FEES; ESTABLISHING QUALIFICATIONS FOR LICENSURE; PROVIDING FOR INVESTIGATION, RIGHT TO HEARING, PENALTIES, INSPECTIONS, AND JUDICIAL REVIEW; AMENDING SECTION 23-5-602, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-5-602, MCA, is amended to read:

**"23-5-602. Definitions.** As used in this part, the following definitions apply:

(1) *"Associated equipment" means all proprietary devices, machines, or parts used in the manufacture or maintenance of a video draw poker machine, including but not limited to integrated circuit chips, printed wired assembly, printed wired boards, printing mechanisms, video display monitors, and metering devices.*

(2) *"Department" means the department of revenue.*

(3) *"Licensed establishment" means an establishment that is licensed to sell alcoholic beverages for consumption on the premises.*

(4) *"Licensee" means an individual, partnership, corporation, or association that has been issued a license by the department for the placement and operation of video draw poker machines in the licensed establishment of the individual, partnership, corporation, or association.*

(5) *"Manufacturer-distributor" means an individual, partnership, corporation, or association that assembles, produces, and makes or supplies video draw poker machines or associated equipment for sale, use, or distribution in this state.*

(6) *"Used video draw poker machine" means a video draw poker machine, as that term is defined in this section, which is owned or possessed by an applicant on the day he applies for a license for the used machine and which was owned or operated in the state prior to February 3, 1984.*

(7) *"Video draw poker machine" means an electronic video game machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker, as provided in this part, utilizing a video display and microprocessors in which, by the skill of the player or by chance, or both, the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins, cash, tokens, or anything else of value."*

**Section 2. Manufacturer-distributor of video draw poker machines — license — fees.** (1) It is unlawful for any person to manufacture, sell, or distribute any video draw poker machine or associated equipment for use or play in this state without having first been issued a manufacturer-distributor's license by the department.

(2) The department shall charge an annual license fee of \$1,000 for the issuance or renewal of a manufacturer-distributor's license.

(3) In addition to other license fees, the department may charge the applicant a one-time manufacturer-distributor's license application processing fee. The processing fee may not exceed the department's actual costs for processing an application.

(4) All manufacturer-distributor's licenses expire on June 30 of each year, and the license fee may not be prorated.

(5) The department shall retain the license and processing fees collected for purposes of administering this part, except 23-5-615.

**Section 3. License qualifications — investigation — right to hearing.** (1) An applicant for issuance or renewal of a manufacturer-distributor's license shall:



(a) apply to the department on forms prescribed by the department;

(b) establish to the satisfaction of the department that the applicant's past record and present status as a manufacturer-distributor of video draw poker machines or associated equipment and as a business person and citizen demonstrate that the applicant is likely to conduct his business in compliance with all laws.

(2) A person denied a manufacturer's or distributor's license has the right to a hearing before the department. The hearing must be conducted in accordance with the provisions of the Montana Administrative Procedure Act.

**Section 4. Determination of unsuitability for licensure — effect.**

(1) If the department determines that a manufacturer-distributor is unsuitable for issuance of a license or if a previously issued license is revoked:

(a) the department may not approve any new video draw poker machine or associated equipment produced by the manufacturer-distributor;

(b) the department may revoke a license for a machine produced by that manufacturer-distributor and owned by a person in the state of Montana, at the time of revocation of the manufacturer-distributor's licensure only if, after a reasonable length of time, the machine remains out of compliance with state requirements; and

(c) a manufacturer-distributor may not sell, transfer, or offer for use or play in this state any new video draw poker machine or associated equipment.

(2) Any association or agreement between the manufacturer-distributor and a licensee is considered to include a provision for its termination without liability on the part of the licensee upon a determination by the department that the manufacturer-distributor is unsuitable for licensure. Failure to include such provisions for termination in an agreement is not a defense in any action brought under the provisions of this section to terminate the agreement.

(3) Failure of a licensee to terminate any association or agreement with a manufacturer-distributor after receiving notice of the department's determination of unsuitability for licensure constitutes grounds for revocation of the licensee's video draw poker machine licenses.

**Section 5. Penalties — hearing.** If the department finds, after a hearing conducted pursuant to the Montana Administrative Procedure Act, that a person licensed under this part has violated any of the provisions of this part or the department's rules, the department may, in addition to the other penalties prescribed:

(1) suspend the license for a period of not more than 180 days;

(2) impose a civil penalty not to exceed \$6,000;

(3) revoke the license;

- (4) deny renewal of the license on expiration thereof; or
- (5) impose a combination of any two of the penalties set forth in subsections (1) through (4).

**Section 6. Examination and approval of new video draw poker machines and associated equipment — fee.** (1) The department shall examine and approve new video draw poker machines and associated equipment which is manufactured, sold, or distributed for use in this state before the video draw poker machine or associated equipment is played or used.

(2) A video draw poker machine or associated equipment may not be examined or approved by the department until the manufacturer-distributor for the machine or associated equipment is licensed as required in [section 2].

(3) The department shall require the manufacturer-distributor seeking the examination and approval of a new video draw poker machine or associated equipment to pay the anticipated actual costs of the examination in advance and, after the completion of the examination, shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayments of actual costs.

**Section 7. Judicial review of agency decision.** (1) Any interested party has the right to judicial review of a final decision of the department concerning the grant, denial, renewal, revocation, or suspension of a license required under this part.

(2) A petition for judicial review must conform to the provisions of Title 2, chapter 4, part 7.

**Section 8. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 9. Authority to proceed with rulemaking.** The department of revenue may initiate rulemaking proceedings under section 8 on or after passage and approval of this act, but no rules under sections 2 through 7 may be made effective prior to the effective dates of those sections.

**Section 10. Codification instruction.** Sections 2 through 7 are intended to be codified as an integral part of Title 23, chapter 5, part 6, and the provisions of Title 23, chapter 5, part 6, apply to sections 2 through 7.

**Section 11. Effective dates.** (1) This section and sections 8 and 9 are effective on passage and approval.

(2) Sections 1 through 7 and section 10 are effective July 1, 1987.

Approved April 1, 1987.

**CHAPTER NO. 318**

[HB 141]

AN ACT CREATING A FEE FOR FILING A MOTION FOR SUBSTITUTION OF A DISTRICT JUDGE IN A CIVIL CASE; REQUIRING MONEY FROM THE FEE TO BE DEPOSITED IN THE STATE GENERAL FUND; AND AMENDING SECTIONS 19-5-404, 25-1-201, AND 25-10-405, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 25-1-201, MCA, is amended to read:

**"25-1-201. (Temporary) Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, from the plaintiff or petitioner, \$25; for filing a complaint in intervention, from the intervenor, \$25; and for filing a petition for dissolution of marriage, an additional fee of \$30;

(b) from each defendant or respondent, on his appearance, \$15;

(c) on the entry of judgment, from the prevailing party, \$10;

(d) for preparing copies of papers on file in his office, 25 cents per page;

(e) for each certificate, with seal, 50 cents;

(f) for oath and jurat, with seal, 50 cents;

(g) for administering oath, 25 cents;

(h) for taking depositions, per folio, 20 cents;

(i) for filing and docketing a transcript of judgment or abstract of judgment from all other courts, \$5;

(j) for issuing an execution or order of sale on a foreclosure of a lien, \$2;

(k) for transmission of records or files or transfer of a case to another court, \$5;

(l) for filing and entering papers received by transfer from other courts, \$10;

(m) for issuing a marriage license, \$30;

(n) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$35, which includes the fee for filing a will for probate;

(o) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$35;

(p) for filing a declaration of marriage without solemnization, \$30;

(q) for filing a motion for substitution of a judge, \$100.

(2) Except as provided in subsections (3) through (5), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the general fund of the county. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) Of the additional fee for filing a petition for dissolution of marriage, \$25 must be deposited in the state general fund and \$5 must be deposited in the children's trust fund account established by 41-3-702.

(5) *The fee for filing a motion for substitution of a judge as provided in subsection (1)(q) must be deposited in the state general fund.*

**25-1-201. (Effective January 1, 1990) Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, from the plaintiff or petitioner, \$25; for filing a complaint in intervention, from the intervenor, \$25; and for filing a petition for dissolution of marriage, an additional fee of \$25;

(b) from each defendant or respondent, on his appearance, \$15;

(c) on the entry of judgment, from the prevailing party, \$10;

(d) for preparing copies of papers on file in his office, 25 cents per page;

(e) for each certificate, with seal, 50 cents;

(f) for oath and jurat, with seal, 50 cents;

(g) for administering oath, 25 cents;

(h) for taking depositions, per folio, 20 cents;

(i) for filing and docketing a transcript of judgment or abstract of judgment from all other courts, \$5;

(j) for issuing an execution or order of sale on a foreclosure of a lien, \$2;

(k) for transmission of records or files or transfer of a case to another court, \$5;

(l) for filing and entering papers received by transfer from other courts, \$10;

(m) for issuing a marriage license, \$30;

(n) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$35, which includes the fee for filing a will for probate;

(o) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$35;

(p) for filing a declaration of marriage without solemnization, \$30;

(q) for filing a motion for substitution of a judge, \$100.

(2) Except as provided in *subsections (3) through (5)*, 32% of all fees collected by the clerk of the district court must be deposited in and credited to the general fund of the county. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) The additional fee for filing a petition for dissolution of marriage must be deposited in the state general fund.

(5) *The fee for filing a motion for substitution of a judge as provided in subsection (1)(q) must be deposited in the state general fund.*"

Section 2. Section 19-5-404, MCA, is amended to read:

**"19-5-404. Contributions by the state.** The state of Montana shall contribute monthly to the fund a sum equal to 6% of the salary of each member. In addition, the clerk of each district court shall transmit 68% of *certain filing fees as required* under 25-1-201 to the state, which shall first deposit in the fund an amount equal to 31% of the salaries paid to district judges and supreme court justices who are covered by the judges' retirement system and then deposit the balance in the state general fund. The clerk of the supreme court shall pay one-fourth of the fees collected under 3-2-403 to the public employees' retirement division of the department of administration to be credited to the fund."

Section 3. Section 25-10-405, MCA, is amended to read:

**"25-10-405. Governmental entities not required to prepay fees.** The state, a county, a municipality, or any subdivision thereof or any officer when prosecuting or defending an action on behalf of the state, a county, a municipality, or a subdivision thereof is not required to pay or

deposit any fee or amount to or with any officer during the prosecution or defense of an action, *except the fee under 25-1-201(1)(q) for filing a motion for substitution of a judge.*"

Approved April 1, 1987.

## CHAPTER NO. 319

[HB 261]

### AN ACT ESTABLISHING A VETERANS MEMORIAL HIGHWAY.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Veterans memorial highway.** There is established the veterans memorial highway composed of the existing U.S. interstate highway 15 from the Montana-Idaho border at Monida Pass to the international boundary at Sweetgrass.

Approved April 1, 1987.

## CHAPTER NO. 320

[HB 263]

### AN ACT TO ALLOW A SCHOOL DISTRICT THE DISCRETION TO CHARGE A NONPUBLIC SCHOOL CHILD FOR TRANSPORTATION ON A DISTRICT SCHOOL BUS; AND AMENDING SECTION 20-10-123, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-10-123, MCA, is amended to read:

**"20-10-123. Provision of transportation for nonpublic school children.** Any child attending a nonpublic school may ride a school bus when a permit to ride such school bus is secured from the operating district by the parent or guardian of such nonpublic school child and when there is seating capacity available on such school bus. When a nonpublic school child rides a school bus, the operating district *may* charge such child his proportionate share, as determined by the trustees, of the cost of operating such school bus. Money realized from such payments shall be deposited to the credit of the transportation fund."

Approved April 1, 1987.

**CHAPTER NO. 321**

[HB 386]

AN ACT TO ALLOW THE BOARD OF CHIROPRACTORS TO HOLD MORE THAN FOUR MEETINGS A YEAR; TO CLARIFY THE RULEMAKING AUTHORITY OF THE BOARD; TO ESTABLISH INACTIVE STATUS REQUIREMENTS AND FEES FOR INACTIVE STATUS; PROHIBITING LOCAL GOVERNMENTS WITH SELF-GOVERNING POWERS FROM IMPOSING LICENSING FEES OR TAXES ON CHIROPRACTORS; AMENDING SECTIONS 37-12-201, 37-12-307, AND 37-12-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-12-201, MCA, is amended to read:

**"37-12-201. Organization of board — meetings — powers and duties.** (1) The board shall elect annually a president, vice-president, and secretary-treasurer from its membership.

(2) The board shall hold a regular meeting each year at Helena and shall hold special meetings at times and places as a majority of the board designates. A majority of the board constitutes a quorum.

(3) The board *shall*:

(a) administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board;

(b) adopt a seal which shall be affixed to licenses issued;

(c) make a schedule of minimum educational requirements, which are without prejudice, partiality, or discrimination, as to the different schools of chiropractic;

(d) *adopt rules necessary for the implementation, administration, continuation, and enforcement of this chapter. The rules must address but are not limited to license applications, form and display of license, license examination format, criteria for and grading of examinations, and disciplinary standards for licensees;*

(e) *investigate complaints;*

(f) *make determinations of the qualifications of applicants under this chapter;*

(g) *administer the examination for licensure under this chapter;*

(h) *collect fees and charges prescribed in this chapter; and*

(i) *issue, suspend, or revoke licenses under the conditions prescribed in this chapter.*

(4) The department shall keep a record of the proceedings of the board which shall at all times be open to public inspection."

Section 2. Section 37-12-307, MCA, is amended to read:

**"37-12-307. Annual renewal of license — fees — continuing education — inactive status.** (1) A license expires on September 1 of each year and shall be renewed by the department on payment of a renewal fee, as set by the board, and the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended and successfully completed a postgraduate educational program for chiropractors approved by the board. All applicants for renewal who have not paid the renewal fee prior to October 1 of each year shall pay an additional late fee prescribed by the board.

(2) *The board shall by rule set standards for inactive status. It shall charge an annual fee for a license placed on inactive status.*

(3) *An inactive license may be reinstated to active status upon payment of a fee and completion of the continuing education requirements set by the board."*

Section 3. Section 37-12-309, MCA, is amended to read:

**"37-12-309. Municipal license fee prohibited.** No license fee or license tax may be imposed upon doctors of chiropractic as a condition to the practice of their profession by a municipality or any other political subdivision of the state, *including a local government with self-governing powers."*

Section 4. **Extension of authority.** Any existing authority of the board of chiropractors to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 1, 1987.

## CHAPTER NO. 322

[HB 430]

AN ACT CLARIFYING PENALTIES THAT MAY BE IMPOSED FOR DELIBERATE HOMICIDE; AND AMENDING SECTION 45-5-102, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-5-102, MCA, is amended to read:

**"45-5-102. Deliberate homicide.** (1) Except as provided in 45-5-103(1), criminal homicide constitutes deliberate homicide if:

(a) it is committed purposely or knowingly; or

(b) it is committed while the offender is engaged in or is an accomplice in the commission of, an attempt to commit, or flight after committing or



attempting to commit robbery, sexual intercourse without consent, arson, burglary, kidnapping, felonious escape, or any other felony which involves the use or threat of physical force or violence against any individual.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 46-18-301 through 46-18-310, *by life imprisonment*, or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-222."

Approved April 1, 1987.

## CHAPTER NO. 323

[HB 483]

AN ACT TO GENERALLY REVISE THE LAWS ON ANTIQUITIES; PROVIDING THAT A HISTORIC PRESERVATION OFFICER SHOULD IN SPECIFIED INSTANCES PROTECT FROM DISCLOSURE CERTAIN INFORMATION ON THE LOCATION OF HERITAGE PROPERTIES; MAKING THE PROVISIONS RELATING TO THE NOMINATION OF PROPERTY TO THE NATIONAL REGISTER OF HISTORIC PLACES SIMILAR TO FEDERAL PROVISIONS; AMENDING SECTIONS 22-3-421, 22-3-423, AND 22-3-431, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 22-3-421, MCA, is amended to read:

**"22-3-421. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Antiquities permit" means the permit granted for *excavation, removal, or restoration* of heritage properties or paleontological remains provided for in 22-3-432.

(2) "Heritage property" means any district, site, building, structure, or object located upon or beneath the earth or under water that is significant in American history, architecture, archaeology, or culture.

(3) "Historic preservation office" means the office within the Montana historical society provided for in 2-15-1512.

(4) "Historic preservation officer" means the officer provided for in 2-15-1512.

(5) "Paleontological remains" means fossilized plants and animals of a geological nature found upon or beneath the earth or under water which are rare and critical to scientific research.

(6) "Preservation review board" means the board provided for in 2-15-1512.

(7) "Register" means the National Register of Historic Places, the official list of the nation's heritage properties worthy of preservation because of national, state, or local significance.

(8) "Registered property" means any heritage property listed in the register.

(9) "State agency" means any executive agency of the state of Montana."

Section 2. Section 22-3-423, MCA, is amended to read:

**"22-3-423. Duties of historic preservation officer.** The historic preservation officer has the following duties and responsibilities:

(1) follow necessary procedures to qualify the state for money that is now or will be made available under any act of congress of the United States or otherwise for purposes of historic preservation;

(2) conduct an ongoing statewide survey to identify and document heritage properties and paleontological remains;

(3) maintain a state inventory file of heritage properties and paleontological remains and maintain a repository for all such inventory work done in the state;

(4) evaluate and formally nominate potential register properties according to the criteria established by the register;

(5) prepare and annually review the state preservation plan, register nominations, and historic preservation grant activity;

(6) maintain, publish, and disseminate information relating to heritage properties and paleontological remains in the state;

(7) cooperate with and assist local, state, and federal government agencies in comprehensive planning that allows for the preservation of heritage properties and paleontological remains;

(8) enter into cooperative agreements with the federal government, local governments, and other governmental entities or private landowners or the owners of objects to ensure preservation and protection of registered properties;

(9) adopt rules outlining procedures by which a state agency that has no approved rules under 22-3-424(1) shall systematically consider heritage properties or paleontological remains on lands owned by the state and avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter such properties;

(10) *protect from disclosure to the public any information relating to the location or character of heritage properties when disclosure would create a substantial risk of harm, theft, or destruction to such resources or to the area or place where the resources are located; and*

(11) any other necessary or appropriate activity permitted by law to carry out and enforce the provisions of this part."

Section 3. Section 22-3-431, MCA, is amended to read:

**"22-3-431. Registration of heritage properties.** (1) Any citizen of Montana may submit to the historic preservation officer for his consideration the necessary forms to nominate heritage properties to the register.

(2) (a) *For private properties, the historic preservation officer shall notify the owner of the property and allow him a reasonable period of time to concur or object to the nomination of the property for registration. If the owner of the property, or a majority of owners if the property has more than one owner, objects to registration, the historic preservation officer may not nominate the property unless the objection is withdrawn. If there are no such objections, the historic preservation officer may, upon approval by the preservation review board, nominate heritage properties to the register.*

(b) *The historic preservation officer and the preservation review board may review the nomination of property that was not nominated due to owner objection to determine whether the property is eligible for registration. If the historic preservation officer and the preservation review board determine that the property is eligible for registration, the preservation officer shall provide for the register information about the property for determination of registration eligibility.*

(c) *The historic preservation officer shall follow the procedures mandated by 36 CFR 60.6 relating to seeking property owner concurrence or objection to registration.*

(3) *For lands owned by the state, a county, or a municipality, the historic preservation officer may, upon approval by the preservation review board, nominate heritage properties to the register. The historic preservation officer shall notify the appropriate governmental agency and give public notice when any such governmental property is being considered for nomination. Unless agency or public objections are submitted in writing within 30 days after notification, the historic preservation officer shall complete the nominations. When an agency or any citizen of Montana submits written objections, the historic preservation officer shall consider the objections and may conduct a public hearing. If a hearing is held, it shall be commenced within 30 days after the final date for submission of written objections. Within 60 days after submission of the objections or after the public hearing, the historic preservation officer shall make a final decision on the proposed registration and prepare a statement responsive to the objections submitted."*

**Section 4. Extension of authority.** Any existing authority of the Montana historical society to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 5. Effective date.** This act is effective on passage and approval.

Approved April 1, 1987.

**CHAPTER NO. 324**

[HB 487]

AN ACT PROVIDING THAT ALL APPLICANTS FOR AN INSURANCE CONSULTANT'S LICENSE MUST TAKE AN EXAMINATION; AND AMENDING SECTION 33-17-505, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-17-505, MCA, is amended to read:

**"33-17-505. Qualification — fee.** (1) In order to determine the competency of every applicant for license as an insurance consultant, the commissioner shall require the applicant to pass an examination.

(2) The fee for taking such an examination shall be \$50. The commissioner shall deposit all fees collected in the general fund. The fee for taking a second or subsequent examination shall be no more than the cost of administering such examination, not to exceed \$50."

Approved April 1, 1987.

**CHAPTER NO. 325**

[HB 493]

AN ACT TO REQUIRE THE DEPARTMENT OF HIGHWAYS TO ERECT SIGNS IDENTIFYING MOUNTAIN RANGES ALONG PRIMARY AND INTERSTATE HIGHWAYS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Signs identifying mountain ranges.** Subject to the provisions of federal law, the department shall design and erect at relevant locations signs, clearly visible to traffic, identifying each prominent mountain range that is visible to an occupant of a vehicle traveling on a primary or interstate highway in Montana.

Section 2. **Extension of authority.** Any existing authority of the department of highways to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 60, chapter 2, part 2, and the provisions of Title 60, chapter 2, part 2, apply to section 1.

Approved April 1, 1987.

**CHAPTER NO. 326**

[HB 533]

AN ACT TO RESERVE 25 SPECIAL ANTELOPE LICENSES FOR NONAMBULATORY DISABLED PERSONS; AMENDING SECTION 87-2-706, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-2-706, MCA, is amended to read:

**"87-2-706. Drawing for special antelope licenses.** (1) In the event the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the department for the district, such licenses shall be awarded by a drawing. The department shall provide for those persons making valid application for special antelope licenses a method of selecting first, second, and third choice hunting districts for any drawing held pursuant to this section.

(2) *The department shall reserve for applicants who are permanently physically handicapped and nonambulatory, as determined by the department, up to 25 of the total special antelope licenses authorized for sale in the state, for use in the district designated by the commission. If the number of valid disabled applicants exceeds the number of licenses available, the department may hold a drawing whereby all applicants have an equal chance of being selected.*

(3) *The department may promulgate such rules and regulations as are necessary to implement this section."*

Section 2. **Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective March 1, 1988.

Approved April 1, 1987.

**CHAPTER NO. 327**

[HB 769]

AN ACT MAKING CERTIFICATES OF AUTHORITY FOR FARM MUTUAL INSURERS, BENEVOLENT ASSOCIATIONS, AND FRATERNAL BENEFIT SOCIETIES CONTINUOUS RATHER THAN ANNUALLY RENEWABLE; AND AMENDING SECTIONS 33-4-409, 33-4-505, 33-6-401, AND 33-7-501, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-4-409, MCA, is amended to read:

**"33-4-409. Fees and taxes.** Except for the fees for filing articles of incorporation as provided in 33-4-202 and 33-4-203, for issuance and *continuance* of certificate of authority as provided in 33-4-505, and for costs

of examination by the commissioner as limited in 33-4-315(2), domestic farm mutual insurers shall not be subject to any other or additional fees or taxes of any kind except for the usual ad valorem taxes upon real estate and tangible personal property of the insurer."

Section 2. Section 33-4-505, MCA, is amended to read:

**"33-4-505. Certificate of authority required — issuance — continuation — fee.** (1) A farm mutual insurer *may not* insure any risk in this state unless it then holds a subsisting certificate of authority issued to it by the commissioner.

(2) Upon application therefor the commissioner shall issue such a certificate of authority to every insurer qualified therefor under this chapter.

(3) Every such certificate of authority *continues in force as long as the farm mutual insurer is entitled thereto under this chapter and until suspended, revoked or otherwise terminated; subject, however, to continuance of the certificate by the farm mutual insurer each year by payment before May 15 of the continuation fee of \$10 if a county mutual insurer or \$25 if a state mutual insurer, to be deposited by the commissioner with the state treasurer to the credit of the state general fund.*

(4) *If the farm mutual insurer does not continue its certificate of authority in accordance with subsection (3), its certificate of authority expires at midnight on May 31 next following its failure to continue it in force. The commissioner shall promptly notify a farm mutual insurer that has not continued its certificate of authority of the impending expiration of its certificate of authority.*

(5) A certificate of authority is subject to suspension or revocation by the commissioner for violation of or noncompliance with any provision of this chapter or referred to herein.

(6) *The commissioner may in his discretion reinstate a certificate of authority that a farm mutual insurer has inadvertently permitted to expire, after the farm mutual insurer has fully cured all failures that resulted in the expiration and upon payment by the farm mutual insurer of the fee for reinstatement as provided in 33-2-708 in addition to the current continuation fee as provided in subsection (3). If a certificate is not reinstated, the commissioner may grant a farm mutual insurer another certificate of authority only after the farm mutual insurer files an application for a certificate of authority and meets all other requirements for an original certificate of authority in this state.*

(7) *The commissioner may amend a certificate of authority at any time to accord with changes in the farm mutual insurer's charter of insuring powers."*

Section 3. Section 33-6-401, MCA, is amended to read:

**"33-6-401. Continuous license — fee — evidence.** (1) A benevolent association *may not* insure a risk in this state unless it then holds a subsisting certificate of authority issued to it by the commissioner.

(2) *A benevolent association's certificate of authority continues in force as long as the benevolent association is entitled to it under this chapter and*

until suspended, revoked, or otherwise terminated; subject, however, to continuance of the certificate by the benevolent association each year by payment before May 15 of the continuation fee of \$25, to be deposited by the commissioner with the state treasurer to the credit of the state general fund.

(3) If a benevolent association does not continue its certificate of authority in accordance with subsection (2), its certificate of authority expires at midnight on May 31 next following its failure to continue it in force. The commissioner shall promptly notify a benevolent association that has not continued its certificate of authority of the impending expiration of its certificate of authority.

(4) The commissioner may in his discretion reinstate a certificate of authority that a benevolent association has inadvertently permitted to expire, after the benevolent association has fully cured all failures that resulted in the expiration and upon payment by the benevolent association of a \$25 fee for reinstatement in addition to the current continuation fee as provided in subsection (2). If a certificate is not reinstated, the commissioner may grant a benevolent association another certificate of authority only after the benevolent association files an application for a certificate of authority and meets all other requirements for an original certificate of authority in this state.

(5) The commissioner may amend a certificate of authority at any time to accord with changes in the benevolent association's charter of insuring powers.

(6) A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a benevolent association within the meaning of this chapter."

Section 4. Section 33-7-501, MCA, is amended to read:

**"33-7-501. Continuous license — fee — evidence.** (1) A fraternal benefit society may not insure a risk in this state unless it then holds a subsisting certificate of authority issued to it by the commissioner.

(2) A fraternal benefit society's certificate of authority continues in force as long as the fraternal benefit society is entitled to it under this chapter and until suspended, revoked, or otherwise terminated; subject, however, to continuance of the certificate by the fraternal benefit society each year by payment before May 15 of the continuation fee of \$10 to be deposited by the commissioner with the state treasurer to the credit of the state general fund.

(3) If a fraternal benefit society does not continue its certificate of authority in accordance with subsection (2), its certificate of authority expires at midnight on May 31 next following its failure to continue it in force. The commissioner shall promptly notify a fraternal benefit society that has not continued its certificate of the impending expiration of its certificate of authority.

(4) The commissioner may in his discretion reinstate a certificate of authority that the fraternal benefit society has inadvertently permitted to

*expire, after the fraternal benefit society has fully cured all failures that resulted in the expiration and upon payment by the fraternal benefit society of a \$25 fee for reinstatement in addition to the current continuation fee as provided in subsection (2). If a certificate is not reinstated, the commissioner may grant a fraternal benefit society another certificate of authority only after the fraternal benefit society files an application for a certificate of authority and meets all other requirements for an original certificate of authority in this state.*

*(5) The commissioner may amend a certificate of authority at any time to accord with changes in the fraternal benefit society's charter of insuring powers.*

*(6) A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter."*

**Section 5. Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 1, 1987.

## CHAPTER NO. 328

[SB 136]

**AN ACT PROVIDING THAT PUBLIC EMPLOYEES WHOSE HOURS ARE TEMPORARILY REDUCED AS A RESULT OF A BUDGET DEFICIT MUST RECEIVE VACATION, SICK LEAVE, AND RETIREMENT CREDITS AS IF THE REDUCTION HAD NOT OCCURRED; AMENDING SECTIONS 2-18-611 AND 2-18-618, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE, AN IMMEDIATE EFFECTIVE DATE, AND A TERMINATION DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-18-611, MCA, is amended to read:

**"2-18-611. Annual vacation leave.** (1) Each permanent full-time employee shall earn annual vacation leave credits from the first day of employment. Vacation leave credits earned shall be credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of 6 calendar months.

(2) Seasonal employees shall earn vacation credits. However, such persons must be employed 6 qualifying months before they may use the vacation credits. In order to qualify, such employees must immediately report back for work when operations resume in order to avoid a break in service.

(3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked the qualifying period.



(4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

(5) Temporary employees do not earn vacation leave credits, except that a temporary employee who is subsequently hired into a permanent position within the same jurisdiction without a break in service and temporary employees who are employed continuously longer than 6 months may count as earned leave credits for the immediate term of temporary employment.

(6) *An employee whose hours have been reduced temporarily from 40 hours a week to less than 40 hours a week as a result of a budget deficit accrues annual vacation leave credits as if he were a full-time employee. A reduction in hours resulting from a budget deficit is temporary if it ends on or before the last day of the current fiscal year."*

Section 2. Section 2-18-618, MCA, is amended to read:

**"2-18-618. Sick leave.** (1) Each permanent full-time employee shall earn sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) shall equal 1 year. Sick leave credits shall be credited at the end of each pay period. Sick leave credits shall be earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) An employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave shall be computed on the basis of the employee's salary or wage at the time he terminates his employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment therefor shall be the responsibility of the agency wherein the sick leave accrues. However, no employee forfeits any sick leave rights or benefits he had accrued prior to July 1, 1971. However, where an employee transfers between agencies within the same jurisdiction, he shall not be entitled to a lump-sum payment. In such a transfer the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(6) An employee who receives a lump-sum payment pursuant to this section and who is again employed by any agency shall not be credited with any sick leave for which the employee has previously been compensated.

(7) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(8) An employee may contribute any portion of his accumulated sick leave to a nonrefundable sick leave fund for state employees and thereby become eligible to draw upon the fund if an extensive illness or accident

exhausts his accumulated sick leave. The department of administration shall, in consultation with the sick leave advisory council provided for in 2-15-216, administer the sick leave fund and adopt rules to implement this subsection.

*(9) An employee whose hours have been reduced temporarily from 40 hours a week to less than 40 hours a week as a result of a budget deficit shall accrue annual sick leave credits as if he were a full-time employee. A reduction in hours resulting from a budget deficit is temporary if it ends on or before the last day of the current fiscal year. (Subsection (8) terminates July 1, 1989—sec. 3, Ch. 707, L. 1985.)"*

**Section 3. Rules on reduction in hours resulting from budget deficit.** (1) Notwithstanding the provisions of this chapter, the board shall adopt rules providing that a member whose hours have been temporarily reduced as a result of a budget deficit receives the same retirement allowance as if the reduction had not occurred.

(2) Rules adopted under this section apply retroactively to members whose hours were reduced from 40 hours a week to less than 40 hours a week on or after July 1, 1986, but whose hours were restored to 40 hours a week before July 1, 1989.

**Section 4. Extension of authority.** Any existing authority of the department of administration and the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 5. Codification instruction.** Section 3 is intended to be codified as an integral part of Title 19, chapters 3, 6 through 9, and 13, and the provisions of Title 19, chapters 3, 6 through 9, and 13, apply to section 3.

**Section 6. Applicability.** This act applies retroactively, within the meaning of 1-2-109, to employees as defined in 2-18-601 whose hours were reduced from 40 hours a week to less than 40 hours a week as a result of a budget deficit on or after January 1, 1986, and who were employees on the effective date of this act.

**Section 7. Effective date — termination.** This act is effective on passage and approval and terminates June 30, 1989.

Approved April 2, 1987.

## CHAPTER NO. 329

[SB 176]

AN ACT INCLUDING NURSE SPECIALIST SERVICES IN THE DEFINITION OF MEDICAL ASSISTANCE ESTABLISHED FOR MEDICAID; REQUIRING HEALTH SERVICE CORPORATIONS TO PROVIDE COVERAGE FOR SERVICES PERFORMED BY A NURSE SPECIALIST; AND AMENDING SECTION 53-6-101, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-6-101, MCA, is amended to read:

**"53-6-101. Definition of medical assistance.** (1) The definition of medical assistance shall include:

- (a) inpatient hospital services;
- (b) outpatient hospital services;
- (c) other laboratory and x-ray services;
- (d) skilled nursing home services;
- (e) physicians' services, whether furnished in the office, the patient's home, a hospital, a skilled nursing home, or elsewhere; and

*(f) services provided by nurse specialists, as specifically listed in 37-8-202(5), within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider.*

(2) It may also include, although not necessarily limited to, the following:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

- (b) home health care services;
- (c) private-duty nursing services;
- (d) dental services;
- (e) physical therapy and other related services;
- (f) clinic services;
- (g) services provided by social workers licensed under Title 37, chapter 22;
- (h) prescribed drugs, dentures, and prosthetic devices;
- (i) eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;
- (j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;
- (k) any additional medical service or aid allowable under or provided by the federal Social Security Act."

**Section 2. Coverage required for services provided by nurse specialists.** A health service corporation shall provide, in group and individual insurance contracts, coverage for health services provided by a nurse specialist as specifically listed in 37-8-202(5), if health care services that nurse specialists are licensed to perform are covered by the contract.

**Section 3. Codification instruction.** Section 2 is intended to be codified as an integral part of Title 33, chapter 30, and the provisions of Title 33, chapter 30, apply to section 2.

**Section 4. Extension of authority.** Any existing authority of the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 2, 1987.

## CHAPTER NO. 330

[HB 198]

AN ACT TO REQUIRE A TEACHER OR SPECIALIST EMPLOYED BY A SPECIAL EDUCATION COOPERATIVE TO REGISTER HIS TEACHING CERTIFICATE; AND AMENDING SECTION 20-4-202, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-4-202, MCA, is amended to read:

**"20-4-202. Teacher and specialist certification registration.** (1) Any person employed as a teacher, specialist, principal, or district superintendent shall register his certificate or the district shall register its emergency authorization of employment for a teacher with the county superintendent of the county wherein he is employed in order to validate his employment status and permit payment under his employment contract. If a teacher or specialist does not register his certificate with the county superintendent within 60 calendar days after he begins to perform his services, he shall not be eligible to receive any further compensation under his contract of employment until he has registered his certificate. After the schools of a district have been open for 60 calendar days in the current school fiscal year, the county superintendent shall notify each district of the county of each teacher or specialist who has registered his current valid certificate, and the district shall not pay any teacher who has not registered his certificate until the county superintendent does notify the district of such registration.

(2) A teacher or specialist employed by a joint district shall register his certificate with the county superintendent of the county in which he is working. *A teacher or specialist employed by a special education cooperative shall register his certificate with the county superintendent of the county in which the special education cooperative is based."*

Approved April 3, 1987.

**CHAPTER NO. 331**

[HB 231]

AN ACT INCREASING THE AMOUNT OF TAX CREDIT A UTILITY MAY CLAIM FOR LOANS TO CONSUMERS FOR ENERGY CONSERVATION MEASURES; AND AMENDING SECTION 15-32-107, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-32-107, MCA, is amended to read:

**"15-32-107. Loans by utilities and financial institutions — tax credit for interest differential.** (1) A public utility providing electricity or natural gas may install or pay for the installation of energy conservation materials or recognized nonfossil forms of energy generation systems in a dwelling. The utility may agree with the occupant of the dwelling that the occupant shall reimburse the utility for its expenditure in periodic installment payments added to the occupant's regular bill for electricity or natural gas. The utility may charge interest not exceeding the equivalent of 7% per year on the declining balance of the sum advanced for the installation of energy conservation materials and recognized nonfossil forms of energy generation systems.

(2) A financial institution, as defined in 32-6-103, may offer and make loans at an interest rate not less than 2 percentage points below the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district.

(3) Except as provided in subsection (6), a public utility or a financial institution lending money under this section may compute the difference between interest it actually receives on such transactions and the interest which would have been received at the prevailing average interest rate for home improvement loans, as prescribed in rules made by the public service commission. The utility may apply the difference so computed as a credit against its tax liability for the electrical energy producer's license tax under 15-51-101 or for the corporation license tax under chapter 31, part 1. The public service commission shall regulate rates in such a manner that a utility making loans under this section may not make a profit as the result of this section. The financial institution may apply the difference so computed as a credit against its tax liability for the corporation license tax under chapter 31, part 1.

(4) A utility may not claim a tax credit under this section exceeding \$750,000 in any tax year. A financial institution may not claim a tax credit under this section exceeding \$2,000 in any tax year.

(5) The public service commission may make rules to implement this section as it shall apply to public utilities only.

(6) A public utility whose purchases of or investments in conservation are placed in the rate base as provided in Title 69, chapter 3, part 7, may not receive a tax credit under subsection (3)."

Section 2. **Extension of authority.** Any existing authority of the department of revenue or the public service commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 3, 1987.

## CHAPTER NO. 332

[HB 358]

AN ACT TO CLARIFY EXISTING LAW REGARDING STATE-OWNED WATER PROJECTS TO SPECIFY THAT ADMINISTRATIVE COSTS ARE DISTINCT FROM OPERATION AND MAINTENANCE COSTS, THAT PROJECT WATER USERS ARE ONLY BILLED FOR REIMBURSEMENT OF OPERATION AND MAINTENANCE COSTS, AND THAT THE DEPARTMENT MAY UTILIZE STATE GRANTS AS REIMBURSEMENT FOR PUBLIC BENEFITS TO BE DERIVED FROM THE PROJECT; TO ALLOW THESE GRANTS TO BE FACTORED INTO THE REQUIRED ESTIMATE OF PROJECT COSTS MADE PRIOR TO CONSTRUCTION; TO ALLOW THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONSIDER WATER USERS' ABILITY TO REPAY PROJECT CONSTRUCTION AND REHABILITATION COSTS; AND AMENDING SECTIONS 85-1-102, 85-1-206, AND 85-1-207, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-1-102, MCA, is amended to read:

**"85-1-102. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

- (1) *"Administrative costs" means costs incurred by the department:*
  - (a) *for the purpose of protecting the department's properties and assets;*
  - (b) *to oversee the operation and maintenance of the projects;*
  - (c) *to administer contracts and receivables;*
  - (d) *to maintain project financial records;*
  - (e) *to provide technical assistance for operating, maintaining, and rehabilitating the projects; and*
  - (f) *to assist in securing funds for operating, maintaining, and rehabilitating the projects.*
- (2) **"Board"** means the board of natural resources and conservation provided for in 2-15-3302.
- (3) **"Cost of operation and maintenance"** means the costs of operation, maintenance, and routine repairs and the costs incurred by the water users'

*association or the department in the distribution of water from the project, excluding the department's administrative costs.*

(4) "Cost of works" means the cost of construction, *including any rehabilitation or alteration of the project*; the cost of all lands, property, rights, easements, and franchises acquired which are deemed necessary for the construction; the cost of all water rights acquired or exercised by the department in connection with those works; the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding 3 years after the completion of construction; cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project; administrative expense; and such other expenses as may be necessary or incident to the financing herein authorized and the construction of the works and the placing of the same in operation.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations having any title or interest in any properties, rights, easements, or franchises to be acquired.

(7) "Private person" means any individual, association, partnership, corporation, or other nongovernmental entity not eligible for loans and grants under 85-1-605 but does not include a governmental entity such as an agency, local government, or political subdivision of the state, the United States, or any agency thereof, or any other governmental entity.

(8) "Project" means any one of the works herein defined or any combination of such works which are physically connected or jointly managed and operated as a single unit.

(9) "Public benefits" means those benefits that accrue from a water development project or activity to persons other than the private grant or loan recipient and that enhance the common well-being of the people of Montana. Public benefits include but are not limited to recreation, flood control, erosion reduction, agricultural flood damage reduction, water quality enhancement, sediment reduction, access to recreation opportunities, and wildlife conservation.

(10) "Water development account" means a separate account created by 85-1-617 within the state special revenue fund of the state treasury to finance loans under the provisions of the water development program to agencies, local governments, and political subdivisions of the state, private persons, and any other eligible recipients from proceeds of bonds issued under part 6 of this chapter.

(11) "Water development activity" means an action or program to protect and enhance water-based recreation or to protect or enhance water resources for the benefit of agriculture, flood control, or other uses, including but not limited to such purposes as the promotion of efficient use of water in agriculture, the improvement of water quality in agriculture and

other nonpoint source uses, the protection and enhancement of water-based recreation, the control of erosion of streambanks and control of sedimentation of rivers and streams, and providing greater local and state control of Montana water resources. Water development activities may provide any combination of marketable and nonmarketable benefits.

(12) "Water development state special revenue account" means a separate account created by 85-1-604 within the state special revenue fund of the state treasury for the purposes of the water development program as set forth in 85-1-604.

(13) "Water development project" means a project as defined in subsection (8), except that water development projects are not limited to projects owned or operated by the department.

(14) "Water development debt service fund" means a separate fund created by 85-1-603 within the debt service fund type of the state treasury to be used as provided in 85-1-619.

(15) "Works" means all property, rights, easements, and franchises relating thereto and deemed necessary or convenient for their operation and all water rights acquired or exercised by the department in connection with those works and includes all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines, and waterworks systems and includes all such works for the conservation, development, storage, distribution, and utilization of water, including without limiting the generality of the foregoing, works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, supplying of water for public, domestic, industrial, or other uses and for fire protection."

Section 2. Section 85-1-206, MCA, is amended to read:

**"85-1-206. Construction of works by department.** (1) Subject to the approval of the board, the department may construct works, the cost of the construction to be paid wholly by means of or with the proceeds of revenue bonds hereinafter authorized or of a grant or loan to aid in financing the construction from the United States or any instrumentality or agency thereof and other funds provided for the construction. Before constructing a project, the department shall estimate the cost of the project, the cost of *operation and maintenance*, and the revenues to be derived therefrom. A project may not be constructed unless, according to the estimates, the revenues to be derived will be sufficient to pay the cost of *operation and maintenance*, and the principal and interest of *loans or revenue bonds* which may be issued for the cost of the project; however, in connection with the issuance of revenue bonds, the failure of the department to make the estimates required by this section or to make them in proper form does not affect the validity or enforceability of those bonds or of the trust indenture, resolution, or other security therefor.

(2) Should the bid of the lowest responsible bidder on any capital improvement associated with public works exceed the department estimates



of the cost of the improvements by more than 5%, the department shall obtain approval from the water user association, whenever an association is involved, before the bid is accepted; however, capital improvements of an emergency nature necessary to protect life or property or to supply immediate needs for water do not require such approval.

(3) A purpose of this chapter is to meet, so far as possible, a statewide need for the conservation and use of water through the construction and operation of projects designed for those purposes. The projects to be finally constructed shall qualify as parts of the statewide program and shall be approved by the board upon the showing of their prospective ability to meet, through the sale of water or other services, the cost of operation and maintenance and the *principal and interest of loans and revenue bonds issued to finance the construction*. The failure of the board to determine the prospective ability of a project does not affect the validity or enforceability of the bonds or of the trust indenture, resolution, or other security therefor."

Section 3. Section 85-1-207, MCA, is amended to read:

**"85-1-207. Determination of costs of works.** The department, in determining *how the cost of works must be met, shall consider the value of public benefits and the repayment capacity of the water users. A state grant may be provided by the department to compensate for the value of public benefits, to minimize the liabilities of the state of Montana, and to pay the difference between the water users' repayment capacity and the cost of works.*"

Section 4. **Extension of authority.** Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 3, 1987.

## CHAPTER NO. 333

[HB 402]

AN ACT CLARIFYING THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MAY BY RULE ESTABLISH RECORD RETENTION SCHEDULES FOR MENTAL HEALTH FACILITIES; AND AMENDING SECTION 53-21-165; MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-21-165, MCA, is amended to read:

**"53-21-165. Records to be maintained.** Complete patient records shall be kept by the mental health facility *for the length of time required by rules established by the department of health and environmental sciences. All records kept by the mental health facility shall be available to any person authorized by the patient in writing to receive these records and*

upon approval of the authorization by the board. The records shall also be made available to any attorney charged with representing the patient or any professional person charged with evaluating or treating the patient. These records shall include:

- (1) identification data, including the patient's legal status;
- (2) a patient history, including but not limited to:
  - (a) family data, educational background, and employment record;
  - (b) prior medical history, both physical and mental, including prior hospitalization;
- (3) the chief complaints of the patient and the chief complaints of others regarding the patient;
- (4) an evaluation which notes the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functioning, memory functioning, orientation, and an inventory of the patient's assets in descriptive rather than interpretative fashion;
- (5) a summary of each physical examination which describes the results of the examination;
- (6) a copy of the individual treatment plan and any modifications thereto;
- (7) a detailed summary of the findings made by the reviewing professional person after each periodic review of the treatment plan which analyzes the successes and failures of the treatment program and directs whatever modifications are necessary;
- (8) a copy of the individualized after-care plan and any modifications thereto and a summary of the steps that have been taken to implement that plan;
- (9) a medication history and status which includes the signed orders of the prescribing physician. The staff person administering the medication shall indicate by signature that orders have been carried out.
- (10) a detailed summary of each significant contact by a professional person with the patient;
- (11) a detailed summary, on at least a weekly basis, by a professional person involved in the patient's treatment, of the patient's progress along the treatment plan;
- (12) a weekly summary of the extent and nature of the patient's work activities and the effect of such activity upon the patient's progress along the treatment plan;
- (13) a signed order by a professional person for any restrictions on visitations and communications;
- (14) a signed order by a professional person for any physical restraints and isolation;

(15) a detailed summary of any extraordinary incident in the facility involving the patient, to be entered by a staff member noting that he has personal knowledge of the incident or specifying his other source of information and initialed within 24 hours by a professional person; and

(16) a summary by the professional person in charge of the facility or his appointed agent of his findings after the 30-day review provided for in 53-21-163."

Section 2. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 3, 1987.

## CHAPTER NO. 334

[HB 424]

### AN ACT TO REVISE THE PENALTY FOR THE UNLAWFUL TAKING OR POSSESSION OF A FUR-BEARING ANIMAL; AND AMENDING SECTION 87-1-102, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-1-102, MCA, is amended to read:

**"87-1-102. Penalties.** (1) A person violating any provision of this title, any other state law pertaining to fish and game, or the orders or rules of the commission or department is, unless a different punishment is expressly provided by law for the violation, guilty of a misdemeanor and shall be fined not less than \$50 or more than \$500, imprisoned in the county jail for not more than 6 months, or both. In addition, the person shall be subject to forfeiture of his license and privilege to hunt, fish, or trap within this state for a period of not less than 24 months from the date of conviction.

(2) (a) A person convicted of unlawfully taking, killing, possessing, transporting, or wasting of a bighorn sheep, moose, wild bison, caribou, mountain goat, or grizzly bear or any part of these animals shall be fined not less than \$500 or more than \$1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 30 months from the date of conviction.

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, mountain lion, or black bear or any part of these animals or wasting a deer, antelope, or elk shall be fined not less than \$300 or more than \$1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege

to hunt, fish, or trap in this state for not less than 24 months from the date of conviction.

(c) A person convicted of unlawfully attempting to trap, take, shoot, or kill a game animal shall be fined not less than \$200 or more than \$600, imprisoned in the county jail for not more than 60 days, or both.

(d) A person convicted of unlawfully taking, killing, possessing, transporting, shipping, labeling, packaging, or wasting or unlawfully attempting to take, kill, or possess any game bird, wild turkey, or fish or any part of any such bird or fish or of failure to tag a game animal or game bird as prescribed by law shall be fined not less than \$50 or more than \$200 or imprisoned in the county jail for not more than 30 days, or both.

(e) *A person convicted of purposely or knowingly taking, killing, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined not less than \$50 or more than \$1,000 or imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current license and the privilege to hunt, fish, or trap for not less than 24 months from the date of conviction and any pelts possessed unlawfully must be confiscated.*

(f) A person convicted of hunting, fishing, or trapping while his license is forfeited or his privilege denied shall be imprisoned in the county jail for not less than 5 days or more than 6 months. In addition, that person may be fined not less than \$500 or more than \$1,000.

(3) Notwithstanding the provision of subsection (1), the penalties provided by this section shall be in addition to any penalties provided in parts 1 and 2 of chapter 4."

Approved April 3, 1987.

## CHAPTER NO. 335

[HB 449]

AN ACT ALLOWING INVESTMENT OF PORTIONS OF RETIREMENT FUNDS IN VENTURE CAPITAL; DEFINING VENTURE CAPITAL; AND AMENDING SECTION 17-6-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-6-201, MCA, is amended to read:

**"17-6-201. Unified investment program — general provisions.**

(1) The unified investment program directed by Article VIII, section 13, of the 1972 Montana constitution to be provided for public funds shall be administered by the board of investments and the Montana economic development board in accordance with Article VIII, section 13, of the Montana constitution and the prudent expert principle which requires any investment manager to:

(a) discharge his duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so; and

(c) discharge his duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) Retirement funds may be invested in common stocks of any corporation provided that no investment may be made at any time which would cause the book value of such investments in any retirement fund to exceed 50% of the book value of such fund or would cause the stock of one corporation to exceed 2% of the book value of such retirement fund.

(3) Nothing contained in this section prevents the investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

*(a) The board of investments is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies which demonstrate an interest in making investments in Montana.*

(b) In discharging its duties, the board of investments and the Montana economic development board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(4) The board of investments has the sole authority to invest state funds other than the Montana in-state investment fund. No other agency may invest such state funds. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board of investments shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to such fund and a record of the participation of each treasury fund account therein.

(6) The board of investments may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received therefor;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(7) The cost of administering and accounting for each investment fund shall be deducted from the income therefrom, except that such costs of the nonexpendable trust funds shall be paid from income otherwise receivable from the pooled investment fund, and the amounts required for this purpose shall be appropriated by the legislature from the respective investment funds."

**Section 2. Extension of authority.** Any existing authority of the board of investments and the Montana economic development board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 3, 1987.

## CHAPTER NO. 336

[HB 467]

AN ACT TO AMEND THE MONTANA HAZARDOUS WASTE ACT TO INCORPORATE, WHERE EXPLICITLY NEEDED, CHANGES MADE IN 1984 TO THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT OF 1976; AND AMENDING SECTIONS 75-10-405 AND 75-10-406, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 75-10-405, MCA, is amended to read:

**"75-10-405. Administrative rules.** (1) The department may adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

(a) identification and classification of those hazardous wastes subject to regulation and those that are not;

(b) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(d) requirements for the issuance, denial, renewal, modification, and revocation of permits for hazardous waste management facilities;

(e) requirements for corrective action within and outside of facility boundaries and for financial assurance of that corrective action;

(f) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(g) requirements for training of facility personnel and for financial assurance of facility owners and operators *and for liability of guarantors providing financial assurance*;

(h) requirements for registration of generators and transporters;

(i) a schedule of fees for hazardous waste management facility permits and registration of hazardous waste generators;

(j) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining any state hazardous waste management facility authorized by 75-10-412;

(k) *requirements for availability to the public of information obtained by the department regarding facilities and sites used for the treatment, storage, and disposal of hazardous wastes; and*

(l) other rules which are necessary to obtain and maintain authorization under the federal program.

(2) The department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended, except that the department may:

(a) require the registration of transporters not otherwise required to register with the state of Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(b) require generators and facilities to report on an annual rather than on a biennial basis; and

(c) adopt requirements for the prevention of leakage from underground storage tanks, including:

(i) reporting by owners and operators;

(ii) financial responsibility;

(iii) release detection, prevention, and correction; and

(iv) standards for design, construction, and installation."

Section 2. Section 75-10-406, MCA, is amended to read:

**"75-10-406. Permits.** (1) No person may construct or operate a hazardous waste management facility without first obtaining a permit from the department for such facility, except that the department may, by rule, prescribe conditions under which specified hazardous wastes or specified quantities of hazardous waste may be disposed of at solid waste disposal sites licensed by the department pursuant to Title 75, chapter 10, part 2.

(2) Any person who wishes to construct or operate a hazardous waste management facility shall apply to the department for a permit on forms

provided by the department. An application must contain, at a minimum, the name and business address of the applicant, the location of the proposed facility, a plan of operation and maintenance, and a description of pertinent site characteristics.

(3) A permit may be issued for a period specified by the department and shall be subject to renewal by the department upon a showing that the facility has been operated in accordance with the terms of the permit and the rules applicable to such facility and in compliance with the provisions of this part and any applicable order of the board or department.

(4) Any permit issued is subject to revocation by the department for failure of the permittee to comply with the terms and conditions of the permit, the department rules, an order of the board or the department, or the provisions of this part. Any person who is denied a permit by the department or who has such permit revoked or modified shall be afforded an opportunity for a hearing before the board upon written application made within 30 days after service of notice of such denial, revocation, or modification by mail. Service by mail is complete upon mailing.

(5) Notwithstanding any other provisions of this part, the department may, in the event of an imminent and substantial danger to public health or the environment, issue a temporary emergency permit to any person for treatment, storage, or disposal of hazardous waste or to any facility to handle hazardous waste not covered by the existing facility permit. Such emergency permits may be oral or written, may not exceed 90 days in duration, and may be terminated by the department at any time prior to 90 days.

(6) The department may, as it considers appropriate, grant permits by rule to classes or categories of hazardous waste management facilities where the facility owner or operator is already licensed or permitted by the department pursuant to other state environmental statutes or where an interim period exists until final administrative disposition of a permit application is made.

*(7) In permits issued under this section, the department shall require corrective action for all releases of hazardous waste or constituents at a treatment, storage, or disposal facility. A permit must contain a schedule of compliance for corrective action and requirements for assurance of financial responsibility for completion of the corrective action.*

*(8) Each permit issued by the department to a person owning or operating a facility must contain the terms and conditions the department considers necessary to protect human health and the environment."*

**Section 3. Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 3, 1987.



**CHAPTER NO. 337**

[HB 537]

AN ACT REMOVING THE REQUIREMENT THAT AN ANNUAL STATEMENT AND REPORT OF EXPENDITURES BE FILED WITH THE COUNTY CLERK AND RECORDER BY FARM MUTUAL INSURERS AND BENEVOLENT ASSOCIATIONS; AND AMENDING SECTIONS 33-4-313 AND 33-6-304, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-4-313, MCA, is amended to read:

**"33-4-313. Annual statement — report — filing.** (1) The president and secretary of every insurer, on or before March 1 each year, shall prepare, affirm under oath, affix the corporate seal thereto, and file with the commissioner, on forms as prescribed and furnished by him, an annual statement for the preceding calendar year showing the condition of such insurer as of December 31 of such year and exhibiting the following facts:

- (a) the names of the president and secretary;
- (b) the date of the annual meeting;
- (c) the amount of insurance in force;
- (d) the number of members;
- (e) the number of assessments made during the year;
- (f) the amount paid in losses during the year;
- (g) the amount of the losses claimed and not paid, with the reason for nonpayment;
- (h) the number of members withdrawn, suspended, and expelled during the year;
- (i) the number of new members admitted during the year;
- (j) the expenses during the year;
- (k) the amount of money on hand;
- (l) the amount and character of the insurer's assets;
- (m) the amount of the insurer's liabilities, including any reserves required to be established under this chapter;
- (n) such other information concerning the insurer's affairs as the commissioner may reasonably require.

(2) A report of an insurer's expenditures for educational purposes, if any, for the preceding year must be filed with the commissioner at the same time and in conjunction with the annual report of such insurer, as required under 33-4-404."

Section 2. Section 33-6-304, MCA, is amended to read:

**"33-6-304. Annual statement.** (1) In addition to compliance with 33-2-701, the annual statement of a benevolent association shall exhibit the following items and facts:

- (a) the name and business address of the association;
  - (b) the names and addresses of the officers of the association;
  - (c) the number of membership contracts in force at the commencement of the year and the number of memberships in good standing at the close of the year for which the statement is made. This provision is also applicable to each subgroup or class, if any, of the association.
  - (d) the number of death losses claimed; the number and total amount of death losses paid; the number of death claims compromised, denied, or resisted, and reasons therefor;
  - (e) the number of assessments in the association and in each subgroup or class, if any; the amount collected in each such assessment; income to the benevolent association from all other sources; and all other fees, assessments, donations, of any kind or nature, except new membership fees from new members;
  - (f) the expenses actually incurred during the year; debts unpaid at the commencement of the year; debts and obligations of any kind (not including death losses actually paid) incurred during the year; debts unpaid at the close of the year; a breakdown of expenses to show the amount paid in salaries or commissions, office expense, and other expenses, in those cases where members of the benevolent association are assessed for operating expenses of such association;
  - (g) whether the association has complied with all of the provisions of 33-6-302 and 33-6-405;
  - (h) the information required by 33-6-302.
- (2) Two officers of the association shall attest under oath to the truth of the facts contained in the annual statement. At least one of such officers must have charge of making up the statement."

Approved April 3, 1987.

## CHAPTER NO. 338

[HB 576]

AN ACT TO DELETE THE WORD "ADDITIONAL" FROM THE BALLOT FORM FOR LOCAL SCHOOL LEVY ELECTIONS; AND AMENDING SECTION 20-9-353, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-9-353, MCA, is amended to read:

**"20-9-353. Additional levy for general fund — election for authorization to impose.** (1) The trustees of any district may propose to

adopt a general fund budget in excess of the general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321 for any of the following purposes:

- (a) building, altering, repairing, or enlarging any schoolhouse of the district;
- (b) furnishing additional school facilities for the district;
- (c) acquisition of land for the district;
- (d) proper maintenance and operation of the school programs of the district.

(2) When the trustees of any district determine that an additional amount of financing is required for the general fund budget that is in excess of the statutory schedule amount, the trustees shall submit the proposition of an additional levy to raise such excess amount of general fund financing to the electors who are qualified under 20-20-301 to vote upon such proposition except that no election shall be required to permit the school trustees to use any funds available to finance the additional amount other than those funds to be raised by the additional levy. Such special election shall be called and conducted in the manner prescribed by this title for school elections. The ballot for such election shall state only the amount of money to be raised by additional property taxation, the approximate number of mills required to raise such money, and the purpose for which such money will be expended, and it shall be in the following format:

#### PROPOSITION

Shall a levy be made in addition to the levies authorized by law in such number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional tax levy is made)?

- ☐ FOR the levy.
- ☐ AGAINST the levy.

(3) If the election on any additional levy for the general fund is approved by a majority vote of those electors voting at such election, the proposition shall carry and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The trustees shall certify the additional levy amount authorized by such a special election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy such number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141, as are required to raise the amount of such additional levy.

(4) Authorization to levy an additional tax under the provisions of this section shall be effective for only 1 school fiscal year and shall be authorized by a special election conducted before August 1 of the school fiscal year for which it is effective."

Approved April 3, 1987.

**CHAPTER NO. 339**

[HB 651]

AN ACT PROVIDING THAT A LAND SET-ASIDE UNDER A STATE OR FEDERAL CONSERVATION PROGRAM AND THE RESULTING REDUCTION IN USE OF A WATER APPROPRIATION RIGHT DOES NOT COMPRISE AN INTENT TO ABANDON PART OR ALL OF THE APPROPRIATION RIGHT AND MAY NOT BE USED TO ESTABLISH A PRIMA FACIE PRESUMPTION OF ABANDONMENT; AMENDING SECTION 85-2-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-2-404, MCA, is amended to read:

**"85-2-404. Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be deemed considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right or ceases using his appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for his use, there shall be a prima facie presumption that the appropriator has abandoned his right in whole or for the part not used.

(3) *If an appropriator ceases to use all or part of his appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:*

(a) *the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and*

(b) *the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.*

(4) *Subsections (1) and (2) do not apply to existing rights until they have been determined in accordance with part 2 of this chapter."*

**Section 2. Extension of authority.** Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved April 3, 1987.

**CHAPTER NO. 340**

[HB 729]

AN ACT REQUIRING A PUBLIC HEARING BEFORE COMMENCING OPERATION OF A COMMERCIAL HAZARDOUS WASTE STORAGE, COLLECTION, OR TRANSFER FACILITY WHOSE PRIMARY PURPOSE IS THE TRANSPORTATION AND TEMPORARY STORAGE OF HAZARDOUS MATERIALS; AMENDING SECTION 75-10-405, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Public hearing required before operation of commercial hazardous waste storage, collection, or transfer facility whose primary purpose is the transportation and temporary storage of hazardous materials.** (1) The owner or manager of a proposed commercial facility for the storage, collection, or transfer of hazardous waste (whether or not the proposed facility is subject to permitting under 75-10-406) shall conduct a public hearing in the nearest population center to provide information and answer questions on:

- (a) facility plans and operating procedures;
- (b) emergency response plans and the manner in which neighboring population densities have been considered in the facility siting decision;
- (c) the kinds of substances to be handled and any applicable state and federal requirements for the provision of public information on these substances;
- (d) procedures that will be used to inform the public of any changes in the kinds of substances to be handled; and
- (e) any other matters related to the operation of the facility that are pertinent to protecting public health, safety, and the environment.

(2) The hearing must be conducted no later than 60 days prior to the commencement of commercial hazardous waste storage, collection, or transfer operations at the facility.

(3) The hearing must be preceded by written notice:

- (a) posted in no fewer than 25 locations of high public visibility and geographically distributed in neighborhoods within one-half mile of the facility;
- (b) published in a newspaper of general circulation once a week for the 3 weeks immediately preceding the hearing; and
- (c) delivered to the department not less than 30 days prior to the hearing.

**Section 2.** Section 75-10-405, MCA, is amended to read:

**"75-10-405. Administrative rules.** (1) The department may adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

(a) identification and classification of those hazardous wastes subject to regulation and those that are not;

(b) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(d) requirements for the issuance, denial, renewal, modification, and revocation of permits for hazardous waste management facilities;

(e) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(f) requirements for training of facility personnel and for financial assurance of facility owners and operators;

(g) requirements for registration of generators and transporters;

(h) a schedule of fees for hazardous waste management facility permits and registration of hazardous waste generators;

(i) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining any state hazardous waste management facility authorized by 75-10-412; and

(j) other rules which are necessary to obtain and maintain authorization under the federal program.

(2) The department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended, except that the department:

(a) *may* require the registration of transporters not otherwise required to register with the state of Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(b) *may* require generators and facilities to report on an annual rather than on a biennial basis;

(c) *may* adopt requirements for the prevention of leakage from underground storage tanks, including:

(i) reporting by owners and operators;

(ii) financial responsibility;

(iii) release detection, prevention, and correction; and

(iv) standards for design, construction, and installation; and

(d) shall require the owner or manager of any proposed commercial facility for the storage, collection, or transfer of hazardous waste to conduct a public hearing, as provided for in [section 1]."

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 75, chapter 10, part 4, and the provisions of Title 75, chapter 10, part 4, apply to section 1.

**Section 4. Effective date.** This act is effective July 1, 1987.

Approved April 3, 1987.

## CHAPTER NO. 341

[HB 820]

AN ACT TO PROVIDE THAT INTEREST EARNED ON INVESTED FUNDS DERIVED FROM UNIVERSITY STUDENT ACTIVITY FEES MAY BE RETAINED BY THE STUDENT GOVERNMENT SUPPORTED BY THE ACTIVITY FEES; AMENDING SECTION 17-2-107, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Interest on student activity fees.** Interest earned on investment of student activity fees used to support a student government at a unit of the university system may be retained by the student government supported by the fees.

**Section 2.** Section 17-2-107, MCA, is amended to read:

**"17-2-107. Accurate accounting records and interaccount loans.**

(1) The department of administration shall record receipts and disbursements for treasury funds and for accounts within treasury funds and shall maintain records in such a manner as to reflect the total cash and invested balance of each fund and each account. The department of administration shall adopt the necessary procedures to insure that interdepartmental or intradepartmental transfers of money do not result in inflation of figures reflecting total governmental costs and revenues.

(2) When the expenditure of an appropriation is necessary and the cash balance in the account from which the appropriation was made is insufficient, the department of administration may authorize a transfer, as a temporary loan bearing no interest, of unrestricted moneys from other accounts, provided that there is reasonable evidence that the income will be sufficient to restore the amount so transferred within 1 calendar year and provided the loan is recorded in the state accounting records. The loan must be repaid within 1 calendar year of the date the loan is approved unless it is extended under subsection (3) or by specific legislative authorization. No account shall be so impaired that all proper demands thereon cannot be met even if the loan is extended.

(3) Under unusual circumstances the director of the department of administration may grant one extension of a loan for up to 1 year. The

department of administration shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the general fund or the current unrestricted subfund to funds designated in subsections (1)(d)(i)(C), (1)(d)(i)(D), and (1)(d)(ii) through (1)(d)(vi) of 17-2-102 shall bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool. Except for investment earnings on restricted donations, all designated and restricted subfund investment earnings, *other than investment earnings on student activity fees used to support student governments at units of the university system*, are credited to the state general fund.

(5) No accounting entity may have a negative cash balance at fiscal yearend. The department of administration may, however, allow any entity to carry a negative balance at any point during the fiscal year subject to the following restrictions:

(a) Accounting entity negative cash balances may not exist more than 7 working days in the funds provided in subsections (1)(a) through (1)(c) of 17-2-102.

(b) Units of the university system and postsecondary vocational-technical centers must maintain positive cash balances in the subfunds provided in subsections (1)(d)(i)(A) through (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) of 17-2-102."

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 20, chapter 25, part 4, and the provisions of Title 20, chapter 25, part 4, apply to section 1.

**Section 4. Effective date.** This act is effective July 1, 1987.

Approved April 3, 1987.

## CHAPTER NO. 342

[HB 193]

AN ACT CONTINUING THE FUNDING OF THE MONTANA UNIVERSITY SYSTEM BY A LEVY OF NOT TO EXCEED 6 MILLS ON ALL TAXABLE PROPERTY EACH YEAR FOR 10 YEARS; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE ELECTORS OF MONTANA; AMENDING SECTION 20-25-423, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-25-423, MCA, is amended to read:

**"20-25-423. State tax levy — support of public education institutions.** The legislature shall levy a property tax of not more than 6 mills on the taxable value of all real and personal property each year for 10 years beginning with the year 1989. All revenue from this property tax levy shall be appropriated for the support, maintenance, and improvement of the Montana university system."



Section 2. **Submission to electorate.** The question of whether section 1 of this act will become effective shall be submitted to the electors of Montana at the general election to be held November 8, 1988, by printing on the ballot the full title of this act and the following:

- ☐ FOR giving the legislature authority to levy up to 6 mills for the support of the Montana university system.
- ☐ AGAINST giving the legislature authority to levy up to 6 mills for the support of the Montana university system.

Section 3. **Effective dates.** (1) If approved by the electorate, section 1 of this act is effective January 1, 1989.

(2) Section 2 and this section are effective on passage and approval.

Approved April 3, 1987.

## CHAPTER NO. 343

[HB 637]

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE XII, SECTION 3, OF THE MONTANA CONSTITUTION TO ALLOW THE LEGISLATURE GREATER DISCRETION IN PROVIDING ECONOMIC ASSISTANCE AND SOCIAL AND REHABILITATION SERVICES TO THOSE IN NEED; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature historically has prescribed the public policy governing the provisions of economic assistance and social and rehabilitation services to those in need; and

WHEREAS, the Legislature is the appropriate body of state government to determine the needs of its residents; and

WHEREAS, the Montana Supreme Court, in a recent decision, determined that the Montana Constitution requires that statutes relating to such assistance and services are reviewable under a heightened scrutiny test; and

WHEREAS, the Legislature finds that it is in the public interest to restore to the Legislature the power to prescribe the provision of economic assistance and social and rehabilitation services to those in need, subject to review under the rational basis test.

THEREFORE, it is the intent of the Legislature to refer this constitutional amendment to the people of the state in order to restore the historical power of the Legislature to set eligibility level criteria for programs and services, as well as for the duration and level of benefits and services relating to economic assistance and social and rehabilitation services.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Article XII, section 3, of The Constitution of the State of Montana is amended to read:

**"Section 3. Institutions and assistance.** (1) The state shall establish and support institutions and facilities as the public good may require,

including homes which may be necessary and desirable for the care of veterans.

(2) Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. Suspended rights are restored upon termination of the state's responsibility.

(3) The legislature *may* provide such economic assistance and social and rehabilitative services for those who, by reason of age, infirmities, or misfortune, *are determined by the legislature to be in need.*

(4) *The legislature may set eligibility criteria for programs and services, as well as for the duration and level of benefits and services."*

Section 2. **Effective date.** If approved by the electorate, this amendment is effective January 1, 1989.

Section 3. **Submission to electorate.** This amendment shall be submitted to the electors of Montana at the general election to be held November 8, 1988, by printing on the ballot the full title of this act and the following:

- ☐ FOR allowing the legislature greater discretion to determine the eligibility, duration, and level of economic assistance and social services to those in need.
- ☐ AGAINST allowing the legislature greater discretion to determine the eligibility, duration, and level of economic assistance and social services to those in need.

Approved April 3, 1987.

## CHAPTER NO. 344

[HB 236]

AN ACT CLARIFYING PROVISIONS CONCERNING THE JUDICIAL NOMINATION COMMISSION; REQUIRING THE COMMISSION TO MEET BEFORE A VACANCY OCCURS ON THE SUPREME COURT OR DISTRICT COURT UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 3-1-1010 THROUGH 3-1-1013, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 3-1-1010, MCA, is amended to read:

**"3-1-1010. List submitted to governor — report on proceedings.** *If a supreme court justice or district judge gives notice of his resignation to take effect on a specific date, the commission shall meet as soon as possible after the justice's or judge's proposed resignation date has been verified by the chief justice of the supreme court. If no notice is given, the commission shall meet as soon as possible after a vacancy occurs. The commission shall submit to the governor within 30 days after the resignation*

*date has been verified by the chief justice, or within 30 days after the date of the vacancy if no notice of intent to resign is given, a list of not less than three or more than five nominees for appointment. The list must be accompanied by a written report to the governor indicating the vote on each nominee, the content of the application submitted by each nominee, and the commission's reasons for recommending each nominee for appointment."*

Section 2. Section 3-1-1011, MCA, is amended to read:

**"3-1-1011. Governor to nominate from list.** The governor must make a *nomination* from the list of nominees submitted by the commission."

Section 3. Section 3-1-1012, MCA, is amended to read:

**"3-1-1012. When governor fails to nominate.** If the governor fails to *nominate* within 30 days after receipt of the list of *nominees*, the chief justice or acting chief justice shall make the *nomination*."

Section 4. Section 3-1-1013, MCA, is amended to read:

**"3-1-1013. Senate confirmation — nomination in the interim — appointment contingent on vacancy.** (1) Each *nomination* must be confirmed as an *appointment* by the senate, but a *nomination* made while the senate is not in session is effective as an *appointment* until the end of the next session. If the *nomination* is not confirmed, the office shall be vacant and another selection of nominees and *nomination* shall be made.

(2) *No nomination is effective unless a vacancy in office occurs."*

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 6, 1987.

## CHAPTER NO. 345

[HB 363]

AN ACT CREATING THE SAME BUT NO GREATER RIGHTS AND PRIVILEGES FOR FOREIGN INSURERS AS FOR DOMESTIC INSURERS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Rights and duties of foreign insurer.** Except as otherwise provided in this chapter, a foreign insurer which has a certificate of authority under this chapter shall, until its certificate is revoked or withdrawn, enjoy the same but no greater rights and privileges as a domestic insurer and shall be subject to the same duties, restrictions, penalties, and liabilities imposed upon a domestic insurer of like character.

**Section 2. Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 33, chapter 2, part 1, and the provisions of Title 33, chapter 2, part 1, apply to section 1.

Approved April 6, 1987.

## CHAPTER NO. 346

[HB 429]

AN ACT TO PROVIDE FOR FISH AND GAME COMMISSION  
APPROVAL OF THE AWARDING OF PRIZES FOR THE TAKING  
OF PROTECTED FISH IN STATE WATERS; AND AMENDING  
SECTION 87-3-121, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-3-121, MCA, is amended to read:

**"87-3-121. Conditions for award of prizes.** (1) It shall be unlawful for any person, firm, corporation, association, or club to offer or give any prize, gift, or anything of value in connection with or as a bag limit prize for the taking, capturing, killing, or in any manner acquiring any game, fowl, fur-bearing animals, or any bird, or animal now or that shall be hereafter protected in any way by the fish and game laws of the state of Montana.

(2) *The commission shall adopt rules to regulate contests by a person, firm, corporation, association, or club that intends to offer or give a prize, gift, or anything of value in connection with or as a prize for the taking, capturing, killing, or in any manner acquiring fish that are protected under Title 87. The commission's rules must be based on the commission's duty under Title 87 to protect, preserve, and propagate fish in the state.*

(3) This section shall not be construed to prohibit the award of prizes for any one game bird, or fur-bearing animal on the basis of size, quality, or rarity."

Approved April 6, 1987.

**CHAPTER NO. 347**

[HB 443]

AN ACT REVISING THE DEFINITION OF THE PRACTICE OF PSYCHOLOGY; CLARIFYING CONDITIONS UNDER WHICH AN UNLICENSED EMPLOYEE OF A GOVERNMENTAL AGENCY OR CHARITABLE OR EDUCATIONAL INSTITUTION MAY USE AN OFFICIAL TITLE THAT INCLUDES "PSYCHOLOGIST"; CLARIFYING THE EDUCATIONAL QUALIFICATIONS FOR LICENSURE AS A PSYCHOLOGIST; REDUCING THE EXPERIENCE REQUIRED FOR REEXAMINATION; REVISING THE AUTHORITY OF THE BOARD OF PSYCHOLOGISTS TO DISCIPLINE LICENSEES; DEFINING PSYCHOLOGISTS AS HEALTH CARE PROVIDERS; GRANTING IMMUNITY FROM LIABILITY TO PSYCHOLOGISTS WHO REPORT VIOLATIONS IN GOOD FAITH; AMENDING SECTIONS 37-17-102, 37-17-104, 37-17-302, 37-17-303, 37-17-311, AND 50-16-302, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-17-102, MCA, is amended to read:

**"37-17-102. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by the regional accrediting association for institutions of higher learning, such as the northwest association of secondary and higher schools.

(2) "Board" means the board of psychologists provided for in 2-15-1851.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) A person represents himself to be a "psychologist" when he holds himself out to the public by a title or description of services incorporating the words "psychologist", "psychological", "psychologic", or "psychology" and offers to render or renders psychological services defined in subsection (5) of this section to individuals, groups, corporations, or the public, *whether or not he does so for compensation or fee.*

(5) (a) "Practice of psychology" means the *observation, description, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of eliminating symptomatic, maladaptive, or undesired behavior and improving interpersonal relations, work and life adjustment, personal effectiveness, and mental health.*

(b) *The practice of psychology includes but is not limited to psychological testing and evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; diagnosis and*

*treatment of mental and emotional disorders or disabilities, chemical dependency, substance abuse, and the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation."*

Section 2. Section 37-17-104, MCA, is amended to read:

**"37-17-104. Exemptions.** This chapter does not prevent:

(1) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "psychology" or "psychologist";

(2) the activities, services, and use of an official title *clearly delineating the nature and level of training* on the part of a person in the employ of a federal, state, county, or municipal agency or of other political subdivisions or an educational or charitable institution insofar as these activities and services are a part of the duties of his office or position with the agency or institution;

(3) the activities and services of a student, intern, or resident in psychology pursuing a course of study at an accredited university or college or working in a generally recognized training center if these activities and services constitute a part of his supervised course of study;

(4) the activities and services of a person who is not a resident of this state in rendering consulting psychological services in this state when these services are rendered for a period which does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the laws of the state or country of his residence to perform these activities and services; however, these persons shall report to the department the nature and extent of the services in this state if they exceed 10 days in a calendar year;

(5) a person authorized by the laws of the state or country of his former residence to perform activities and services, who has recently become a resident of this state and who has applied for a license in this state, from performing such activities and services pending disposition of his application;

(6) the use of the term "social psychologist" by a person who:

(a) has been graduated with a doctoral degree in sociology or social psychology from an institution and whose credits in sociology or social psychology are acceptable by a recognized educational institution;

(b) has passed comprehensive examinations in the field of social psychology as part of the requirement for the doctoral degree or who has had equivalent specialized training in social psychology; and

(c) has filed with the department a statement of facts demonstrating his compliance with this subsection;

(7) the offering of lecture services for a fee by a person exempted from licensing requirements by virtue of his employment;

(8) activities of a psychological nature on the part of a person who is a salaried employee of an accredited academic institution, governmental

agency, research laboratory, or business corporation if he is performing the duties for which he is employed by the organization within the confines of the organization."

Section 3. Section 37-17-302, MCA, is amended to read:

**"37-17-302. Application — qualifications.** (1) Application for examination for licensing a psychologist shall be made on forms prescribed by the board.

(2) The board shall license as a psychologist any person who pays the prescribed fee, passes the prescribed examination, and submits evidence by oath that he:

(a) is a resident of or shows satisfactory evidence of intent to become a resident of this state at the time he is licensed;

(b) is at least 18 years of age;

(c) is of good moral character;

(d) (i) has received a doctoral degree in clinical psychology from an accredited college or university having an appropriate graduate program approved by the American psychological association;

(ii) has received a doctoral degree in psychology from an accredited college or university not approved by the American psychological association and has successfully completed a formal graduate retraining program in clinical psychology approved by the American psychological association; or

(iii) has received a doctoral degree in psychology from an accredited college or university, and whose course of studies meets minimum standards specified in rules by the board; and

(e) has completed at the time of application a minimum of 2 years of experience in the practice, research, or teaching of psychology. One year of this experience shall be post doctoral."

Section 4. Section 37-17-303, MCA, is amended to read:

**"37-17-303. Examination.** (1) The department shall administer examinations to qualified applicants for licensing at least once a year, subject to 37-1-101. The board shall determine the subject and scope of specialized psychological areas and techniques for examination. Examinations may be written, oral, or both. The board shall determine an acceptable level of performance for each examination.

(2) An applicant who fails his first examination may be reexamined at a subsequent examination on the payment of another examination fee. An applicant who fails two successive examinations may apply for reexamination after 1 year of additional professional experience or training."

Section 5. Section 37-17-311, MCA, is amended to read:

**"37-17-311. Denial or revocation of license — grounds — notice and hearing.** (1) The board may refuse or revoke a license applied for or issued under this chapter or apply other disciplinary sanctions on finding that the person to whom the license was issued:

(a) has been guilty of fraud or deceit in securing the license or a renewal;

(b) is using *or has used* a narcotic or an alcoholic beverage to an extent that the use impairs his ability to perform the work of a professional psychologist with safety to the public; or

(c) has been guilty of unprofessional conduct as defined by the *rules* adopted by the board.

(2) The board may not revoke or refuse to issue or renew a license for any cause other than failure to pay fees unless the person is given notice and opportunity for a hearing before the board."

Section 6. Section 50-16-302, MCA, is amended to read:

**"50-16-302. Definitions.** As used in this part, the following definitions apply:

(1) "Health care provider" means a person, corporation, facility, or institution licensed by this state to provide health care services.

(2) "Health care services" means *medical or psychological* diagnosis, treatment, evaluation, advice, or other activities permitted under the health care licensing statutes of this state.

(3) "Confidential health care information" means information obtained by a health care provider relating to health care history, diagnosis, condition, treatment, or evaluation.

(4) "Peer review committee" means a committee of a state or local professional *organization of health care providers* or of a medical staff of a licensed hospital or other health care facility that is operated pursuant to written bylaws approved by the governing board of the hospital or other health care facility or approved by an organization of health care providers and formed pursuant to state or federal law and authorized by law to evaluate health care services.

(5) "Third party" means a person or entity other than the person to whom the confidential health care information relates and other than a health care provider.

(6) "Qualified person" means a person whose training and experience is appropriate to the nature and level of work in which he is engaged and who, when working as part of an organization, is performing the work with published and adequate administrative safeguards against unauthorized disclosures.

(7) "Administration" includes but is not limited to accreditation, reimbursement, liability risk management, appraisal, and defense or prosecution of legal actions."

**Section 7. Immunity from liability.** There is no liability on the part of and no cause of action may arise against a psychologist for a statement made in good faith in reporting another psychologist's apparent violation of the provisions of this chapter or rules adopted by the board.



**Section 8. Extension of authority.** Any existing authority of the board of psychologists to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 9. Codification instruction.** Section 7 is intended to be codified as an integral part of Title 37, chapter 17, part 3, and the provisions of Title 37 apply to section 7.

**Section 10. Applicability date.** Section 3 applies to individuals who apply for initial licensure under 37-17-302 on or after October 1, 1987.

Approved April 6, 1987.

## CHAPTER NO. 348

[HB 454]

**AN ACT REQUIRING NOISE SUPPRESSION DEVICES ON MOTOR-BOATS; ALLOWING SIRENS ONLY ON EMERGENCY VESSELS; AND AMENDING SECTION 23-2-521, MCA.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 23-2-521, MCA, is amended to read:

**"23-2-521. Equipment.** (1) Every motorboat or vessel shall have aboard:

(a) one United States coast guard approved personal flotation device in good and serviceable condition for each person on board, provided that any person who has not reached his 12th birthday shall have a United States coast guard approved life preserver properly fastened to his person when occupying a motorboat or vessel under 26 feet in length while such motorboat or vessel is in motion;

(b) if carrying or using any inflammable or toxic fluid in any enclosure for any purpose and if the motorboat or vessel is not an entirely open one, an efficient natural or mechanical ventilation system prescribed by the department which shall be used and be capable of removing resulting gases prior to and during the time the motorboat or vessel is occupied by a person;

(c) hand portable fire extinguishers approved by the United States coast guard, the number of which is to be determined by the department, or a United States coast guard approved fixed fire extinguishing system, except that motorboats less than 26 feet in length of entirely open construction, propelled by outboard motors, and not carrying passengers for hire need not carry such portable fire extinguishers or fire extinguishing systems.

(2) Every motorboat or vessel shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel equipped with an efficient flame arrester, backfire trap, or other similar device.

(3) (a) *Except as provided in subsection (3)(b), the exhaust of every internal combustion engine used on a motorboat or vessel must be muffled either by discharge underwater or by a functioning muffler capable of muffling exhaust noise at full throttle to 86 dbA or less when measured at a distance of 50 feet. The muffler may not be modified or altered, such as by a cutout. The department may require a test at dockside to determine exhaust noise level.*

(b) *The provisions of subsection (3)(a) do not apply to a motorboat:*

(i) *competing in a state-sanctioned regatta or boat race while on trial runs between 9 a.m. and 5 p.m. and during a period not more than 48 hours immediately preceding the regatta or boat race; or*

(ii) *operating under a separate permit issued by the department for the purpose of tuning engines, making test or trial runs, or competing in official trials for speed records other than in connection with regattas or boat races.*

(4) (a) *Except as provided in subsection (4)(b), no vessel may be equipped with a siren, and no person may use or install a siren on a vessel.*

(b) *An authorized emergency vessel may be equipped with a siren capable of sound audible under normal conditions from a distance of not less than 500 feet, but the siren may be used only when the vessel is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, and the operator of the vessel shall sound the siren when necessary to warn persons of the vessel's approach.*

(5) *When in operation or at anchor or moored away from a docking facility between sunset and sunrise, all vessels shall display lights as prescribed by the department.*

(6) *The department may designate waters where and the time of year on these waters when all persons aboard a motorboat or vessel must wear approved life preservers at all times.*

(7) *Vessels, including houseboats and floating cabins, equipped with a galley or toilet shall have a wastewater holding system sealed to prevent the discharge of water carried waste products, whether treated or untreated, into the surrounding waters.*

(8) *The department may adopt rules modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation and safety laws or with the navigation and safety rules promulgated by the United States coast guard.*

(9) *A person may not operate or give permission for the operation of a vessel which is not equipped as required by this section."*

**Section 2. Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 6, 1987.

**CHAPTER NO. 349**

[MIB 513]

AN ACT PROVIDING THAT CERTAIN PROCEEDS RECEIVED FROM THE SETTLEMENT OF DISPUTED TAXES FROM THE MINES NET PROCEEDS TAX AND THE METAL MINES GROSS PROCEEDS TAX DO NOT CONSTITUTE THE PAYMENT OF DELINQUENT TAXES OR MONEY ARISING FROM THE TAXATION OF PROPERTY; AUTHORIZING SUCH PROCEEDS ALLOCATED TO SCHOOL BUILDING FUNDS OR USED TO SECURE BONDS FOR LOCAL GOVERNMENT FACILITIES; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Disputed mines net proceeds or metal mines gross proceeds taxes — characterization of proceeds of settlement.** (1) Proceeds received by a municipality or county in settlement of an alleged tax obligation arising under the mines net proceeds tax in Title 15, chapter 23, part 5, or the metal mines gross proceeds tax in Title 15, chapter 23, part 8, do not constitute the payment of delinquent taxes or money arising from the taxation of property if all of the following conditions are met:

(a) there are no entries in the county's assessment book reflecting the disputed valuations;

(b) the proceeds are not apportioned to previous tax years in which the department through revised assessment determined taxes were owing;

(c) the payment schedule differs from that applicable to mines net proceeds and metal mines gross proceeds taxes with respect to time of payment;

(d) the settlement agreement provides for penalty and interest provisions that differ from relevant statutory provisions; and

(e) the county and the taxpayer are given the discretion to modify the time and amount of payments.

(2) After all mandatory distributions have been made to state and local taxing jurisdictions, remaining settlement proceeds satisfying all the conditions set forth in subsection (1) may be:

(a) allocated to a school district building fund established under 20-9-508; or

(b) used to provide additional security for bonds issued under Title 90, chapter 5, part 1, for financing of projects for local government facilities, including schools and local port authorities.

**Section 2. Effective date — applicability.** This act is effective on passage and approval and applies only to settlement proceeds received during calendar year 1993.

Approved April 6, 1987.

**CHAPTER NO. 350**

[HB 546]

AN ACT TO MODIFY THE DEFINITION OF ABSOLUTE LIABILITY; TO PROVIDE IMPOSITION OF ABSOLUTE LIABILITY FOR PERSONS CONVICTED OF DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AND AMENDING SECTIONS 45-2-104, 61-8-401, AND 61-8-406, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-2-104, MCA, is amended to read:

**"45-2-104. Absolute liability.** A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in subsections (33), (37), and (58) of 45-2-101 only if the offense is punishable by a fine not exceeding \$500 or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described."

Section 2. Section 61-8-401, MCA, is amended to read:

**"61-8-401. Persons under the influence of alcohol or drugs.** (1) It is unlawful and punishable as provided in 61-8-714 for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a narcotic drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to a degree which renders him incapable of safely driving a vehicle to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any drug to a degree that renders him incapable of safely driving a vehicle to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(a) If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that fact shall not give rise to any presumption that the person was or was not under the influence of alcohol but such fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.10 or more, it shall be presumed that the person was under the influence of alcohol. Such presumption is rebuttable.

(4) The provisions of subsection (3) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol.

(5) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and subsections (1) through (4) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided.

(6) *Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."*

Section 3. Section 61-8-406, MCA, is amended to read:

**"61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more.** It is unlawful and punishable as provided in 61-8-722 for any person to drive or be in actual physical control of a vehicle upon the ways of this state open to the public while the alcohol concentration in his blood, breath, or urine is 0.10 or more. *Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."*

Approved April 6, 1987.

## CHAPTER NO. 351

[HB 579]

AN ACT AUTHORIZING THE CREATION OF A FIRE SERVICE AREA WITHIN UNINCORPORATED AREAS NOT PART OF A RURAL FIRE DISTRICT IN A COUNTY TO PROVIDE CAPITAL EQUIPMENT FOR EXISTING FIRE SERVICES OR TO CONTRACT FOR FIRE SERVICES FOR THE PROTECTION OF THE AREA; AND PROVIDING THAT THE AREA BE FUNDED BY RATES CHARGED TO BENEFITED STRUCTURES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Fire service area — establishment.** (1) Upon receipt of a petition signed by at least 30 owners of real property in the proposed service area, or by a majority of the owners of real property if there are no more than 30 owners of real property in the proposed service area, the

board of county commissioners may establish a fire service area within an unincorporated area not part of a rural fire district in the county to provide the services and equipment set forth in [section 2].

(2) To establish a fire service area, the board shall:

(a) pass a resolution of intent to form the area, with public notice as provided in 7-1-2121 and written notice as provided in 7-1-2122;

(b) hold a public hearing no earlier than 30 or later than 90 days after passage of the resolution of intent;

(c) at the public hearing:

(i) accept written protests from property owners of the area of the proposed area; and

(ii) receive general protests and comments relating to the establishment of the fire service area and its boundaries, rates, service levels, or any other matter relating to the proposed fire service area; and

(d) pass a resolution creating the fire service area. The area is created effective 60 days after passage of the resolution unless by that date more than 50% of the property owners of the proposed fire service area protest its creation.

(3) Based on testimony received in the public hearing, the board in the resolution creating the fire service area may establish different boundaries, establish a different fee schedule than proposed, or change the manner in which the area will provide services to its residents.

(4) The board of county commissioners may alter the boundaries or dissolve a fire service area, using the same procedures required for the creation of a fire service area. Any existing indebtedness of a fire service area that is dissolved remains the responsibility of the owners of property within the area, and any assets remaining after all indebtedness has been satisfied must be returned to the owners of property within the area.

**Section 2. Area services.** A fire service area created pursuant to [section 1] may provide residents of the area with:

(1) fire equipment, housing for the equipment, and related maintenance, for use by a fire service agency providing service to the area; or

(2) fire protection by contracting for the services of a fire service agency.

**Section 3. Operation of fire districts.** (1) Whenever the board of county commissioners has established a fire service area, the commissioners may:

(a) govern and manage the affairs of the area; or

(b) appoint five qualified trustees to govern and manage the affairs of the area.

(2) If the commissioners appoint trustees under subsection (1), the provisions of 7-33-2105 and 7-33-2106 shall apply, except that the trustees shall prepare annual budgets and request a schedule of rates therefor.

**Section 4. Financing of fire service area — fee on structures.** (1) In the resolution creating the fire service area and by resolution as necessary thereafter, the board of county commissioners shall establish a schedule of rates to be charged owners of structures that are benefited by the fire services offered by the fire service area.

(2) The rates must be applied on a fair and equal basis to all classes of structures benefited by the fire service area.

(3) The board of county commissioners shall collect the funds necessary to operate the fire service area by charging the area rate as a special assessment on the owners of structures and collect the assessments with the general taxes of the county. The assessments are a lien on the property so assessed.

(4) The board of county commissioners or the trustees, if the commissioners have appointed trustees under [section 3], may pledge the income of the fire service area to secure financing necessary to procure fire equipment and buildings to house fire equipment. The outstanding amount of such indebtedness may not exceed 7% of the taxable valuation of the area.

Approved April 6, 1987.

## CHAPTER NO. 352

[HB 640]

**AN ACT TO REQUIRE THAT AN INJURED WORKER GIVE NOTICE TO THE EMPLOYER OR TO THE EMPLOYER'S INSURER WITHIN 30 DAYS OF HIS INJURY TO RECOVER WORKERS' COMPENSATION BENEFITS; AMENDING SECTION 39-71-603, MCA; AND PROVIDING AN APPLICABILITY DATE.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-71-603, MCA, is amended to read:

**"39-71-603. Notice of injuries other than death to be submitted within 30 days.** No claim to recover benefits under the Workers' Compensation Act, for injuries not resulting in death, may be considered compensable unless, within 30 days after the occurrence of the accident which is claimed to have caused the injury, notice of the time and place where the accident occurred and the nature of the injury is given to the employer or the employer's insurer by the injured employee or someone on the employee's behalf. Actual knowledge of the accident and injury on the part of the employer or the employer's managing agent or superintendent in charge of the work upon which the injured employee was engaged at the time of the injury is equivalent to notice."

**Section 2. Extension of authority.** Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Applicability.** This act applies to injuries occurring on and after October 1, 1987.

Approved April 6, 1987.

## CHAPTER NO. 353

[HB 699]

AN ACT TO EXCLUDE CERTAIN NEWSPAPER ADVERTISING SALESMEN FROM THE OVERTIME COMPENSATION REQUIREMENTS OF THE STATE WAGE LAWS; AND AMENDING SECTION 39-3-406, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-3-406, MCA, is amended to read:

**"39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 shall not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores such as babysitting, mowing lawns, cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees thereof who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work which is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that such exclusion shall not exceed a period of 180 days from their initial date of employment and further provided that during this exclusion period wages paid such learners may not be less than 50% of the minimum wage rate established in this part;



(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner;

(k) any individual employed by the United States of America.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) *an outside salesman paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;*

(e) a salesman, partsman, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers;

(f) a salesman primarily engaged in selling trailers, boats, or aircraft if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(g) an employee employed as a driver or driver's helper making local deliveries who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the commissioner finds that such plan has the general purpose and effect of reducing hours worked by such employees to or below the maximum workweek applicable to them under 39-3-405;

(h) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and which are used exclusively for supply and storing of water for agricultural purposes;

(i) an employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee is:

(i) primarily employed during his workweek in agriculture by such farmer; and

(ii) paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(j) an employee of an establishment commonly recognized as a country elevator, including an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(k) a driver employed by an employer engaged in the business of operating taxicabs;

(l) an employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in such institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as such employee and his spouse reside in such facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than \$10,000;

(m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight;

(n) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(o) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee where no bargaining unit is recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 ½ times the hourly wage rate for the employee.

(p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee where no bargaining unit is recognized. Employment in excess of 8 hours per day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 ½ times the hourly wage rate for the employee.

(q) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(r) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-411A;

(s) an employee of a department of public safety working under a work period established pursuant to 7-32-115."

Section 2. **Extension of authority.** Any existing authority of the commissioner of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 6, 1987.

## CHAPTER NO. 354

[HB 810]

AN ACT TO AMEND SECTION 39-31-103, MCA, TO PROVIDE HEAD START EMPLOYEES THE SAME RIGHT AS PUBLIC EMPLOYEES TO BARGAIN COLLECTIVELY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-31-103, MCA, is amended to read:

**"39-31-103. Definitions.** When used in this chapter, the following definitions apply:

(1) "Public employer" means the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees. *Public employer also includes any local public agency designated as a head start agency as provided in 42 U.S.C. 9836.*

(2) (a) "Public employee" means:

(i) except as provided in subsection (2)(b) of this section, a person employed by a public employer in any capacity; and

(ii) an individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.

(b) "Public employee" does not mean:

(i) an elected official;

(ii) a person directly appointed by the governor;

(iii) a supervisory employee, as defined in subsection (3) of this section;

(iv) a management official, as defined in subsection (4) of this section;

(v) a confidential employee, as defined in subsection (12) of this section;

(vi) a member of any state board or commission who serves the state intermittently;

(vii) a school district clerk;

(viii) a school administrator;

(ix) a registered professional nurse performing service for a health care facility;

(x) a professional engineer; or

(xi) an engineer-in-training.

(3) "Supervisory employee" means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(4) "Management official" means a representative of management having authority to act for the agency on any matters relating to the implementation of agency policy.

(5) "Labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(6) "Exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.

(7) "Board" means the board of personnel appeals provided for in 2-15-1705.

(8) "Person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(9) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402.

(10) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(11) "Appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board.

(12) "Confidential employee" means any person found by the board to be a confidential labor relations employee and any person employed in the personnel division, department of administration, who acts with discretionary authority in the creation or revision of state classification specifications."

**Section 2. Extension of authority.** Any existing authority of the board of personnel appeals to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 6, 1987.

**CHAPTER NO. 355**

[SB 53]

AN ACT ELIMINATING PRIVATE PROPERTY RIGHTS IN WILD FUR-BEARING ANIMALS; MAKING IT UNLAWFUL TO CAPTURE A FURBEARER FROM THE WILD; AND REPEALING SECTIONS 70-2-112 AND 70-2-113, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Unlawful capture.** No person may capture, take, or otherwise acquire a furbearer from the wild for use on a fur farm.

Section 2. **Repealer.** Sections 70-2-112 and 70-2-113, MCA, are repealed.

Section 3. **Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 87, chapter 4, part 10, and the provisions of Title 87, chapter 4, part 10, apply to section 1.

Approved April 7, 1987.

**CHAPTER NO. 356**

[SB 66]

AN ACT REDEFINING "NEW PRODUCTION" OF NATURAL GAS, PETROLEUM, OR OTHER CRUDE OR MINERAL OIL FOR PURPOSES OF DETERMINING THE NET PROCEEDS TAX ON SUCH PRODUCTION; AMENDING SECTION 15-23-601, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-23-601, MCA, is amended to read:

**"15-23-601. Definitions.** As used in this part, the following definitions apply:

(1) "Excise tax" means the windfall profit tax on domestic crude oil imposed by Title I of the federal Crude Oil Windfall Profit Tax Act of 1980, as enacted or as amended.

(2) The term "new production" means the production of natural gas, petroleum, or other crude or mineral oil from any *well* that has not produced natural gas, petroleum, or other crude or mineral oil during the 5 years immediately preceding the first month of qualified new production.

(3) The terms "operator" and "producer" mean any person who engages in the business of drilling for, extracting, or producing any natural gas, petroleum, or other crude or mineral oil.

(4) The term "well" includes each single well or group of wells, including dry wells, in one field or production unit and under the control of one operator or producer."

**Section 2. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Applicability — effective date.** This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to production of natural gas, petroleum, or other crude or mineral oil from any well after December 31, 1986.

Approved April 7, 1987.

## CHAPTER NO. 357

[SB 88]

AN ACT EXTENDING THE PRISON TERM FOR BURGLARY;  
CHANGING THE DEFINITION OF AGGRAVATED BURGLARY;  
AND AMENDING SECTION 45-6-204, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-6-204, MCA, is amended to read:

**"45-6-204. Burglary.** (1) A person commits the offense of burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein.

(2) A person commits the offense of aggravated burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit *an offense* therein and:

(a) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he or another participant in the offense is armed with explosives or a weapon; or

(b) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he purposely, knowingly, or negligently inflicts or attempts to inflict bodily injury upon anyone.

(3) A person convicted of the offense of burglary shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed \$50,000, or both. A person convicted of the offense of aggravated burglary shall be imprisoned in the state prison for any term not to exceed 40 years or be fined an amount not to exceed \$50,000, or both."

Approved April 7, 1987.

**CHAPTER NO. 358**

[SB 92]

AN ACT EXTENDING THE AUTHORITY OF THE RESERVED WATER RIGHTS COMPACT COMMISSION TO CONTINUE NEGOTIATIONS WITH THE INDIAN TRIBES UNTIL JULY 1, 1993; AMENDING SECTIONS 85-2-217 AND 85-2-702, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-2-217, MCA, is amended to read:

**"85-2-217. Suspension of adjudication.** While negotiations for the conclusion of a compact under part 7 are being pursued, all proceedings to generally adjudicate reserved Indian water rights and federal reserved water rights of those tribes and federal agencies which are negotiating are suspended. The obligation to file water rights claims for those reserved rights is also suspended. This suspension shall be effective until July 1, 1993, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state legislature and tribes or federal agencies has not been accomplished by July 1, 1993, the suspension shall terminate on that date. Upon termination of the suspension of this part, the tribes and the federal agencies shall be subject to the special filing requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2. Those tribes and federal agencies that choose not to negotiate their reserved water rights shall be subject to the full operation of the state adjudication system and may not benefit from the suspension provisions of this section."

Section 2. Section 85-2-702, MCA, is amended to read:

**"85-2-702. Negotiation with Indian tribes.** (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings shall be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Upon receipt of such written designation from the governing body of a tribe, compact negotiations shall be considered to have commenced.

(2) When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana and any affected tribal governing body, and approval by the appropriate federal authority.

(3) Upon its ratification by the Montana legislature and the tribe, the terms of a compact must be included in the preliminary decree as provided by 85-2-231, and unless an objection to the compact is sustained under 85-2-233, the terms of the compact must be included in the final decree

without alteration. However, if approval of the state legislature and tribe has not been accomplished by July 1, 1993, all Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within 6 months. These new filings shall be used in the formulation of the preliminary decree and shall be given treatment similar to that given to all other filings."

Section 3. **Effective date.** This act is effective July 1, 1987.

Approved April 7, 1987.

## CHAPTER NO. 359

[SB 121]

**AN ACT ESTABLISHING CRITERIA DETERMINING WHEN FIREARMS OR AMMUNITION MAY NOT BE CONSIDERED DEFECTIVE IN DESIGN IN PRODUCTS LIABILITY ACTIONS; AND PROVIDING EXCEPTIONS.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Products liability — defect in design of firearms or ammunition.** (1) In a products liability action, no firearm or ammunition may be considered defective in design on the basis that the benefits of the product do not outweigh the risk of injury posed by its potential to cause serious injury, damage, or death when discharged.

(2) For purposes of this section:

(a) the potential of a firearm or ammunition to cause serious injury, damage, or death when discharged does not make the product defective in design; and

(b) injuries or damages resulting from the discharge of a firearm or ammunition are not proximately caused by its potential to cause serious injury, damage, or death but are proximately caused by the actual discharge of the product.

(3) The provisions of this section do not affect a products liability cause of action based upon the improper selection of design alternatives.

Approved April 7, 1987.

## CHAPTER NO. 360

[SB 145]

**AN ACT TO CLARIFY WHEN PENALTIES AND INTEREST ON DELINQUENT PROPERTY TAXES ON MOBILE HOMES AND HOUSETRAILERS BEGIN TO ACCRUE; AND AMENDING SECTION 15-24-202, MCA.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-24-202, MCA, is amended to read:

**"15-24-202. Payment of tax — interest and penalty — display of tax-paid sticker.** (1) (a) The owner of a mobile home or house trailer



which is not taxed as an improvement, as improvements are defined in 15-1-101, shall pay the personal property tax in two payments, except as provided in 15-24-206.

(b) The first payment is due within 30 days from the date of the notice of taxes due.

(c) The second payment is due no later than September 30 of the year in which the property is assessed.

(d) *If not paid on or before the date due, the tax is considered delinquent and subject to the penalty and interest provisions in 15-16-102 applicable to other delinquent property taxes. The penalty must be assessed and interest begins to accrue on the first day of delinquency.*

(2) Taxes assessed against a mobile home after the second payment date must be prorated to reflect the remaining portion of the tax year. The prorated taxes must be added to the following year's tax roll and, except as provided in 15-24-206, are due with and must be collected with the first payment due in that year.

(3) The department of revenue shall issue tax-paid stickers to the county treasurers. The treasurers shall issue the stickers to the owners of mobile homes and house trailers if the taxes and any interest and penalty owed are paid in full. An owner shall then display the sticker, which must be visible from the exterior of the mobile home or house trailer. No mobile home movement permit provided for in 15-24-206 may be issued unless the taxes have been paid in full to the county treasurer."

Approved April 7, 1987.

## CHAPTER NO. 361

[SB 147]

AN ACT TO REQUIRE THAT A COUNTY TREASURER REMIT INHERITANCE TAX COLLECTIONS, THE \$3 FEE FOR FILING A SECURITY INTEREST AGAINST A MOTOR VEHICLE, THE \$3 FEE FOR ISSUANCE OF A CERTIFIED COPY OF A CERTIFICATE OF OWNERSHIP SUBJECT TO A SECURITY INTEREST, AND THE \$2 FEE FOR APPLICATIONS FOR ORIGINAL CERTIFICATES OF MOTOR VEHICLE OWNERSHIP OR TRANSFER OF REGISTRATION AT THE SAME TIME AS OTHER MONEY BELONGING TO THE STATE IS REMITTED; AND AMENDING SECTIONS 61-3-103, 61-3-203, AND 72-16-215, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-3-103, MCA, is amended to read:

**"61-3-103. Filing of security interests, rights, procedure, fees.**

(1) No security interest in a motor vehicle shall be valid as against creditors, subsequent purchasers, or encumbrancers unless a lien notice, on a

form approved by the department, that shows a security interest has been created, has been filed with the department as provided in this section. The department shall not file any security interest or other lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor. The department shall file the security interest or lien by entering the name and address of the secured party upon the face of the certificate of ownership. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer where the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess such motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under the provisions of 61-4-101, must be perfected in accordance with Title 30, chapter 9, and no endorsement on the certificate of title is necessary for perfection.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected by filing under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." No other information regarding such additional security interests need be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter shall be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) The filing of a security interest or other lien, as herein provided, perfects a security interest which has attached at the time the certificate of ownership noting such interest is issued. Issuance of a certificate of ownership constitutes constructive notice to subsequent purchasers or encumbrancers, from the time of filing, of the existence of the security interest.

(6) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 shall be applicable except that deposits must be made with the department.

(7) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment shall be required

to pay the department the sum of \$1 for each day thereafter that he fails to file such satisfaction.

(8) Upon receipt of any liens, or notice of liens dependent on possession, or attachments, etc., against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any thereof a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and/or attaching creditor.

(9) It shall not be necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(10) A fee of \$3 shall be paid to the department to file any security interest or other lien against a motor vehicle. The \$3 fee shall include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering such satisfaction or release on the records of the department and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of \$3 shall be paid the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department, or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section shall be *paid to the county treasurer for deposit in the motor vehicle recording account of the state special revenue fund in accordance with 15-1-504.*"

Section 2. Section 61-3-203, MCA, is amended to read:

**"61-3-203. Fee for original certificate of ownership and transfer of title — disposition.** A charge of \$3 shall be made for issuance of an original certificate of ownership of title and for a transfer of registration which shall be collected by the county treasurer. The fees shall be distributed as follows:

(1) Two dollars of each fee shall be remitted to the department by the county treasurer, *as provided in 15-1-504*, for each application for original certificate of ownership or transfer of registration.

(2) Prior to March 1, 1966 and each March thereafter, the county commissioners of each county shall divide the fees retained by the county to:

(a) the city road fund of each city and town within the county based on the number of motor vehicles registered inside the corporate limits of each city or town; and

(b) the county road fund based on the number of motor vehicles registered outside the corporate limits of cities and towns."

Section 3. Section 72-16-215, MCA, is amended to read:

**"72-16-215. County treasurer — monthly report — payment of collections to state treasurer — interest on unpaid amounts.** *Between the 1st and 20th days of each month, each county treasurer shall*

make a report under oath to the department of revenue listing all payments received by him under the inheritance tax laws during the preceding month and stating for what estate, by whom, and when paid. The form of such report shall be prescribed by the department. He shall at the same time pay the *state treasurer* all the payments received by him under the inheritance tax laws and not previously paid to the *state treasurer*, and for all such payments collected by him and not paid to the *state treasurer* within 5 days from the time herein required, he shall pay interest at the rate of 10% per annum."

Approved April 7, 1987.

## CHAPTER NO. 362

[SB 161]

AN ACT EXTENDING THE SUNSET PROVISION OF THE TWO TEMPORARY ASSOCIATE JUSTICE POSITIONS ON THE SUPREME COURT FOR AN ADDITIONAL 8 YEARS; AMENDING SECTION 5, CHAPTER 683, LAWS OF 1979.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 5, Chapter 683, Laws of 1979, is amended to read:

"Section 5. **Effective period.** This act is effective until the first Monday of January, 1997, at which time the number of associate justices authorized by this act shall revert to four. The code commissioner is directed to make appropriate changes in the Montana Code Annotated to reflect the intent of this section."

Approved April 7, 1987.

## CHAPTER NO. 363

[SB 164]

AN ACT ALLOWING THE DEPARTMENT OF JUSTICE TO BILL A PARTY THAT SUBPOENAS A DEPARTMENT EMPLOYEE SO THAT THE DEPARTMENT WILL BE REIMBURSED FOR THE EMPLOYEE'S TIME SPENT ON THE SUBPOENA; AND REPEALING SECTION 44-1-502, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Department of justice employees — payment of compensation for time spent answering subpoena.** A department of justice employee must receive all regular duty pay and benefits for time spent answering a subpoena in a civil or criminal cause when called to testify in connection with the employee's official duties. The department of justice

may bill the person or organization requesting issuance of the subpoena for reimbursement for the employee's time.

**Section 2. Repealer.** Section 44-1-502, MCA, is repealed.

Approved April 7, 1987.

## CHAPTER NO. 364

[SB 223]

### AN ACT ESTABLISHING A PRIVILEGE FROM EXAMINATION IN CIVIL PROCEEDINGS FOR MEDIATORS.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Mediator privilege.** Except as otherwise provided by law, a person acting as a mediator in a family law mediation cannot, without the consent of the parties to the mediation, be examined in a civil action as to any communication made by a party to him during the course of the mediation.

Approved April 7, 1987.

## CHAPTER NO. 365

[SB 252]

### AN ACT PERMITTING A DISABILITY INSURANCE POLICY OR A HOSPITAL OR MEDICAL SERVICE PLAN CONTRACT TO CONTAIN A PROVISION PROVIDING FOR CERTAIN SUBROGATION RIGHTS; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Subrogation rights.** A disability insurance policy subject to this chapter may contain a provision providing that, to the extent necessary for reimbursement of benefits paid to or on behalf of the insured, the insurer is entitled to subrogation, as provided for in [section 3], against a judgment or recovery received by the insured from a third party found liable for a wrongful act or omission that caused the injury necessitating benefit payments.

**Section 2. Subrogation rights.** A hospital or medical service plan contract issued by a health service corporation may contain a provision providing that, to the extent necessary for reimbursement of benefits paid to or on behalf of the insured, the health service corporation is entitled to subrogation, as provided for in [section 4], against a judgment or recovery received by the insured from a third party found liable for a wrongful act or omission that caused the injury necessitating benefit payments.

**Section 3. Notice — shared costs of third-party action — limitation.** (1) If an insured intends to institute an action for damages against a third party, the insured shall give the insurer reasonable notice of his intention to institute the action.

(2) The insured may request that the insurer pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) An insurer may elect not to participate in the cost of the action. If such an election is made, the insurer waives 50% of any subrogation rights granted to it by [section 1].

(4) The insurer's right of subrogation granted in [section 1] may not be enforced until the injured insured has been fully compensated for his injuries.

**Section 4. Notice — shared costs of third-party action — limitation.** (1) If an insured intends to institute an action for damages against a third party, the insured shall give the health service corporation reasonable notice of his intention to institute the action.

(2) The insured may request that the health service corporation pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) A health service corporation may elect not to participate in the cost of the action. If such an election is made, the health service corporation waives 50% of any subrogation rights granted to it by [section 2].

(4) The health service corporation's right of subrogation granted in [section 2] may not be enforced until the injured insured has been fully compensated for his injuries.

**Section 5. Codification instructions.** (1) Sections 1 and 3 are intended to be codified as an integral part of Title 33, chapter 22, and Title 2, chapter 18, and the provisions of Title 33, chapter 22, and Title 2, chapter 18, apply to sections 1 and 3.

(2) Sections 2 and 4 are intended to be codified as an integral part of Title 33, chapter 30, and the provisions of Title 33, chapter 30, apply to sections 2 and 4.

**Section 6. Applicability.** This act applies to policies or contracts delivered, issued for delivery, or renewed in this state after October 1, 1987.

Approved April 7, 1987.

## CHAPTER NO. 366

[SB 258]

AN ACT TO REVISE THE LAW RELATING TO TRAINING OF JUSTICES OF THE PEACE; AND AMENDING SECTIONS 3-10-202 AND 3-10-203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 3-10-202, MCA, is amended to read:

“**3-10-202. Oath — qualifications.** (1) Each justice of the peace, elected or appointed, after he has received his certificate of election or

appointment, shall, before entering upon the duties of his office, take the constitutional oath of office, which must be filed with the county clerk.

(2) Before the county clerk may file the oath, the elected or appointed justice must satisfy the clerk that he is either:

(a) an attorney at law authorized to practice law in the state of Montana;

(b) a person who has held the office of justice of the peace within the preceding 5 years; or

(c) a person who has completed the orientation course of study held under the direction of the *supreme court* or *has been excused by the supreme court*. If a person is appointed after the course is offered, he must agree to take the course at the next offering and failure to do so will disqualify him."

Section 2. Section 3-10-203, MCA, is amended to read:

**"3-10-203. Orientation course — annual training.** (1) *Under the supervision of the supreme court, a course of study must be presented as soon as is practical following each general election. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials shall be paid to the elected or appointed justice of the peace for attending the course by the county in which he holds or will hold court and shall be charged against that county.*

(2) *There shall be two mandatory annual training sessions supervised by the supreme court for all elected and appointed justices of the peace. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials shall be paid to the elected or appointed justice of the peace for attending the sessions by the county in which he holds or will hold court and shall be charged against that county.*

(3) *Each justice of the peace shall attend the training sessions provided for in subsection (2). Failure to attend disqualifies him from office and creates a vacancy in the office. However, the supreme court may excuse a justice of the peace from attendance because of illness, a death in the family, or any other good cause."*

Approved April 7, 1987.

## CHAPTER NO. 367

[SB 356]

AN ACT TO SPECIFY QUALIFICATIONS FOR THE OFFICE OF COUNTY CORONER AND TO MANDATE EDUCATIONAL REQUIREMENTS FOR THE CORONER AND DEPUTY CORONERS; AND AMENDING SECTIONS 7-4-2901 AND 7-4-2902, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Qualifications for office of county coroner.** (1) In addition to the qualifications set forth in 7-4-2201, to be eligible for the office of coroner, at the time of election or appointment to office a person must

be a high school graduate or holder of an equivalency of completion of secondary education as provided by the superintendent of public instruction under 20-7-131 or of an equivalency issued by another state or jurisdiction.

(2) Each coroner, before entering the duties of his office, must:

(a) take, and file with the county clerk, the constitutional oath of office; and

(b) certify to the county clerk that:

(i) he has satisfactorily completed the basic coroner course of study provided in [section 4] or that he has completed the equivalent educational requirements approved by the attorney general; or

(ii) he intends to take the basic coroner course at the next offering of the course if the coroner has been appointed or was elected by other than a local government general election and, from the date of appointment or election and assumption of his duties as coroner, no basic coroner course was offered. A coroner forfeits his office for failure to take and satisfactorily complete the next offering of the basic coroner course.

Section 2. Section 7-4-2902, MCA, is amended to read:

**"7-4-2902. Vacancy in office of county coroner or disqualification of coroner.** (1) *The coroner, or the board of county commissioners if the coroner is unable or refuses to act, shall request the coroner or a qualified deputy coroner of another county to be acting county coroner if the coroner:*

(a) *is absent or unable to attend to his duties or if the office of coroner is vacant and there are no qualified deputies available;*

(b) *is related to the deceased;*

(c) *is a potential party in an action concerning the death or his inquiry into the death may pose a conflict of interest;*

(d) *has not successfully completed the basic coroner course required in [section 4] and there are no qualified deputies available; or*

(e) *is disqualified under the provisions of 46-4-201.*

(2) *The salary of and expenses incurred by an acting coroner on behalf of a requesting county are an allowable charge against the requesting county."*

Section 3. Section 7-4-2901, MCA, is amended to read:

**"7-4-2901. Appointment of deputy coroners.** (1) The coroner, with approval of the county commissioners, may appoint one or more deputy coroners to assist him or act in his absence.

(2) *At the time of appointment, a deputy coroner or acting coroner must meet the qualifications required of a coroner as provided in [section 1(1) and (2)(a)]. Within a reasonable time after appointment, a deputy must successfully complete the basic coroner course, as provided for in [section*



4(2)(a)]. *The deputy must also meet the requirements for advanced education as provided in [section 4(2)(b)].*

(3) A deputy coroner may be the coroner or qualified deputy coroner from another county."

**Section 4. Coroner education and continuing education.** (1) Coroner education will be conducted by the attorney general. The cost of conducting such education must be borne by the office of the attorney general from money appropriated for such education. The county shall pay the salary, mileage, and per diem of each coroner-elect, coroner, and deputy coroner attending from that county.

(2) (a) The attorney general shall conduct a 40-hour basic coroner course of study after each general election. The course, or an equivalent course approved by the attorney general, must be completed before the first Monday in January following the election. The attorney general may conduct other basic coroner courses at times he considers appropriate.

(b) The attorney general shall annually conduct a 16-hour advanced coroner course. Failure of any coroner or deputy coroner to satisfactorily complete the advanced coroner course, or an equivalent course approved by the attorney general, at least once every 2 years results in forfeiture of office.

Approved April 7, 1987.

## CHAPTER NO. 368

[SB 357]

AN ACT REQUIRING THAT ELECTION MATERIALS TOO SMALL TO INCLUDE DISCLAIMERS BE FILED WITH THE COMMISSIONER OF POLITICAL PRACTICES PRIOR TO PUBLIC DISTRIBUTION; PROVIDING FOR NOTIFICATION OF INADVERTENT DISCLAIMER OMISSION AND COMPLIANCE WITH ELECTION MATERIAL PROCEDURES WITHIN 5 DAYS OF INITIAL PUBLIC DISTRIBUTION; AND AMENDING SECTION 13-35-225, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 13-35-225, MCA, is amended to read:

**"13-35-225. Election materials not to be anonymous.** (1) Whenever any person makes an expenditure for the purpose of financing communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, or other form of general political advertising, such communication shall clearly and conspicuously state the name and address of the printer, if printed commercially, and the name and address of the person who made or financed the expenditure for the communication; including, in the case of a political committee, the name and address of the treasurer.

(2) If any document or other article of advertising is too small for the requirements of subsection (1) to be conveniently included, the person financing the communication shall file a copy of the article with the commissioner, together with the required information, *prior to its public distribution.*

(3) *If information required in subsection (1) is inadvertently omitted or not printed, upon discovering the omission, the person financing the communication shall file notification of the omission with the commissioner within 5 days and make every reasonable effort to bring the material into compliance with subsection (1)."*

Approved April 7, 1987.

## CHAPTER NO. 369

[SB 146]

AN ACT DESIGNATING THE DEPARTMENT OF COMMERCE AS THE STATE AGENCY RESPONSIBLE FOR COORDINATING COLLECTION OF REVENUE BY COUNTIES ON BEHALF OF THE STATE; AND REQUIRING EACH STATE AGENCY RECEIVING REVENUE COLLECTED BY THE COUNTIES TO COORDINATE ITS COLLECTION WITH THE DEPARTMENT OF COMMERCE.

WHEREAS, by law counties are required to collect certain revenues on behalf of the state; and

WHEREAS, counties receive limited and conflicting instructions from the various departments of state government concerning the collection of revenue by the state; and

WHEREAS, a recent audit identified many of these problems and recommended that a single state agency be designated to coordinate the collection of state revenue by the counties.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Coordination of state revenue collected by counties — duties of department of commerce.** (1) The department of commerce shall advise the counties concerning any questions involving collection of revenue on behalf of the state. The department shall prepare and distribute a county collections manual to county treasurers, setting forth the procedures and forms to be used by the counties in collecting revenue for the state. The manual must be revised at least biennially, with the manual and revisions being sent to each county treasurer.

(2) State agencies receiving revenue collected by the counties shall coordinate the collection of revenue with the department. Necessary instructions or procedures must be submitted to the counties by state agencies through the department to provide coordination and ensure placement in the county collections manual.

Approved April 7, 1987.

**CHAPTER NO. 370**

[HB 53]

AN ACT TO GENERALLY REVISE AND CLARIFY THE MONTANA CODE ANNOTATED; AND REPEALING SECTIONS 2-17-106, 2-17-110, 7-15-4122, 7-33-4203, AND 50-5-421 THROUGH 50-5-424, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-1857, MCA, is amended to read:

**"2-15-1857. Board of cosmetologists.** (1) There is a board of cosmetologists.

(2) The board consists of three licensed cosmetologists and one public member who is not engaged in the practice of cosmetology or electrology appointed by the governor with the consent of the senate. Each licensed cosmetologist member appointed shall have actively engaged in the profession of cosmetology for at least 5 years before his appointment and have been a resident of this state for at least 5 years immediately before his appointment. Each member shall be at least 18 years old and a graduate of a high school or its equivalent. No two members of the board may be members of or affiliated with a school of cosmetology.

(3) Each member shall serve for a term of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 2-18-703, MCA, is amended to read:

**"2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, shall contribute the amount specified in this section towards the group benefits cost.

(2) For employees defined in 2-18-701, other than members of collective bargaining units, and for members of the legislature, the employer contribution for group benefits shall be \$105 per month for the fiscal year ending June 30, 1986, and \$115 per month for each fiscal year thereafter. Permanent part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution as wages. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act of 1965, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than \$10 per month.

(4) Unused employer contributions for any state employee shall be transferred to an account established for this purpose by the department

*of administration* and upon such transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member."

Section 3. Section 5-11-206, MCA, is amended to read:

**"5-11-206. Index.** (1) The legislative council shall prepare a suitable index of all the laws and resolutions passed or adopted at each session of the legislature. The index shall be a thorough index of the laws and resolutions and of each subject contained in or covered by the laws and resolutions, together with a cross-index to assist in readily finding any subject contained in each volume.

(2) For the purpose of uniformity in indexes, the index of each succeeding publication of the session laws shall conform as nearly as practicable with those of the volumes preceding it.

(3) There shall also be prepared for each publication of the session laws a "*code sections affected list*" showing what sections of the Montana Code Annotated have been amended or repealed by any laws enacted by that session of the legislature."

Section 4. Section 5-11-208, MCA, is amended to read:

**"5-11-208. Expenses.** The expenses incurred by the legislative council in carrying into effect 5-11-202, 5-11-203, and 5-11-205 through 5-11-207, as amended, must be paid out of money specifically appropriated for that purpose."

Section 5. Section 7-2-2730, MCA, is amended to read:

**"7-2-2730. Establishment of special warrant district or special funding bond district in continuing county.** (1) After all warrants have been drawn and issued against the funds of such adjoining county to pay the claims and demands existing against such county on the date when the territory of such abandoned and abolished county was attached to such adjoining county, all money in the funds of such adjoining county shall be used and applied in payment of the warrants drawn against its respective funds. If such money is not sufficient to pay all of such warrants, with the interest thereon, then the board of county commissioners shall make an order creating a special warrant district and shall include within such district all of the territory of such adjoining county but shall not include therein any of the territory of such abandoned and abolished county and shall, thereafter and at the time of making levies for county purposes, levy a special tax against all taxable property in such district to pay the warrants, with interest thereon, outstanding against the funds of said county. The board may in its discretion extend such tax levy over a period of not to exceed 3 years.

(2) (a) If it shall appear to the board that it will require too large a tax levy to pay such warrant indebtedness, with interest thereon, within 3 years, such board, instead of creating a special warrant district, shall create and establish a special funding bond district and shall include within the boundaries thereof all of the territory within such adjoining county but shall not include therein any of the territory of the abandoned and abolished county attached to such adjoining county. After all money in the

several funds of said county applicable thereto has been applied in payment of such outstanding warrants and interest thereon and without submitting the question of doing so to an election, such board may issue bonds in an amount sufficient to pay and redeem all such warrants remaining outstanding, with interest thereon.

(b) Such bonds shall be issued in the name of said adjoining county and shall contain recitals to the effect that the principal and interest thereof will be paid by millage tax levies against the property situated within the boundaries of said county as the same existed before the territory of such abandoned and abolished county was attached thereto and that none of the property within the territory of such abandoned and abolished county will be subjected to such levies. Except as otherwise provided herein, said bonds shall be issued and sold and tax levies shall be fixed and made to pay the principal and interest thereof as the same becomes due in the manner provided by 7-7-107, 7-7-108, 7-7-123, 7-7-124, 7-7-2104, 7-7-2106, and parts 22 and 23 of chapter 7 and all the provisions thereof, so far as applicable thereto, shall apply to such bonds."

Section 6. Section 7-2-2748, MCA, is amended to read:

**"7-2-2748. Special funding bond district bonds.** (1) Bonds issued under 7-2-2747 shall not be issued for a longer period than 10 years and shall be issued without submitting the question of doing so to any election. Such bonds shall be issued in the name of such district and shall be signed by the trustees. The clerk shall attest the same and affix the seal of the district thereof, and they shall be registered in the office of the county treasurer, who shall certify such registration on such bonds. Except as otherwise provided herein and insofar as the same are not in conflict herewith, all of the provisions of 7-7-107, 7-7-108, 7-7-123, 7-7-124, 7-7-2104, 7-7-2106, and parts 22 and 23 of chapter 7 shall apply to, govern, and control the issuance, sale, and payment of such bonds, with the interest thereon, and the levying of taxes for such purposes.

(2) There shall be inserted and made a part of each such bond statements setting forth the purpose for which the same is issued and that said bonds do not incur, create, or constitute any indebtedness or obligation whatever on the part of the county of (naming the county whose board of county commissioners, acting as such trustees, are issuing such bonds) but that the principal and interest thereof will be paid by special millage taxes levied against all of the taxable property situated within the boundaries of such special funding bond district."

Section 7. Section 7-2-2749, MCA, is amended to read:

**"7-2-2749. Payment of outstanding bonds of abandoned county.** (1) If any abandoned and abolished county shall have any bonds outstanding and unpaid at the time it ceases to exist, the territory within the boundaries of such county as they existed when such county so ceased to exist shall constitute a special district for the payment thereof. The board of county commissioners of the county designated in the petition for abandonment as the county to which the territory of such county is to be attached and made a part shall annually levy a tax against all taxable property in such taxing district sufficient to pay the interest and principal of

such bonds as the same become due, and all of the provisions of 7-7-107, 7-7-108, 7-7-123, 7-7-124, 7-7-2104, 7-7-2106, and parts 22 and 23 of chapter 7 shall apply to, govern, and control the levying and collection of such taxes and the payment of interest and principal thereof by the boards and officers of the county within which such district is situated.

(2) Any and all money in any bond sinking and interest funds of such abandoned and abolished county, when transmitted and paid over to the treasurer of the county to which the territory of such abandoned and abolished county has been attached, shall be credited to and deposited in a sinking and interest fund. All taxes levied for the payment of such bonds and interest and delinquent at the time such county ceased to exist, all taxes levied for such sinking and interest fund in accordance with the provisions of 7-2-2742 through 7-2-2750, and all other money coming to the hands of such county treasurer for the use or benefit of such abandoned county, when not required for any other purposes under the provisions of this part, shall be deposited to the credit of such sinking and interest fund and used for the payment of the principal and interest of such bonds and for no other purpose."

Section 8. Section 7-3-4264, MCA, is amended to read:

**"7-3-4264. Applicability of civil service provisions.** The provisions of 7-3-4257 through 7-3-4262, 7-3-4264, and 7-3-4265 shall apply to all appointive officers and employees of such city except those especially named in 7-3-4254, commissioners of any kind, laborers whose occupation requires no special skill or fitness, election officials, and mayor's secretary and assistant attorney, where such officers are appointed."

Section 9. Section 7-3-4265, MCA, is amended to read:

**"7-3-4265. Violations of civil service provisions.** (1) The council of such city shall have power to pass ordinances imposing suitable penalties for the punishment of persons violating any of the provisions of this part relating to the civil service commission.

(2) It shall be unlawful for any candidate for office in any such city, directly or indirectly, to give or promise any person or persons any office, position, employment, benefit, or anything of value for the purpose of influencing or obtaining the political support, aid, or vote of any person or persons.

(3) Any violation of the provisions of 7-3-4257 through 7-3-4262, 7-3-4264, or this section shall be a misdemeanor and give grounds for the removal from office."

Section 10. Section 7-4-2631, MCA, is amended to read:

**"7-4-2631. Fees of county clerk.** (1) Except as provided in 7-4-2632, the county clerks must charge, for the use of their respective counties:

(a) for recording and indexing each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with seal affixed, \$6;

(b) for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:

(i) for the first mining claim in the affidavit, \$3; and

(ii) for each additional mining claim included in it, 50 cents;

(c) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, \$2;

(d) for filing of subdivision and townsite plats, \$5 plus:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 25 cents;

(e) for filing certificates of surveys and amendments thereto, \$5 plus 50 cents per tract or lot;

(f) for a copy of a record or paper:

(i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and

(ii) for each certification with seal affixed, \$2;

(g) for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;

(h) for administering an oath with certificate and seal, no charge;

(i) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(j) for filing, indexing, or other services provided for by 30-9-401 through 30-9-407, the fees prescribed *under* those sections;

(k) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, \$3;

(l) for filing a copy of notarial commission and issuing a certificate of official character of such notary public, \$2;

(m) for each certified copy of a birth certificate or a death certificate, \$2;

(n) for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service.

(2) State agencies submitting documents to be put of record shall pay the fees provided for in this section. These fees must be paid by a state agency on a monthly basis."

Section 11. Section 7-6-308, MCA, is amended to read:

**"7-6-308. Population and taxable valuation figures to be used.**

(1) Population figures used in 7-6-304, 7-6-306, and 7-6-307 must be the most recent figures as determined by the department of commerce.

(2) Mill values used in 7-6-306 and 7-6-307 are the most recent taxable valuation figures as determined by the department of revenue for the fiscal year in which payments will be made."

Section 12. Section 7-6-4423, MCA, is amended to read:

**"7-6-4423. Sales for delinquent taxes when municipality collects municipal tax.** (1) (a) Whenever, in a city or town whose city treasurer or town clerk collects its own taxes or special assessments or both, any such taxes or assessments shall become delinquent, no tax sale shall be held therefor by such city treasurer or town clerk but such city treasurer or town clerk must, within 10 days after the date the same become delinquent, certify all such delinquent taxes and assessments to the county treasurer of the county in which the city or town is situated.

(b) Such certificate shall contain:

(i) the description of each lot or parcel of land on which any tax or assessment has become delinquent;

(ii) the name and address of the person to whom assessed;

(iii) the date when the same became delinquent;

(iv) the amount of the delinquent tax or assessment, the penalty to be added thereto, and the total amount of such delinquent tax or assessment with penalty added.

(c) If any special assessment is payable in installments and any installment thereof becomes delinquent, the amount of such delinquent installment shall be included in such certificate; provided, however, that if the city or town council, by the adoption of an appropriate resolution, shall declare the whole of the assessment remaining unpaid to be delinquent as provided in 7-12-4182, then the whole of the assessment remaining unpaid shall be included in such certificate.

(2) Upon receipt of such certificate, the county treasurer shall enter such delinquent taxes and assessments in the delinquent tax list of the county, and the county treasurer in selling property for delinquent taxes must include all such city and town delinquent taxes and assessments. There shall be but one sale for each piece of property. Such sale shall cover the aggregate of such city or town, county, and state taxes and special assessments, with the penalties, interest, and costs provided by law."

Section 13. Section 7-6-4439, MCA, is amended to read:

**"7-6-4439. Emergency provisions not affected.** Nothing in 7-6-4431, 7-6-4432, 7-6-4434, 7-6-4436, and 7-6-4437 shall affect the emergency expenditures provided by law."

Section 14. Section 7-6-4463, MCA, is amended to read:

**"7-6-4463. Limit on resort community tax rate — goods and services subject to tax.** (1) The rate of the resort tax must be established by the election petition or resolution provided for in 7-6-4464, but the rate may not exceed 3%.



(2) (a) The resort tax is a tax on the retail value of all goods and services sold within the resort community by the following establishments:

- (i) hotels, motels, and other lodging or camping facilities;
- (ii) restaurants, fast food stores, and other food service establishments;  
*and*
- (iii) taverns, bars, night clubs, lounges, and other public establishments that serve beer, wine, liquor, or other alcoholic beverages by the drink.

(b) *Establishments* that sell luxuries must collect a tax on such luxuries."

Section 15. Section 7-7-2302, MCA, is amended to read:

**"7-7-2302. Applicability of certain other bond provisions.** The provisions of 7-7-2203 through 7-7-2207, 7-7-2209 through 7-7-2211, 7-7-2222, 7-7-2255 through 7-7-2270, and 7-7-2272 through 7-7-2274 apply to refunding bonds issued under this part; however, the board of county commissioners may at its option sell bonds issued under this part at a private negotiated sale or at a public sale conducted pursuant to the provisions of 7-7-2251 through 7-7-2254."

Section 16. Section 7-7-4302, MCA, is amended to read:

**"7-7-4302. Applicability of certain other bond provisions.** The provisions of 7-7-4201 through 7-7-4206, 7-7-4208 through 7-7-4210, 7-7-4255 through 7-7-4270, and 7-7-4272 through 7-7-4274 apply to refunding bonds issued under this part; however, the city or town council may at its option sell bonds issued under this part at a private negotiated sale or at a public sale conducted pursuant to the provisions of 7-7-4251 through 7-7-4254."

Section 17. Section 7-12-1103, MCA, is amended to read:

**"7-12-1103. Definitions.** As used in this part, the following definitions apply:

(1) "Appointing authority" means the mayor in the case of a municipality, the board of county commissioners in the case of a county, or the chief executive of a consolidated city-county government.

(2) "Board" means the board of trustees created in 7-12-1121.

(3) "Business" means all types of business, including professions.

(4) "District" means a business improvement district created under this part.

(5) "Governing body" means the legislative body of a local government.

(6) "Local government" means a municipality, a county, or a consolidated city-county government.

(7) "Owner" means a person in whom appears the legal title to real property by deed duly recorded in the county records or a person in possession of real property under claim of ownership for himself or as the personal representative, agent, or guardian of the owner."

Section 18. Section 7-12-4429, MCA, is amended to read:

**"7-12-4429. Financial assistance from the United States.** Cities and towns are authorized to:

(1) enter into suitable agreements with the United States of America for loans of money and for receiving financial assistance to do the work and improvements contemplated by 7-12-4405; and

(2) provide for the repayment thereof by yearly payments from funds derived from districts created under 7-12-4402, apportioned over a period of time not exceeding 20 years."

Section 19. Section 7-13-114, MCA, is amended to read:

**"7-13-114. Applicable provisions of laws relating to rural improvement districts.** The provisions of 7-12-2101, 7-12-2106, 7-12-2107, 7-12-2110, 7-12-2115 through 7-12-2120, 7-12-2131 through 7-12-2140, 7-12-2153, 7-12-2154, 7-12-2161 through 7-12-2165, 7-12-2166(2), 7-12-2168(2), and 7-12-2169 through 7-12-2174 pertaining to rural improvement districts shall likewise apply under the provisions of this part *unless in conflict with the provisions of this part.*"

Section 20. Section 7-13-2242, MCA, is amended to read:

**"7-13-2242. Examination of petition.** (1) When a petition of nomination is presented for filing to the election administrator, he shall examine the same and ascertain whether or not it conforms to the provisions of 7-13-2237 through 7-13-2247. If found not to conform thereto, he shall in writing designate on the petition the defect or omission or reason why the petition cannot be filed and shall return the petition to the individual named as the individual to whom it may be returned in accordance with 7-13-2239.

(2) The petition may then be amended and again presented to the election administrator as in the first instance but in no case may a petition be presented later than 75 days before the election. The election administrator shall proceed to examine the petition as hereinbefore provided."

Section 21. Section 7-13-2510, MCA, is amended to read:

**"7-13-2510. Powers of district.** A television district organized under this part, acting through its board of trustees herein provided for, may:

(1) perform all the acts and take all the necessary or proper steps to assure that there will be a fair, efficient, and equitable distribution of television services within the area in order that all persons within such service area shall be supplied by means of an appropriate electrical or electronic system for television program distribution, such authorized system to provide such flexibility as to permit radical improvements in technical quality without rendering inoperative receivers therein, but discontinuance of service by the district for improvements or repairs for a temporary period shall not be construed as rendering inoperative;

(2) if necessary or proper in the furtherance of the objects of this part, acquire, build, construct, repair, own, maintain, and operate any necessary

stations transmitting simultaneous visual and aural signals intended to be received by the general public, relay stations, pickup stations, or any other necessary electrical or electronic system;

(3) make contracts to compensate any owner of land or other property for the use of such property for the purposes of this part;

(4) make contracts with the United States, any state or municipality, or any department or agency of those entities for carrying out the general purposes for which the district is formed;

(5) acquire, by gift, devise, bequest, lease, or purchase, real and personal property, tangible or intangible, including lands, rights-of-way, and easements, necessary or convenient for its purposes;

(6) to make contracts of any lawful nature (including labor contracts or those for employees' benefits) and employ engineers, laboratory personnel, attorneys, other technical or professional assistants, and any other assistants or employees necessary to carry out the provisions of this part;

(7) issue warrants, payable at the time stated therein, to evidence the obligation to repay money borrowed or any other obligation incurred by the district, warrants so issued to draw interest at a rate fixed by the board, payable annually or semiannually as the board may prescribe;

(8) contract indebtedness or borrow money for corporate purposes and issue revenue bonds therefor to be repaid from rates and charges, bearing interest *as provided in 17-5-102* payable semiannually, the bonds not to be sold for less than par and accrued interest;

(9) prescribe tax rates for the providing of services throughout the area in accordance with the provisions of this part;

(10) prescribe such installation or ready-to-serve charges to be used for any costs connected with preparation, acquisition, or construction of the system;

(11) apply for, accept, and be the holder of any permit or license issued by or required under federal or state law; and

(12) provide FM translator services if authorized as provided in 7-13-2512."

Section 22. Section 7-14-1133, MCA, is amended to read:

**"7-14-1133. Bonds and obligations.** (1) An authority may borrow money for any of its corporate purposes and issue bonds therefor, including refunding bonds, in such form and upon such terms as it determines, payable out of any revenues of the authority, including revenues derived from:

- (a) any port or transportation and storage facility;
- (b) taxes levied pursuant to 7-14-1131 or 67-10-402;
- (c) grants or contributions from the federal government; or
- (d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that no bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds and on any then outstanding bonds for which revenues from the same source are pledged exceeds the amount of such revenues to be received in that year, as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenues from the pledged source in such year at least equal to the amount of principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest *as provided in 17-5-102*. Except as otherwise provided in this part, any bonds issued pursuant to this part by an authority may be payable as to principal and interest solely from revenues of the authority and shall state on their face the applicable limitations or restrictions regarding the source from which such principal and interest are payable.

(4) Bonds issued by an authority, county, or municipality pursuant to the provisions of this part are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) For the security of any such bonds, the authority, county, or municipality may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenues referred to in this part, prior to the payment of current costs of operation and maintenance of the facilities."

Section 23. Section 7-14-2745, MCA, is amended to read:

**"7-14-2745. Mode of payment of assessment — installment payments.** (1) Installment payments shall be made in six equal portions, in 1, 2, 3, 4, 5, and 6 years.

(2) Payments shall be in the form of bonds which shall draw interest, *as provided in 17-5-102*, from the date they are issued until they are paid.

(3) If the mode of payment is to be by installments, the board and the committee shall approve and certify the assessment roll.

(4) The board and the assessor shall, at the time of levying the assessment and in their order setting the levy, declare that the sum charged against each parcel of land may be paid in equal annual installments with interest upon the whole sum at the rate fixed by the board of county commissioners in accordance with law. The order shall specify the number of installments which shall be equal to the number of years for which the bonds may run.

(5) Each year thereafter, the treasurer shall collect one of the installments, together with the interest due thereon and the interest due on the installments thereafter to become due.

(6) Provisions concerning delinquency and the sale of land set forth with relation to the mode of immediate payment shall be likewise applicable to installment payments."

Section 24. Section 7-14-2823, MCA, is amended to read:

**"7-14-2823. Hearing and decision on application.** (1) At the hearing, proof of giving the notice required by 7-14-2821 and 7-14-2822 must be made, and any person may appear and contest the application. If the board of commissioners finds that the ferry is either a public necessity or convenience and that the applicant is a suitable person and, by reason of the ownership of the landing or failure of the owner thereof to apply, is entitled thereto, authority to erect and take tolls on the ferry may be granted to him for the term of 10 years. The board may at any time they see fit authorize and maintain fords across any water within any distance of any ferry.

(2) The board granting authority to keep a public ferry must at the same time:

(a) fix the amount of a bond to be given by the person or corporation owning or taking tolls on the ferry for the benefit of the county and all persons crossing or desiring to cross *on* the same and provide for the annual renewal thereof;

(b) fix the amount of license tax to be paid by the person or corporation for taking tolls thereon, not less than \$3 or over \$100 per month, payable annually;

(c) fix the rate of tolls which may be collected for crossing *on* the ferry;

(d) make all necessary orders relative to the construction, erection, and business of ferries which they have by law the power to make.

(3) When a county commissioner is interested in an application to erect, construct, or take tolls on a ferry, he must not act in any such matters."

Section 25. Section 7-15-4322, MCA, is amended to read:

**"7-15-4322. Details relating to urban renewal bonds.** (1) Bonds issued under 7-15-4301 may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest *as provided in* 17-5-102, be in such denomination or denominations, be in such form (either coupon or registered), carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment at such place or places, be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics as may be provided by the resolution, ordinance, or trust indenture or mortgage authorized pursuant thereto.

(2) (a) The bonds may be sold at not less than 98% of par at public or private sale or may be exchanged for other bonds on the basis of par.

(b) The bonds may be sold to the federal government at private sale at not less than par, and if less than all of the authorized principal amount

of the bonds is sold to the federal government, the balance may be sold at public or private sale at not less than 98% of par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government."

Section 26. Section 7-31-112, MCA, is amended to read:

**"7-31-112. Details relating to bonds.** (1) The bonds to be issued upon the conditions and under the provisions aforesaid shall:

- (a) bear the date of their issuance;
- (b) be designated as sanitary coupon bonds of the county, city, or town issuing the same;
- (c) be of a denomination not less than \$500 or more than \$1,000 each;
- (d) be payable at such place in New York City or elsewhere, at the discretion of the board or council issuing the same;
- (e) bear interest *as provided in 17-5-102*, payable 30 years after the date thereof, with the privilege of paying the same at any time after 5 years from such date, which interest shall be payable semiannually at the place whereat the principal is payable and for which interest coupons shall be attached to said bonds.

(2) If said bonds and coupons are issued by any county, they shall be signed by the chairman of the board of county commissioners of such county and attested by the clerk thereof and his seal attached thereto. If the bonds and coupons are issued by any incorporated city or town, the same shall be signed by the mayor and attested to by the city or town clerk and the seal thereof attached."

Section 27. Section 7-32-4153, MCA, is amended to read:

**"7-32-4153. Meaning of word mayor.** Wherever the word "mayor" is used in 7-32-4109 and 7-32-4160 through 7-32-4163, it is intended to include "city manager", "city commissioner", or any other name or designation used to identify or designate the chief executive of any city or municipality."

Section 28. Section 7-34-2131, MCA, is amended to read:

**"7-34-2131. Hospital district bonds authorized.** (1) A hospital district may borrow money by the issuance of its bonds to provide funds for payment of part or all of the cost of acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide an adequate working capital for a new hospital.

(2) The amount of bonds issued for such purpose and outstanding at any time may not exceed 22.5% of the taxable value of the property therein as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds.

(3) Such bonds shall be authorized, sold, and issued and provisions made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of school districts by Title 20, chapter 9, part 4.

(4) Nothing herein shall be construed to preclude the provisions of Title 50, chapter 6, part 1, allowing the state to apply for and accept federal funds."

Section 29. Section 7-34-2415, MCA, is amended to read:

**"7-34-2415. Details of bonds.** (1) The bonds may be sold at public or private sale and shall bear interest at a rate or rates *as provided in* 17-5-102. The bonds may be for a 40-year period.

(2) Except as otherwise provided in 7-34-2411 through 7-34-2418, any bonds issued pursuant to 7-34-2411 through 7-34-2418 by a county shall be payable as to principal and interest solely from revenues of the county and shall state on their face the applicable limitations or restrictions regarding the source or sources from which such principal and interest are payable."

Section 30. Section 10-4-101, MCA, is amended to read:

**"10-4-101. (Effective January 1, 1987) Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Account" means the 9-1-1 emergency telecommunications account established in 10-4-301.

(2) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(3) "Direct dispatch method" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, provides for a decision as to the proper action to be taken and for dispatch of appropriate emergency service units.

(4) "Emergency" means any event that requires dispatch of a public or private safety agency.

(5) "Emergency services" means services provided by any public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.

(6) "Exchange access services" means:

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged therefor, any facility or service provided in connection with the services described in subsection (6)(a).

(7) "Local government" means any city, county, or political subdivision of the state and its agencies.

(8) "Minimum 9-1-1 service" means a telephone service meeting the standards established in 10-4-102 that automatically connects a person dialing the digits 9-1-1 to an established public safety answering point. "Minimum 9-1-1 services" includes equipment for connecting and outswitching 9-1-1 calls within a telephone central office, trunking facilities

from the central office to a public safety answering point, and equipment, as appropriate, for transferring the call to another point, when appropriate.

(9) A "9-1-1 jurisdiction" means a group of public or private safety agencies who operate within or are affected by one or more common central office boundaries and who have agreed in writing to jointly plan a 9-1-1 emergency telephone system.

(10) "Private safety agency" means any entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

(11) "Provider" means a public utility, cooperative telephone company, or any other entity that provides telephone exchange access services.

(12) "Public safety agency" means the state and any city, county, city-county consolidated government, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state that provides or has authority to provide emergency services.

(13) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives 9-1-1 calls from persons in a 9-1-1 service area and which may, as appropriate, directly dispatch public or private safety services or transfer or relay 9-1-1 calls to appropriate public safety agencies.

(14) "Relay method" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays such information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

(15) "Subscriber" means an end user who receives telephone exchange access services.

(16) "Transfer method" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers such a request to an appropriate public safety answering agency or other provider of emergency services."

Section 31. Section 13-1-101, MCA, is amended to read:

**"13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(2) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination or appointment as a candidate for public office as required by law;

(b) for the purposes of chapters 35, 36, or 37, an individual who has publicly announced his intention to seek nomination or election to public office by write-in vote and who has received a contribution or made an



expenditure or has given an authorization to another person to receive a contribution or make an expenditure for the purpose of supporting his nomination or election.

(3) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residence for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, so long as such organization is not a primary political committee; or

(iv) filing fees paid by the candidate.

(4) "Election" means a general, special, or primary election held pursuant to the requirements of state law, regardless of the time and/or purpose.

(5) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

(6) "Elector" means an individual qualified and registered to vote under state law.

(7) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (3);

(ii) payments by a candidate for his filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for himself and his family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, so long as such organization is not a primary political committee.

(8) "General election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1).

(9) "Individual" means a human being.

(10) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35, 36, or 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes an "issue" upon approval by the secretary of state of the form of the petition or referral.

(11) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (2) of this section.

(12) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

(13) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(14) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for such nominations is set on the same date for all similar subdivisions in the state.

(15) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(16) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(17) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(18) "Voting machine or device" means any equipment used to record, tabulate, or in any manner process the vote of an elector."

Section 32. Section 13-1-203, MCA, is amended to read:

**"13-1-203. Chief election officer to advise, assist, and train.** The secretary of state shall advise and assist election administrators with regard to application, operation, and interpretation of Title 13, except for chapters 35, 36, or 37. He shall hold at least one workshop each year to provide training and assistance to election administrators. Election administrators shall be reimbursed, from funds appropriated to the secretary of state, for their mileage and expenses for attending the workshops at the rates set for mileage and expenses in 2-18-501 through 2-18-503. At the discretion of the secretary of state and within the budget limits allowed for workshops, such workshops may be held in several sessions at separate locations in the state."

Section 33. Section 13-17-103, MCA, is amended to read:

**"13-17-103. Required specifications for equipment.** A voting machine or device may not be approved unless:

- (1) an elector can vote in secrecy;
- (2) an elector is prevented from voting for any candidate or upon any ballot issue more than once and is also prevented from voting on any office or ballot issue for which he is not entitled to vote;
- (3) an elector can secretly select the party for which he wishes to vote in a primary election and the machine or device will count only votes for the candidates of that party by the elector in the primary election;
- (4) an elector can vote a split ticket in a general election if he desires;
- (5) every valid vote cast is registered and recorded;
- (6) the machine or device is constructed so that it cannot be tampered with for a fraudulent purpose and is also constructed so that during the progress of the voting no individual can see or know the number of votes registered for any candidate or on any ballot issue;
- (7) it allows write-in voting; and
- (8) a guarantee to provide training and assistance to election officials is included in each contract for purchase of the machine or device."

Section 34. Section 13-37-303, MCA, is amended to read:

**"13-37-303. Donation by taxpayer.** (1) An individual whose withheld income tax or payment of estimated tax exceeds by more than \$1 his income tax liability for the taxable year may donate \$1 to be paid to the fund. In the case of a joint return, as provided in 15-30-142, of a husband and wife having an income tax overpayment as defined in 15-30-149 of \$2 or more, each spouse may donate \$1 to be paid to the fund.

(2) An individual with an unpaid tax liability may at the time of payment donate an extra \$1 to be paid to the fund.

(3) The department shall provide a place on the face of the blank form of return, provided for in 15-30-144, where an individual may make the donations provided for in subsections (1) and (2). The form shall adequately explain the individual's option to donate \$1 to the fund."

Section 35. Section 15-1-101, MCA, is amended to read:

**"15-1-101. Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to the raising of livestock, poultry, bees, and other species of domestic animals and wildlife in domestication or a captive environment, and the raising of field crops, fruit, and other animal and vegetable matter for food or fiber.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and profit margin shown in national appraisal guides and manuals or the valuation schedules of the department of revenue.

(d) (i) The term "commercial", when used to describe property, means any property used or owned by a business, a trade, or a nonprofit corporation as defined in 35-2-102 or used for the production of income, except that property described in subsection (ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes used exclusively as a residence except when held by a distributor or dealer of trailers or mobile homes as his stock in trade;

(E) all property described in 15-6-135;

(F) all property described in 15-6-136; and

(G) all property described in 15-6-146.

(e) The term "comparable property" means property that has similar use, function, and utility; that is influenced by the same set of economic trends and physical, governmental, and social factors; and that has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed.

(h) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on such leasehold improvements are a lien only on such leasehold improvements.

(i) The term "livestock" means cattle, sheep, swine, goats, horses, mules, and asses.

(j) The term "mobile home" means forms of housing known as "trailers", "housetrainers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

(k) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(l) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(m) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(n) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(o) The term "taxable value" means the percentage of market or assessed value as provided for in 15-6-131 through 15-6-149.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board."

Section 36. Section 15-6-135, MCA, is amended to read:

**"15-6-135. Class five property — description — taxable percentage.** (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in subsection (1)(b) of 15-6-137;

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation.

(2) (a) "Air and water pollution equipment" means facilities, machinery, or equipment used to reduce or control water or atmospheric pollution or contamination by removing, reducing, altering, disposing, or storing pollutants, contaminants, wastes, or heat. The department of health and environmental sciences shall determine if such utilization is being made.

(b) The department of health and environmental sciences' determination as to air and water pollution equipment may be appealed to the board of health and environmental sciences and may not be appealed to either a county tax appeal board or the state tax appeal board. However, the appraised value of the equipment as determined by the department of revenue may be appealed to the county tax appeal board and the state tax appeal board.

(3) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials; or

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget.

(5) New industrial property does not include:

(a) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions;

(b) a plant that will create adverse impact on existing state, county, or municipal services; or

(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

(6) Class five property is taxed at 3% of its market value."

Section 37. Section 15-8-111, MCA, is amended to read:

**"15-8-111. Assessment — market value standard — exceptions.** (1) All taxable property must be assessed at 100% of its market value except as provided in subsection (6) of this section and in 15-7-111 through 15-7-114.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) Except as provided in subsection (3), the market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to aircraft and boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in 15-6-134 through 15-6-140 and 15-6-145 through 15-6-149, except:

(a) the wholesale value for agricultural implements and machinery is the loan value as shown in the Official Guide, Tractor and Farm Equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri; and

(b) for agricultural implements and machinery not listed in the official guide, the department shall prepare a supplemental manual where the values reflect the same depreciation as those found in the official guide.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property in classes four through eleven and fifteen through nineteen is the percentage of market value established for each class of property in 15-6-134 through 15-6-141 and 15-6-145 through 15-6-149.

(6) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-143, under class thirteen, are assessed at 100% of the combined appraised value of the standing timber and grazing productivity of the land when valued as timberland.

(7) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(8) The taxable value of all property in 15-6-131 and classes two, three, and thirteen is the percentage of assessed value established in 15-6-131(2), 15-6-132, 15-6-133, and 15-6-143 for each class of property. (Subsections (3)(a) and (3)(b) applicable to tax years beginning after December 31, 1985—sec. 4, Ch. 463, L. 1985. Subsection (6)(d) and references in (8) to class thirteen and 15-6-143 terminate January 1, 1991—sec. 10, Ch. 681, L. 1985.)"

Section 38. Section 15-8-201, MCA, is amended to read:

**"15-8-201. General assessment day.** (1) The department of revenue or its agent must, between January 1 and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county. The department or its agent must assess property to the person by whom it was owned or claimed or in whose possession or control it was at midnight of January 1 next preceding. It must also ascertain and assess all mobile homes arriving in the county after midnight of January 1 next preceding. No mistake in the name of the owner or supposed owner of real property, however, renders the assessment invalid.

(2) The procedure provided by this section may not apply to:

(a) motor vehicles that are required by 15-8-202 to be assessed on January 1 or upon their anniversary registration date;

(b) automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(c) motor homes and travel trailers subject to a fee in lieu of property tax;



- (d) motorcycles and quadricycles;
  - (e) livestock;
  - (f) property defined in 61-1-104 as "special mobile equipment" that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate; and
  - (g) mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade.
- (3) Credits must be assessed as provided in 15-1-101(1)(f)."

Section 39. Section 15-10-203, MCA, is amended to read:

**"15-10-203. Increase of tax revenue — notice of intention required.** No taxing authority may budget an increased amount of ad valorem tax revenue exclusive of revenue from ad valorem taxation on properties appearing for the first time on the assessment roll unless it gives notice of its intention to do so at the same time and in the same manner that it gives notice of its hearing on its preliminary *or proposed* budget for the forthcoming fiscal year."

Section 40. Section 15-10-204, MCA, is amended to read:

**"15-10-204. Resolution or ordinance for increase over certified millage.** No millage in excess of the department of revenue's certified millage may be levied until a resolution or ordinance is approved by the governing board of the taxing authority, which resolution or ordinance must be approved by the taxing authority according to the following procedure:

(1) The taxing authority shall publish notice of its intent to exceed the department's certified millage in the same manner that it gives notice of hearings on its preliminary *or proposed* budget for the forthcoming fiscal year. The notice must state that the taxing authority will meet on a day, at a time and place fixed in the notice, which must be approximately 7 days after the day that the notice is published, for the purpose of hearing comments regarding the proposed increase and to explain the reasons for the proposed increase. The meeting may coincide with the meeting on the tentative budget as required by law.

(2) After the public hearing has been held in accordance with the above procedures, the taxing authority may adopt a resolution or ordinance levying a millage rate in excess of the certified millage. If the resolution or ordinance adopting such millage rate is not approved on the day of the public hearing, the day, time, and place at which the resolution or ordinance will be scheduled for consideration and approval by the taxing authority must be announced at the public hearing. If the resolution or ordinance is to be considered at a day and time that is more than 2 weeks from the public hearing, the taxing authority must again publish notice in the same manner as provided in subsection (1)."

Section 41. Section 15-16-305, MCA, is amended to read:

**"15-16-305. Disposition of delinquent list.** (1) The county treasurer must annually on the third *Tuesday* of February attend at the office

of the county clerk and recorder with the delinquent list. The county clerk and recorder must then carefully compare the lists with the assessments of persons and property not marked "paid" on the assessment book, and when taxes have been paid, he must note the fact in the appropriate column in the assessment book.

(2) The county clerk and recorder must then administer to the county treasurer an oath, to be written and subscribed in the delinquent list, that every person and all property assessed in the delinquent list on which taxes have been paid have been credited in the list with such payment.

(3) The county clerk and recorder must then foot up the amount of taxes remaining unpaid and credit the treasurer with the amount and have a final settlement with him. The delinquent list must remain in the county clerk and recorder's office.

(4) At the time mentioned in subsection (1) of this section, the treasurer must make an affidavit, endorsed on the list, that the taxes not marked "paid" have not been paid and that he has not been able to discover any property belonging to or in possession of the persons liable to pay the sum whereof to collect them."

Section 42. Section 15-17-101, MCA, is amended to read:

**"15-17-101. Publication of notice of tax sales.** (1) On or before the last Monday of June of each year, the county treasurer must publish in the manner and for the time prescribed in this section a notice specifying *that*:

(a) at a given time and place (to be designated in the notice), all property in the county upon which delinquent taxes are a lien will be sold at public auction unless prior to said time said delinquent taxes, together with all interest, penalties, and costs due thereon, are paid;

(b) a complete delinquent list of all persons and property in the county now owing taxes, including all city and town property as to which taxes or taxes and assessments are delinquent, is on file in the office of the county treasurer and is subject to public inspection and examination.

(2) The publication must be made once a week for 3 successive weeks in such newspaper published in the county as the board of county commissioners directs; if there is no newspaper published in the county, then by posting the notice in three public places.

(3) The publication must designate the time and place of sale.

(4) The time of sale must not be less than 21 or more than 28 days from the first publication, and the place must be in front of the county treasurer's office."

Section 43. Section 15-23-616, MCA, is amended to read:

**"15-23-616. Future returns to reflect reduced deduction.** (1) Except as provided in subsection (2), each taxpayer who files a return for 1983 production must reflect the reduced excise tax deduction pursuant to

15-23-603 and 15-23-605 for the period between January 1, 1980, and October 1, 1983, on the statement required under 15-23-602 in the first taxable year after October 1, 1983.

(2) Either the taxpayer or the department may adjust the deduction under this section to reflect the actual excise taxes paid by the operator."

Section 44. Section 15-23-701, MCA, is amended to read:

**"15-23-701. Reporting gross yield from coal.** (1) Each person engaged in mining coal must, on or before March 31 each year, file with the department of revenue a statement of the gross yield from each coal mine owned or worked by such person in the preceding calendar year and the value thereof. The statement shall be in the form prescribed by the department, which may be coordinated with the form used under 15-35-104 and must be verified by an officer of the firm. The statement shall include:

(a) the name and address of the owner or lessee or operator of the mine;

(b) the location of the mine;

(c) the tons of coal extracted, treated, and sold from the mine during the taxable period;

(d) the gross yield or value in dollars and cents derived from the contract sales price as defined in 15-35-102.

(2) Whenever value is imputed under 15-35-107(1)(b), that value shall be used for purposes of reporting the value of the gross yield of coal under this section."

Section 45. Section 15-24-901, MCA, is amended to read:

**"15-24-901. Definition.** As used in this part, "livestock" includes those animals specified in 15-1-101(1)(i)."

Section 46. Section 15-24-1102, MCA, is amended to read:

**"15-24-1102. Federal property held under contract of sale.** When the property is held under a contract of sale or other agreement whereby upon payment the legal title is or may be acquired by the person, the real property shall be assessed and taxed as defined in 15-6-131 through 15-6-149 and 15-8-111 without deduction on account of the whole or any part of the purchase price or other sum due on the property remaining unpaid. The lien for the tax may not attach to, impair, or be enforced against any interest of the United States in the real property."

Section 47. Section 15-24-1103, MCA, is amended to read:

**"15-24-1103. Federal property held under lease.** When the property is held under lease, other interest, or estate therein less than the fee, except under contract of sale, the property shall be assessed and taxed as for the value, as defined in 15-6-131 through 15-6-149 of such leasehold, interest, or estate in the property and the lien for the tax shall attach to and be enforced against only the leasehold, interest, or estate in the property. When the United States authorizes the taxation of the property for

the full assessed value of the fee thereof, the property shall be assessed for full assessed value as defined in 15-8-111."

Section 48. Section 15-30-111, MCA, is amended to read:

**"15-30-111. Adjusted gross income.** (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability; and

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954 as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) all benefits received under the Federal Employees' Retirement Act not in excess of \$3,600;

(d) all benefits, not in excess of \$360, received as an annuity, pension, or endowment under any private or corporate retirement plan or system;

(e) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;

(f) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

(g) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;

(h) all Montana income tax refunds or credits thereof;

(i) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans *or specified as exempt from taxation by 19-13-1003*;

(j) all benefits paid under the municipal police officers' retirement system that are specified as exempt from taxation by 19-9-1005;

(k) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(l) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(m) all benefits received under the workers' compensation laws; and

(n) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect.

(4) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(5) A taxpayer who, in determining federal adjusted gross income, has reduced his business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of such wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(6) Married taxpayers filing a joint federal return who must include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(7) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the

amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months. (Subsection (2)(l) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)”

Section 49. Section 15-30-321, MCA, is amended to read:

**“15-30-321. Penalties for violation of chapter.** (1) If any person, without purposely or knowingly violating any requirement imposed by this chapter, fails to file a return of income on or before its due date (determined with regard to an extension of time granted for filing the return), there shall be imposed a penalty of 5% of any balance of tax unpaid with respect to such return as of its due date, but in no event shall the penalty for failure to file a return by its due date be less than \$5. The department may abate the penalty if the taxpayer establishes that the failure to file on time was due to reasonable cause and was not due to neglect on his part. If any person, without purposely or knowingly violating any requirement imposed by this chapter, fails to pay any tax on or before its due date (determined with regard to an extension of time granted for filing the return), there shall be added to the tax a penalty of 10% of said tax, but not less than \$5, and interest shall accrue on the tax at the rate of 9% per annum for the entire period it remains unpaid. The department may abate the penalty if the taxpayer establishes that the failure to pay on time was due to reasonable cause and was not due to neglect on his part.

(2) If any person fails, purposely or knowingly violating any requirement imposed by this chapter, to make a return of income or to pay a tax if one is due at the time required by or under the provisions of this chapter, there shall be added to the tax an additional amount equal to 25% thereof, but such additional amount shall in no case be less than \$25, and interest at 1% for each month or fraction of a month during which the tax remains unpaid.

(3) Any individual, corporation, or partnership or any officer or employee of any corporation or member or employee of any partnership who, with intent to evade any tax or any requirement of this chapter or any lawful requirement of the department thereunder, purposely or knowingly, fails to pay the tax or to make, render, or sign any return or to supply any information within the time required by or under the provisions of this chapter or who, with like intent, purposely or knowingly makes, renders, or signs any false or fraudulent return or statement or supplies any false or fraudulent information shall be liable to a penalty of not more than \$1,000, to be recovered by the attorney general in the name of the state by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall upon conviction be fined not to exceed \$1,000 or be imprisoned not to exceed 1 year, or both, at the discretion of the court.

(4) With respect to the imposition of a civil penalty, evidence produced by the department to the effect that a tax has not been paid, that a return

has not been filed, or that information has not been supplied as required under the provisions of this chapter is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied."

Section 50. Section 15-31-406, MCA, is amended to read:

**"15-31-406. License tax sections incorporated by reference.** The provisions of the following sections of this chapter are incorporated into this part by reference and made a part hereof:

(1) that part of 15-31-101 which defines the term "corporation" and 15-31-102, which specifies the classes of organizations whose income shall not be taxed;

(2) sections 15-31-111 through 15-31-114; 15-31-141, 15-31-142; 15-31-301 through 15-31-313; 15-31-501 through 15-31-509; 15-31-525, 15-31-526; 15-31-531, 15-31-532; 15-31-541, and 15-31-543, except that the term "gross income" shall be construed as excluding the net amount of interest income from valid obligations of the United States and except that wherever the words "tax", "license tax", "license fee", "corporation excise tax", or like words appear, referring to the tax imposed under part 1 of this chapter, there shall be substituted the words "income tax".

Section 51. Section 15-35-102, MCA, is amended to read:

**"15-35-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) "Base consumption level" for a purchaser means the greater of:

(a) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or

(b) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(3) "Base production level" for a coal mine operator means the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984.

(4) "Broker" means any person who resells Montana coal.

(5) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how such royalties are calculated. However, with

respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only:

(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid; and

(d) for quarterly periods ending on and after September 30, 1987, 15 cents per ton.

(6) "Department" means the department of revenue.

(7) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electric energy, or any other form of energy.

(8) "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.

(9) "Produced" means severed from the earth.

(10) "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

(11) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed his base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.

(12) "Strip mining" is defined in 82-4-203 and includes "surface mining".

(13) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

(14) "Ton" means 2,000 pounds.



(15) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203."

Section 52. Section 15-59-121, MCA, is amended to read:

**"15-59-121. Penalty for violations.** Any violation of the provisions of 15-59-101, 15-59-102, 15-59-104 through 15-59-106, 15-59-110, 15-59-112, or 15-59-113 shall be deemed a misdemeanor and shall be punished by a fine not exceeding \$500 or by imprisonment in the county jail not exceeding 6 months or by both such fine and imprisonment."

Section 53. Section 16-1-105, MCA, is amended to read:

**"16-1-105. Divisions of code.** This code is divided into six chapters. Chapter 1 relates to the authority of the department of revenue to administer this code and the powers and functions of the department. Chapter 2 relates to the establishment of state stores and the keeping and selling of liquors. Chapter 3 relates to the control of liquor, wine, and beer. Chapter 4 relates to license administration. Chapter 5, *now repealed, related to* identification cards. Chapter 6 relates to enforcement."

Section 54. Section 16-1-306, MCA, is amended to read:

**"16-1-306. Revenue to be paid to state treasurer.** Except as provided in 16-1-404, 16-1-405, 16-1-408, 16-1-410, and 16-1-411, all fees, charges, taxes, and revenues collected by or under authority of the department shall be deposited with the state treasurer. He shall deposit the funds to the credit of the state general fund."

Section 55. Section 17-5-1202, MCA, is amended to read:

**"17-5-1202. Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Department" means the department of administration provided for in 2-15-1001.

(2) "Limit" or "private activity bond limit" means the total state ceiling applicable to the state of Montana for any calendar year for the issuance of tax exempt private activity bonds, as determined under the provisions of the reform act.

(3) "Private activity bond" means a tax-exempt private activity bond, as defined under the provisions of the reform act.

(4) "Reform act" means the federal Tax Reform Act of 1984 and particularly subtitle B of Title VI thereof, entitled "Private Activity Bonds", which are a part of the federal Deficit Reduction Act of 1984 (Public Law 98-369).

(5) "State issuer agencies" means those state agencies authorized by state law to issue bonds that would qualify as private activity bonds."

Section 56. Section 17-6-103, MCA, is amended to read:

**"17-6-103. Security for deposits of public funds.** The following kinds of securities may be pledged or guarantees may be issued to secure deposits of public funds:

- (1) direct obligations of the United States;
- (2) securities as to which the payment of principal and interest is guaranteed by the United States;
- (3) securities issued or fully guaranteed by the following agencies of the United States or their successors, whether or not guaranteed by the United States:
  - (a) commodity credit corporation;
  - (b) federal intermediate credit banks;
  - (c) federal land bank;
  - (d) bank for cooperatives;
  - (e) federal home loan banks;
  - (f) federal national mortgage association;
  - (g) government national mortgage association;
  - (h) small business administration;
  - (i) federal housing administration; and
  - (j) federal home loan mortgage corporation;
- (4) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;
- (5) revenue bonds of any county, city, or other political subdivision of the state, when backed by the full faith and credit of such subdivision or when the revenues pledged to the payment of the bonds are derived from a water or sewer system and the issuer has covenanted to establish and maintain rates and charges for the system in an amount sufficient to produce revenues equal to at least 125% of the average annual principal and interest due on all bonds payable for such revenues during the outstanding term of such bonds;
- (6) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state issued in evidence of claims in an amount which, with all other claims on the same fund, do not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;
- (7) obligations of housing authorities of the state secured by a pledge of annual contributions or by a loan agreement made by the United States or any agency thereof providing for contributions or a loan sufficient with other funds pledged to pay the principal of and interest on the obligations when due. Subject to rules prescribed by the department of commerce, the bonds and other obligations made eligible for investment in 32-1-424(3) and 7-15-4505 may be used as security for all deposits of public funds or obligations for which depository bonds or any kind of bonds or other securities are required or may by law be deposited as security.
- (8) general obligation bonds of other states and of municipalities, counties, and school districts of other states;

(9) undertaking or guarantees issued by a surety company authorized to do business in the state;

(10) first mortgages and trust indentures on real property. The depository shall, on a quarterly basis, certify to the state treasurer that sufficient first mortgages and trust indentures on real property are available and segregated to secure deposits of public funds. The board of investments shall determine the amount of security required.

(11) bonds issued pursuant to Title 7, chapter 12, parts 21, 41, and 42;

(12) bonds issued pursuant to Title 90, chapter 6, part 1;

(13) revenue bonds issued by any unit of the university system of the state of Montana; and

(14) advance refunded bonds secured by direct obligations of the United States treasury held in irrevocable escrow."

Section 57. Section 17-6-302, MCA, is amended to read:

**"17-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the Montana economic development board established in 2-15-1805.

(2) "Clean and healthful environment" means an environment that is relatively free from pollution which threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(3) "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

(4) "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

(5) "Loan participation" means loans or portions thereof bought from a financial institution.

(6) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests are owned and controlled by residents of Montana.

(7) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenues in the future to the people of Montana, either directly or indirectly.

(8) "Montana economy" means any business activity in the state of Montana, including those which continue existing jobs or create new jobs in Montana.

(9) "Montana in-state investment fund" means the fund established by 17-6-306.

(10) "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund."

Section 58. Section 18-1-103, MCA, is amended to read:

**"18-1-103. Residence defined.** (1) For the purpose of 18-1-102 and 18-1-103, the word "resident" shall include actual residence of an individual within this state for a period of more than 1 year immediately prior to bidding.

(2) In a partnership enterprise or an association, the majority of all partners or association members shall have been actual residents of the state of Montana for more than 1 year immediately prior to bidding.

(3) Domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents, but this qualification may be set aside and a successful bid disallowed where it is shown to the satisfaction of the board, commission, officer, or individual charged with the responsibility for the execution of such contract that said corporation is a wholly owned subsidiary of a foreign corporation or that said corporation was formed for the purpose of circumventing the provisions relating to residence.

(4) Notwithstanding the foregoing, any bidder on a contract for purchase of products, materials, supplies, or equipment, whether an individual, partnership, or corporation, foreign or domestic and regardless of ownership thereof, whose offered materials, supplies, or equipment are manufactured or produced in this state by industry located in Montana and Montana labor shall be deemed to be a resident for the purpose of 18-1-102 and 18-1-103."

Section 59. Section 18-2-201, MCA, is amended to read:

**"18-2-201. Bonding requirements.** (1) Except as otherwise provided in 85-1-219 and subsection (4) of this section, whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or any public body shall contract with any person or corporation to do any work for the state, county, or municipality or other public body, city, town, or district, such board, council, commission, trustees, or body shall require the corporation, person, or persons with whom such contract is made to make, execute, and deliver to such board, council, commission, trustees, or body a good and sufficient bond with a licensed surety company as surety, conditioned that such corporation, person, or persons shall:

- (a) faithfully perform all of the provisions of such contract;
- (b) pay all laborers, mechanics, subcontractors, and materialmen; and
- (c) pay all persons who shall supply such corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for the carrying on of such work.

(2) A copy of such bond shall be filed with the county clerk and recorder of the county where such work is performed or improvement made or, if to be performed in more than one county, then with the county clerk of either county, except in cases of cities and towns, in which case such bond shall be filed with the city or town clerk thereof.

(3) Notwithstanding the provisions of (1) and (2) above, the state or other governmental entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency of the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, materialmen, mechanics, and subcontractors:

(a) lawful money of the United States; or

(b) a cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of the state of Montana or by a national banking association located in Montana; or

(c) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana.

(4) Notwithstanding the provisions of subsections (1) and (2) above, any board, council, commission, trustee, or body acting for any county, municipality, or any public body other than the state may, in lieu of a bond from a licensed surety company, accept a good and sufficient bond with two or more sureties acceptable to the governmental body."

Section 60. Section 19-3-906, MCA, is amended to read:

**"19-3-906. Early retirement allowance.** (1) The annual amount of retirement allowance payable to a member following his early retirement is the actuarial equivalent of the accrued portion of the service retirement allowance which would have been payable to him commencing at age 60 or upon completion of 30 years of creditable service pursuant to 19-3-904.

(2) The early retirement allowance shall be determined as prescribed in 19-3-904 with the exception that the allowance must be reduced as follows:

(a) by  $\frac{1}{2}$  of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which he would have retired had he attained 60 years of age or had he completed 30 years of creditable service; and

(b) by  $\frac{3}{10}$  of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which he would have retired had he attained 60 years of age or had he completed 30 years of creditable service."

Section 61. Section 19-4-902, MCA, is amended to read:

**"19-4-902. Allowance for disability retirement.** (1) Upon retirement for disability, a member shall receive the superannuation allowance prescribed under part 8 of this chapter if he is eligible.

(2) If he is not eligible for the *allowance* prescribed under part 8 of this chapter, he shall receive a disability retirement allowance which consists of:

(a) an annuity which is the actuarial equivalent of his accumulated contributions at the time of retirement; and

(b) a pension which, together with his annuity, provides a total retirement allowance equal to one-sixtieth of his average final compensation multiplied by the number of years of his creditable service, if such retirement allowance exceeds one-fourth of his average final compensation; otherwise, a pension which, together with his annuity, provides a total retirement allowance equal to one-fourth of his average final compensation.

(3) No allowance under subsection (2) may exceed one-sixtieth of his average final compensation multiplied by the number of years which would be creditable to him were his service to continue until the attainment of the minimum age for superannuation retirement."

Section 62. Section 19-7-101, MCA, is amended to read:

**"19-7-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana sheriffs' retirement pension trust fund administered by the board.

(2) "Accumulated contributions" or "accumulated deductions" means the total amount deducted from the salary of a member during a period of membership service plus the total amount deducted during a period of prior service and transferred from the public employees' retirement system standing to the member's credit in the account, together with the accrued interest.

(3) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(4) "Beneficiary" means a person who is nominated by the member in an acknowledged document which is filed with the board.

(5) "Board" means the public employees' retirement board.

(6) "Creditable service" means the aggregate of all of a member's current and prior service.

(7) "Death benefit" means a monthly annuity or lump-sum payment made to a beneficiary on behalf of a member who dies before retirement.

(8) "Final salary" means the average annual salary received by a member, before any deductions are made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service from which contributions were deducted or, in the event that a member has not served 3 years, the total salary earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months

included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(9) "Member" means any person who has accumulated deductions in the account to his credit.

(10) "Member's annuity" means payments for life derived from contributions made by the member while employed.

(11) "Membership service" means service for which an amount is deducted from the salary of a member and paid into the account.

(12) "Prior service" means service for which credit was granted by the public employees' retirement system of the state of Montana.

(13) "Retired sheriff" means a person receiving a retirement allowance under this chapter.

(14) "Retirement allowance" means the state annuity plus the member's annuity.

(15) "Service" means employment as a sheriff.

(16) "Sheriff" means any elected or appointed county sheriff, undersheriff, or regularly appointed and acting deputy sheriff.

(17) "State annuity" means payments for life derived from county contributions into the sheriffs' retirement account, together with any supplemental legislative appropriations to the account.

(18) "Vested retirement" means a retirement not for cause and before retirement age."

Section 63. Section 19-7-405, MCA, is amended to read:

**"19-7-405. Investment of account.** Whenever there is over \$25,000 on deposit in the account, that amount will be invested by the board of investments as part of the long-term investment fund. Any of the account in an amount of \$25,000 or less shall be invested by the board of investments as part of the short-term investment fund when so directed by the board."

Section 64. Section 19-10-202, MCA, is amended to read:

**"19-10-202. Limit on use of fund.** (1) Except as provided in subsection (2), a police retirement fund may not be used for any purpose other than to make payments authorized by this chapter to members of the police department on the retired list and to make authorized investments.

(2) When a city or town no longer employs a police officer eligible to receive benefits paid from the city's or town's police retirement fund and when there are no retired police officers or beneficiaries eligible to receive benefits from the fund, the city or town shall dissolve the fund and pay to the state auditor, for deposit in the general fund, an amount proportional to the prior contributions made by the state under 19-10-305, as determined by the state auditor. Any remaining money in the fund must be transferred to the city or town general fund to be used by the city or town for any authorized city or town purpose."

Section 65. Section 19-11-203, MCA, is amended to read:

**"19-11-203. Use of disability and pension fund.** The fund may not be used for any purpose other than investment, as provided in *part 4* of this chapter, and the payment of the following:

(1) a service pension to a member who, by reason of service, has become entitled to a service pension;

(2) a pension to a member who has become permanently maimed or disabled;

(3) a benefit or allowance to a member who has suffered a permanent disabling injury;

(4) a benefit or allowance to a member who has contracted a permanent disabling sickness;

(5) a benefit, not exceeding \$750, to defray the funeral expenses of a member;

(6) benefits to the surviving spouse, child, or children of a deceased member as provided in this chapter;

(7) premiums on a blanket policy of insurance covering the members of the fire department and providing for payment of compensation in case of the death of or injury to any such member;

(8) the return of employee contributions as provided in this chapter."

Section 66. Section 20-3-108, MCA, is amended to read:

**"20-3-108. Division of resources and assessment enterprise fund.** The superintendent of public instruction shall establish an enterprise fund within the office of public instruction for the division of resources and assessment. Funds derived from the sale of educational materials or services provided by the division of resources and assessment shall be deposited in the resources and assessment enterprise fund. In addition to other available funds, the superintendent of public instruction shall use these funds for the operation and maintenance of the division of resources and assessment as authorized by 20-3-106(23)."

Section 67. Section 20-5-301, MCA, is amended to read:

**"20-5-301. Elementary tuition with mandatory approval.** (1) Any child may be enrolled in and attend an elementary school outside of the elementary district in which he resides when such elementary school is located in:

(a) any other district of the county of his residence;

(b) a county adjoining his county of residence; or

(c) a district of another state that is adjacent to the county of his residence.

(2) When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the



county superintendent of the county of his residence before July 1 of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. The application shall be made on a tuition agreement form supplied by the county superintendent and shall be approved, before permission to enroll in and attend school outside of the district under the provisions of this section may be granted, by:

- (a) the trustees of the elementary district in which the child resides;
  - (b) the trustees of the district where the child wishes to attend school;
- and

- (c) the county superintendent of the child's residence.

(3) In considering the approval of a tuition application, the tuition approval agents prescribed in this section shall approve such application for a resident child when:

- (a) the child resides less than 3 miles from the school which he wishes to attend and more than 3 miles from any school of his resident elementary district;

- (b) the child resides more than 3 miles from any school of his resident elementary district and such district does not provide transportation under the provisions of this title;

- (c) the child resides more than 3 miles from any school of his resident elementary district, the resident district does not provide transportation under the provisions of this title, and school bus transportation is furnished by the district operating the school which he wishes to attend;

- (d) the child is a member of a family who must send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided the child resides more than 3 miles from an elementary school of the resident district or the parent must move to the elementary district where the high school is located in order to enroll the other child in high school;

- (e) the child has been declared by a court of competent jurisdiction to be an abused, neglected, or dependent child, as defined in 41-3-102, or a delinquent youth, as defined in 41-5-103, and has been ordered to be placed in a licensed child care institution which is approved by the department of social and rehabilitation services and as a result of the order the child is required to attend elementary school outside of the district of his residence; *for purposes of this subsection the prescribed geographic relationship of the receiving district to the district of residence does not apply; or*

- (f) the child is required to attend elementary school outside the district of residence as the result of an order of a court of competent jurisdiction. For the purposes of this subsection (f), the following do not apply:

- (i) the prescribed geographic relationship of the receiving district to the district of residence in this subsection (3); or

- (ii) an order issued under Title 40, chapter 4, part 2.

(4) The trustees of the district where the school to be attended is located may disapprove a tuition agreement that satisfies any of the mandatory approval conditions specified in subsection (3) above when they find that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child. In the event of disapproval, the trustees shall so notify the parent in writing within 15 days of the first receipt of the application."

Section 68. Section 20-7-117, MCA, is amended to read:

**"20-7-117. Five-year-old schooling and preschool programs.** (1) The trustees of an elementary district may establish a program capable of accommodating, at a minimum, all the children in the district who will be 5 years old on or before September 10 of the school year for which the program is to be conducted or *have* been enrolled by special permission of the board of trustees. The program shall be an integral part of the elementary school and shall be financed and governed accordingly, provided that to be eligible for inclusion in the calculation of ANB pursuant to 20-9-311, a child must have reached the age of 5 on or before September 10 of the school year covered by the calculation or *have* been enrolled by special permission of the board of trustees.

(2) The trustees of an elementary school district may establish and operate a free preschool program for children between the ages of 3 and 5 years. When such preschool programs are established, they shall be an integral part of the elementary school and shall be governed accordingly. Financing of preschool programs shall not be supported by moneys available from state equalization aid."

Section 69. Section 20-9-165, MCA, is amended to read:

**"20-9-165. Emergency budget limitation, preparation, and adoption procedures.** (1) The meeting of the trustees to consider and adopt an emergency budget shall be open to the public, and any taxpayer in the district shall have the right to appear and be heard. If at such a meeting a majority of the trustees present shall find that an emergency exists, the trustees may make and adopt a preliminary emergency budget, on the regular budget form, setting forth fully the facts constituting the emergency. In adopting the preliminary emergency budget, the trustees may budget for any fund which was included on the final budget of the district for the current school fiscal year. The budget shall be itemized to show the amount appropriated for each item as required on the budget form.

(2) When the emergency is due to any increase of enrollment, the maximum amount of the emergency budget for all funds shall be determined in the following manner:

(a) Determine the total amount in the final budget for the current school fiscal year of all funds affected by the emergency, less any amounts appropriated as capital outlay and any amount appropriated for addition to the cash reserve.

(b) Divide the amount determined in subsection (2)(a) by the number of pupils originally enrolled in such district during the immediately preceding school fiscal year. The resulting cost per pupil shall constitute the maximum permissible per-pupil expenditure in the emergency budget.

(c) Determine the enrollment increase of the current school fiscal year by subtracting the number of pupils originally enrolled during the immediately preceding school fiscal year from the number of pupils enrolled for the current school year. The result shall be the enrollment increase for the current school fiscal year.

(d) Multiply the cost per pupil determined in subsection (2)(b) by the enrollment increase determined in subsection (2)(c). The result shall be the maximum limitation on an emergency budget for emergencies due to an increase of enrollment.

(e) In the case of a community college district, by budget amendment.

(3) In the event of any other type of emergency, the budget shall be limited by those expenditures deemed by the trustees to be reasonable and necessary to finance the stated conditions of the emergency and the preliminary emergency budget shall be accompanied with the details of the proposed expenditures.

(4) Whenever the trustees adopt a preliminary emergency budget for the transportation fund, the trustees shall attach to such budget a copy of each transportation contract which is connected with the emergency and which has been prepared and executed in accordance with the school transportation contract laws.

(5) After the trustees have adopted the emergency budget by a majority vote of the trustees, it shall be signed by the chairman of the trustees and the clerk of the district and copies shall be sent to the county superintendent, the county treasurer, and the superintendent of public instruction. In the case of a community college district, copies of the emergency budget shall be sent to the county superintendent, the county treasurer, and the board of regents."

Section 70. Section 20-9-343, MCA, is amended to read:

**"20-9-343. Definition of and revenue for state equalization aid.**

(1) As used in this title, the term "state equalization aid" means those moneys deposited in the state special revenue fund as required in this section plus any legislative appropriation of moneys from other sources for distribution to the public schools for the purpose of equalization of the foundation program.

(2) The legislative appropriation for state equalization aid shall be made in a single sum for the biennium. The superintendent of public instruction has authority to spend such appropriation, together with the earmarked revenues provided in subsection (3), as required for foundation program purposes throughout the biennium.

(3) The following shall be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) 25% of all moneys received from the collection of income taxes under chapter 30 of Title 15;

(b) 25% of all moneys, except as provided in 15-31-702, received from the collection of corporation license taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) *the amount provided in 15-35-108 of the moneys received from the collection of the severance tax on coal under chapter 35 of Title 15;*

(d) 100% of the moneys received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income moneys described in 20-9-341 and 20-9-342;

(f) income from the local impact and education trust fund account; and

(g) in addition to these revenues, the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333.

(4) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce the appropriation required for the next succeeding biennium."

Section 71. Section 20-9-410, MCA, is amended to read:

**"20-9-410. Limitation of term and interest — timing for redemption.** School district bonds shall not be issued for a term longer than 20 years, except that bonds issued to refund or redeem outstanding bonds shall not be issued for a term longer than 10 years unless the unexpired term of the bonds to be refunded or redeemed is in excess of 10 years, in which case the refunding or redeeming bonds may be issued for such unexpired term. All bonds issued for a longer term than 5 years shall be redeemable at the option of the school district on any interest payment date after one-half of the term for which they were issued has expired, and it shall be so stated on the face of the bonds. The interest shall be as provided under 17-5-102 and shall be payable semiannually."

Section 72. Section 20-15-403, MCA, is amended to read:

**"20-15-403. Applications of other school district provisions.** (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-18-108, 15-55-106, 15-70-301, 15-70-322, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-102, 18-1-112, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

Section 73. Section 20-15-404, MCA, is amended to read:

**"20-15-404. Trustees to adhere to certain other laws.** Unless the context clearly indicates otherwise, the trustees of a community college district shall:

- (1) adhere to the teachers' retirement provisions of Title 19, chapter 4, as amended;
- (2) adhere to the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212, as amended;
- (3) adhere to the school property provisions of 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636, as amended;
- (4) adhere to the adult education provisions of 20-7-701 through 20-7-713, as amended;
- (5) adhere to the administration of finances provisions of 20-9-115, 20-9-134, subsections (2), (3), (4), and (5) of 20-9-161, 20-9-163, 20-9-165, 20-9-207, 20-9-208, 20-9-210, 20-9-215, and 20-9-221 through 20-9-224, as amended;
- (6) adhere to the school bond provisions of 20-9-401 through 20-9-412, 20-9-421 through 20-9-446, 20-9-451 through 20-9-456, and 20-9-461 through 20-9-465, as amended;
- (7) adhere to the special purpose funds provisions of 20-9-502, 20-9-503, 20-9-507, 20-9-508, and 20-9-511, as amended;
- (8) adhere to the educational cooperative agreements provisions of 20-9-701 through 20-9-704, as amended;
- (9) adhere to the school elections provisions of Title 20, chapter 20, as amended;
- (10) adhere to the students' rights provisions of 20-25-511 through 20-25-516, as amended; and
- (11) adhere to the health provisions of 50-1-206."

Section 74. Section 20-25-302, MCA, is amended to read:

**"20-25-302. Revenue-producing facilities — powers of regents.** The regents of the Montana university system may:

- (1) purchase, construct, equip, or improve, at any unit of the Montana university system, any of the following types of revenue-producing facilities:
  - (a) land;
  - (b) residence halls, dormitories, houses, apartments, and other housing facilities;
  - (c) dining rooms and halls, restaurants, cafeterias, and other food service facilities;
  - (d) student union buildings and facilities; and
  - (e) those other facilities specifically authorized by joint resolution of the legislature;

(2) rent housing facilities and provide food and other services to the students, officers, guests, and employees of the unit at rates that will ensure a reasonable net income over operating expenses and will provide for debt service and reserves and provide for the collection of charges, admissions, and fees for the use of other facilities by students and other persons, which charges, admissions, and fees shall not be deemed to be tuition within the meaning of 20-25-421 and may be collected from any or all students. Student building fees established and in effect on January 1, 1965, which are imposed uniformly upon all students or upon all of a specified class of students in attendance at any unit of the Montana university system shall not be increased without authorization by law unless absolutely necessary and then only to the extent necessary to pay principal or interest due on obligations for which such fees have been or shall be pledged or to maintain reserves securing the payment of such obligations in accordance with the indentures, resolutions, contracts, or other instruments authorizing the issuance of such obligations; provided that at any unit of the Montana university system where the aggregate amount of student building fees in effect on January 1, 1965, was less than \$50 per student per academic year, such fees may be increased or additional student building fees may be established to an aggregate amount not exceeding \$50 per student per academic year and provided further that additional student building fees may be established or existing student building fees may be increased at the university of Montana at Missoula to an aggregate amount not to exceed \$90 per student per academic year. This limitation shall not affect admission or use charges which are made to individual students or others in proportion to their use or occupancy of particular facilities or services and shall not affect any student building fees or other charges which are made *pursuant to 20-25-421 for nonresident students.*

(3) hold the net income derived from the operation of such facilities and the charges, admissions, and fees so collected and devote the revenues from these sources to debt service and reserves, repairs, replacements, and betterments of the facilities or, so far as such revenues have not been previously obligated for these purposes, to the acquisition, erection, equipping, enlarging, or improvement of additional facilities of the types described in this section;

(4) exercise full control and complete management of such facilities;

(5) rent the facilities to other public or private persons, firms, and corporations for such uses, at such times, for such periods, and at such rates as in the regents' judgment will be consistent with the full use thereof for academic purposes and will add to the revenues available for capital costs and debt service;

(6) do all things necessary to plan for and propose financing, including all necessary loan applications, for:

(a) classroom, laboratory, library, bookstore, and other instructional facilities;

(b) office, recordkeeping, storage, equipment maintenance, and other administrative and operational facilities;

(c) stadiums, fieldhouses, armories, arenas, gymnasiums, swimming pools, and other facilities for athletic and military instruction, exhibitions, games, and contests;

(d) auditoriums, theaters, music halls, and other assembly, theatrical, musical, and entertainment facilities;

(e) hospital, nursing, and other health instruction and service facilities;

(f) nurseries, barns, arenas, pavilions, and other facilities for agricultural and livestock breeding, development, and exhibition;

(g) parking lots and ramps and other parking facilities; and

(h) land needed for such facilities."

Section 75. Section 30-4-302, MCA, is amended to read:

**"30-4-302. Payor bank's responsibility for late return of item.**

In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of 30-4-207), settlement effected or the like, if an item is presented on and received by a payor bank the bank is accountable for the amount of:

(1) a demand item other than a documentary draft whether properly payable or not if the bank, in any case where it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(2) any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents."

Section 76. Section 30-10-103, MCA, is amended to read:

**"30-10-103. Definitions.** When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" means securities commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this definition. "Salesman" does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by subsections (1), (2), (3), (9), (10), (11), or (12) of 30-10-104;

(b) effecting transactions exempted by 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) a salesman, issuer, bank, savings institution, trust company, or insurance company; or

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(4) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(5) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(6) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(a) a bank, savings institution, trust company, or insurance company;

(b) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(c) a broker-dealer;

(d) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;

(e) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(f) a person who has no place of business in this state if his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(g) such other persons not within the intent of this subsection (6) as the commissioner may by rule or order designate.

(7) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person



or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(8) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(9) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(10) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(11) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

(12) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period.

(13) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico."

Section 77. Section 30-10-204, MCA, is amended to read:

**"30-10-204. Registration by coordination.** (1) Any security for which a registration statement has been filed under the Securities Act of 1933 or any securities for which filings have been made pursuant to regulation A or regulation E, and amendments thereto, of the general rules and regulations of the United States securities and exchange commission, adopted pursuant to subsection (b) of section 3 of said Securities Act of 1933, in connection with the same offering, may be registered by coordination. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) three copies of the prospectus or offering circular and letter of notification filed under the Securities Act of 1933 or the general rules and regulations thereunder, together with all amendments thereto;

(b) the amount of securities to be offered in this state;

(c) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(d) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission;

(e) if the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) if the commissioner requests, any other information, or copies of any other documents, filed under the Securities Act of 1933;

(g) an undertaking to forward promptly all amendments to the federal registration statement or offering circular and letter of notification, other than an amendment which merely delays the effective date;

(h) a consent to service of process meeting the requirements of 30-10-208; and

(i) such other information as the commissioner may require.

(2) A registration statement by coordination under this section automatically becomes effective at the moment the federal registration statement or other filing becomes effective if all the following conditions are satisfied:

(a) no stop order is in effect and no proceeding is pending under 30-10-207;

(b) the registration statement has been on file with the commissioner for at least 10 business days; and

(c) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for 2 business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations.

(3) The registrant shall promptly notify the commissioner of the date and time when the federal registration statement or other filings became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(4) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment referred to in subsection (3) of this section, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with *subsections (2) and (3)* of this section, if he promptly notifies the registrant of the issuance of the order. If the registrant proves compliance with the requirements as to notice and posteffective amendment, the stop order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subsections (2)(b) and (2)(c) of this section. If the federal registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement or other filing is expected to become effective the commissioner shall promptly advise the registrant whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under 30-10-207; but this advice by the commissioner does not preclude the institution of such a proceeding at any time."

Section 78. Section 32-1-803, MCA, is amended to read:

**"32-1-803. Organization of subsidiary trust companies.** A subsidiary trust company shall be incorporated under the laws of this state in accordance with and subject to the provisions of 32-1-301 through 32-1-303, 32-1-305 through 32-1-322, 32-1-324, 32-1-325, and 32-1-351 through 32-1-356 or under the laws of the United States. To the extent not inconsistent with the provisions of this part, any subsidiary trust company incorporated under the laws of this state shall be subject to the laws of this state generally applicable to trust companies. A subsidiary trust company formed under the laws of the United States shall be subject, to the extent provided by the laws of the United States, to the laws of this state applicable to subsidiary trust companies incorporated under the laws of this state."

Section 79. Section 33-1-104, MCA, is amended to read:

**"33-1-104. General penalty.** Each violation of any provision of this code with respect to which violation a greater penalty is not provided by other applicable laws of this state shall, in addition to any administrative penalty otherwise applicable thereto, upon conviction in a court of competent jurisdiction of this state be punishable by a fine of not less than \$50 or more than \$1,000 or by imprisonment in the county jail for not less than 30 days or more than 90 days or by both such fine and imprisonment."

Section 80. Section 33-1-313, MCA, is amended to read:

**"33-1-313. Rules — notice, hearing, and penalty.** (1) The commissioner may make reasonable rules necessary for or as an aid to effectuation of any provision of this code. No such rule shall extend, modify, or conflict with any law of this state or the reasonable implications thereof. Any such rule affecting persons or matters other than the personnel or the internal affairs of the commissioner's office shall be made or amended only after a hearing thereon of which notice was given as required by 33-1-703. If reasonably possible the commissioner shall set forth the proposed rule or amendment in or with the notice of hearing. No such rule or amendment as to which a hearing is required shall be effective until it has been on file as a public record in the commissioner's office for at least 10 days.

(2) In addition to any other penalty provided, willful violation of any such rule shall subject the violator to such administrative penalties as may be applicable under this code as for violation of the provision as to which such rule relates."

Section 81. Section 33-1-317, MCA, is amended to read:

**"33-1-317. Penalty imposed by commissioner.** The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine not to exceed the sum of \$5,000 upon a person found to have violated any provision of this code or regulation duly promulgated by the commissioner, except that the fine imposed upon agents or adjusters shall not exceed \$500. Said fine shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the commissioner in the name of the state of Montana. Imposition of any fine hereunder shall be an order from which an appeal may be taken, pursuant to the provisions of 33-1-711."

Section 82. Section 33-17-211, MCA, is amended to read:

**"33-17-211. Application for license.** (1) Application for an agent or solicitor license must be made to the commissioner by the applicant and be signed and sworn to by the applicant before a notary public or other person authorized by law to take acknowledgments of deeds.

(2) The commissioner must designate and prepare forms for application for license which must require full answers to such questions as may reasonably be necessary to determine the applicant's identity, residence, personal history, business record, experience and training in insurance, purpose for which the license is to be used, and other facts as required by the commissioner to determine whether the applicant meets the applicable qualifications for the license applied for.

(3) If for an agent's license, the application must state the kinds of insurance proposed to be transacted and be accompanied by written appointment of the applicant as agent by an authorized insurer, subject to issuance of the license.

(4) If for a solicitor's license, the application must be accompanied by written appointment of applicant as solicitor by a licensed agent, subject to issuance of the license.

(5) If the applicant for an agent license is a firm or corporation, the application shall show, in addition, the names of all members, officers, and directors and shall designate each individual who is to exercise the powers to be conferred by the license upon the firm or corporation. Each such individual so designated shall furnish information as to himself, as part of the application, as though for an individual license.

(6) If the applicant for an agent license is an agents' association pursuant to 33-17-205, the application must show the names and residence addresses of the association's officers and trustees.

(7) If for license as either agent or solicitor, the application must also show whether applicant was ever previously licensed to transact any kind of insurance in this state or elsewhere; whether any such license was ever refused, suspended, or revoked; whether any insurer, general agent, or agent, in the case of a solicitor application, claims applicant to be indebted to it and, if so, the details thereof and the defenses, if any, of the applicant thereto; and whether applicant ever had an agency contract canceled and the facts thereof.

(8) The commissioner shall require as part of the application for license the certificate of an officer or representative of the insurer proposed to be represented, in the case of applicants for license as agent, or of the proposed employing agent, in the case of applicants for license as solicitor, as to whether the applicant is known to such officer or representative, whether the insurer or agent has investigated the character and business record of the applicant and the uses to be made of the license, if granted, and his opinion, based on such investigation, as to applicant's trustworthiness and competence and whether the applicant will use the license principally for the purpose of insuring the applicant's own risks or interests and those of the applicant's relatives or employer.

(9) All such applications must be accompanied by the applicable license fee, appointment of agent fee where applicable, and examination fee where *an examination is required* under 33-17-212, all in the respective amounts stated in 33-2-708."

Section 83. Section 33-20-103, MCA, is amended to read:

**"33-20-103. Standard provisions required — exceptions.** (1) No policy of life insurance other than group and pure endowments with or without return of premiums or of premiums and interest shall be delivered or issued for delivery in this state unless it contains in substance all of the applicable provisions as required by 33-20-104 through 33-20-108, 33-20-110 through 33-20-116, and 33-20-131.

(2) This section shall not apply to annuity contracts or to any provision of a life insurance policy, or contract supplemental thereto, relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(3) Any of such provisions or portions thereof not applicable to single premium or term policies shall to that extent not be incorporated therein."

Section 84. Section 33-20-1111, MCA, is amended to read:

**"33-20-1111. Dependents of employee and labor union groups — coverage.** Any group life policy issued under 33-20-1101, 33-20-1102, or 33-20-1103, may be extended to insure the employees or members against loss due to the death of their spouses and minor children, or any class or classes thereof, subject to the following requirements:

(1) The premium for the insurance shall be paid by the policyholder, either from the employer's or union's funds or funds contributed by the employer or union or from funds contributed by the insured employees or members, or from both. If any part of the premium is to be derived from funds contributed by the insured employees or members, the insurance with respect to spouses and children may be placed in force only if at least 75% of the then eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. If no part of the premium is to be derived from funds contributed by the employees or members, all eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, must be insured with respect to their spouses and children.

(2) The amounts of insurance must be based upon some plan precluding individual selection either by the employees or members or by the policyholder, employer, or union.

(3) Upon termination of the insurance with respect to the members of the family of any employee or member by reason of the employee's or member's termination of employment, termination of membership in the class or classes eligible for coverage under the policy, or death, the spouse is entitled to have issued by the insurer, without evidence of insurability, an individual policy of life insurance, without disability or other supplementary benefits, providing application for the individual policy shall be made, and the first premium paid to the insurer, within 31 days after such termination, subject to the requirements of subsections (1)(a), (1)(b), and (1)(c) of 33-20-1209. If the group policy terminates or is amended so as to terminate the insurance of any class of employees or members and the employee or member is entitled to have issued an individual policy under 33-20-1210, the spouse is also entitled to have issued by the insurer an individual policy, subject to the conditions and limitations provided above. If the spouse dies within the period during which he would have been entitled to have an individual policy issued in accordance with this provision, the amount of life insurance which he would have been entitled to have issued under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

(4) Notwithstanding 33-20-1208, only one certificate need be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in such certificate."

Section 85. Section 33-30-111, MCA, is amended to read:

**"33-30-111. Notice of violation — conference.** If the commissioner shall for any reason have cause to believe that violation of this chapter has occurred or is threatened, the commissioner may give written notice

to the health service corporation and to the representatives or other persons who appear to be involved in the suspected violation to arrange a conference with the alleged violators or their authorized representative for the purpose of attempting to ascertain the facts relating to the suspected violation, and in the event it appears that a violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing the violation."

Section 86. Section 33-30-112, MCA, is amended to read:

**"33-30-112. Cease and desist order.** (1) The commissioner acting in the name of the state may issue an order directing a health service corporation or a representative of a health service corporation to cease and desist from engaging in any act or practice in violation of the provisions of this chapter.

(2) Within 15 days after service of the order of cease and desist, the respondent may request a hearing on the question of whether acts or practices in violation of this chapter have occurred. These hearings shall be conducted under the Montana Administrative Procedure Act."

Section 87. Section 33-30-113, MCA, is amended to read:

**"33-30-113. Injunctive relief.** In the case of any violation of the provisions of this chapter if the commissioner elects not to issue a cease and desist order or in the event of noncompliance with a cease and desist order issued under this chapter, the commissioner may institute a proceeding to obtain injunctive relief, receivership, or other appropriate relief in the district court of the county in which the violation occurs or in which the principal place of business of the health service corporation is located. Any proceeding under this section shall conform to the requirements of Title 27, chapter 19 or 20, except that the commissioner shall not be required to allege facts tending to show the lack of an adequate remedy at law or tending to show irreparable damage or loss."

Section 88. **Applicability.** Section 33-30-1012, MCA, is intended to be an integral part of Title 33, and the provisions of Title 33 apply to 33-30-1012.

Section 89. Section 35-12-1308, MCA, is amended to read:

**"35-12-1308. Action by attorney general.** The attorney general may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of 35-12-1301 through 35-12-1307."

Section 90. Section 37-16-404, MCA, is amended to read:

**"37-16-404. Examination — subject areas.** The examination provided in 37-16-403 shall consist of a test of knowledge and practical tests of proficiency, where they apply, in the following areas as they pertain to the fitting of hearing aids:

- (1) acoustics:
- (a) general principles;
- (b) the decibel;

- (c) hearing and speech;
- (2) the human ear:
  - (a) external;
  - (b) middle;
  - (c) inner;
- (3) the hearing process;
- (4) disorders of hearing:
  - (a) conductive;
  - (b) sensorineural;
  - (c) central;
  - (d) psychogenic;
- (5) audiometry:
  - (a) pure tone;
  - (b) theory;
  - (c) procedures;
  - (d) speech;
- (6) the hearing analysis:
  - (a) audiogram;
  - (b) auditory area;
- (7) hearing aids:
  - (a) history;
  - (b) characteristics;
  - (c) components;
- (8) practical use of the otoscope:
  - (a) earmold;
  - (b) impression;
- (9) fittings:
  - (a) hearing aid;
  - (b) earmold;
- (10) delivery and checkup; or
- (11) any change as deemed necessary by the board."

Section 91. Section 37-30-425, MCA, is amended to read:



**"37-30-425. Refusal, suspension, or revocation of license.** The board may, after notice and opportunity for a hearing, either refuse to issue or renew or may suspend or revoke a barbershop or barber school or college license for any one or combination of the following causes:

- (1) the violation of any of the provisions of 37-30-308; 37-30-403, except subsection (1)(f); 37-30-406; 37-30-407; 37-30-412; 37-30-413; and 37-30-421;
- (2) gross malpractice or gross incompetency;
- (3) continued practice by a person knowingly having an infectious or contagious disease;
- (4) advertising by means of knowingly false or deceptive statements;
- (5) advertising, practicing, or attempting to practice under a trade name other than one's own;
- (6) habitual drunkenness or addiction to the use of morphine, cocaine, or other habit-forming drugs;
- (7) the violation of any of the rules adopted pursuant to 37-30-203."

Section 92. Section 37-42-305, MCA, is amended to read:

**"37-42-305. Certification without examination.** The department may consider for certification the holder of a certificate issued by a governmental agency or equivalent certification board of another state on presentation to the department of satisfactory evidence that the applicant is in responsible charge of works located in this state requiring a certified operator and that he has successfully passed an examination at least equivalent to that required under 37-42-202(2)."

Section 93. Section 37-51-301, MCA, is amended to read:

**"37-51-301. License required — limited to persons.** (1) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesman within this state without a license as a broker or salesman or otherwise complying with this chapter.

(2) Corporations, partnerships, and associations may not be licensed under this chapter. A corporation or a partnership may act as a real estate broker if every corporate officer and every partner performing the functions of a "broker", as defined in 37-51-102, is licensed as a broker. All officers of a corporation or all members of a partnership acting as a broker are in violation of this chapter unless there is full compliance with this subsection."

Section 94. Section 37-72-101, MCA, is amended to read:

**"37-72-101. Construction blasting restrictions — license required — definitions — exemptions.** (1) No person may engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the workers' compensation division.

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) "division" means the workers' compensation division of the department of labor and industry provided for in 2-15-1702;

(d) "explosive" has the meaning given in 50-38-101;

(e) "magazine" has the meaning given in 50-38-101.

(3) Nothing in this chapter applies to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection must comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under and implementing 82-4-231(10)(e)."

Section 95. Section 39-51-201, MCA, is amended to read:

**"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state, except as provided under subsections (8) and (9) of 39-51-203. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(10) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(11) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter shall be paid.

(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in

a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or his employer.

(13) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(14) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(15) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(16) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(17) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made to or on behalf of an employee by an employer on account of:

(A) retirement;

(B) sickness or accident disability;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare office.

(18) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(19) An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for 1 week of total unemployment."

Section 96. Section 39-71-118, MCA, is amended to read:

**"39-71-118. Employee, worker, and workman defined.** (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116(3) are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education approved by the state *superintendent of public instruction* at designated postsecondary vocational-technical centers; or

(e) an airman or other person employed as a volunteer under 67-2-105.

(2) If the employer is a partnership or sole proprietorship, such employer may elect to include as an employee within the provisions of this chapter any member of such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business. In the event of such election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered, and no partner or sole proprietor shall be deemed an employee within this chapter until such notice has been given. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the

insurance carrier shall assume a salary or wage of such electing employee to be not less than \$900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter."

Section 97. Section 39-71-403, MCA, is amended to read:

**"39-71-403. Plan three exclusive for state agencies — election of plan by other public corporations.** (1) Where a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3 shall be exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by any state agency shall be considered to be ordinary and necessary expense of the agency, and the agency shall make appropriation of and pay such sums into the state compensation insurance fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, employer; plan No. 2, insurer; or plan No. 3, state insurance fund; separately or jointly with any other public corporation, other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance. A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and chapter 72 and to discharge all liabilities that reasonably incur during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and chapter 72 and for actual and necessary expenses required for the efficient administration of the fund.

(4) All money in the fund established under subsection (3) not needed to meet immediate expenditures must be invested by the governing body of the public corporation, and all proceeds of the investment shall be credited to the fund."

Section 98. Section 40-4-209, MCA, is amended to read:

**"40-4-209. Security or guaranty to secure support.** (1) Upon verified application by a person authorized to enforce or collect a child support obligation, the department of revenue, or the department of social and rehabilitation services showing that a person obligated to pay child support or maintenance pursuant to court or administrative order is delinquent in an amount equal to the total of 6 months' support payments, the court may direct the obligated person to appear and show cause why an order should not be entered ordering that he post bond, give a mortgage, or provide other security or guaranty for the payment of the delinquency.

(2) If the court finds that a delinquency greater than the total of 6 months of support is owed and that the obligated person has the ability to post bond, give a mortgage, or provide security or other guaranty, the court

may enter an order requiring him to post bond, give a mortgage, or provide security or guaranty for so long as there is a support delinquency.

(3) The bond or other security may be in an amount up to the total support due for a 2-year period and must be approved by the court. The bond must include the name and address of the issuer. Any person issuing a bond under this section must, if the bond is cancelled, notify the court and the person or public agency entitled to receive payments under the support order.

(4) If the person obligated to pay child support or maintenance fails to make payments as required by the court or administrative order, the person or public agency entitled to receive payment may recover on the bond or other security. The amount recovered on the bond or other security must first be applied toward satisfaction of any support arrearages.

(5) The department of *revenue* shall adopt guidelines which take into account the payment record of the obligated person, the availability of other remedies, and other considerations which it determines relevant for determining whether the procedure provided in this section would carry out the purpose of enforcing payments of child support or would be appropriate in the circumstances. If after application of the guidelines the department determines an application for an order requiring security is not appropriate, it may not request the order."

Section 99. Section 41-3-611, MCA, is amended to read:

**"41-3-611. Effect of decree.** (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due him from any third person, including but not limited to any Indian tribe, agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any other placement proceedings held pursuant to 41-3-610."

Section 100. Section 41-5-206, MCA, is amended to read:

**"41-5-206. Transfer to criminal court.** (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, or mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

- (A) negligent homicide as defined in 45-5-104;
- (B) arson as defined in 45-6-103;
- (C) aggravated assault as defined in 45-5-202;
- (D) robbery as defined in 45-5-401;
- (E) burglary or aggravated burglary as defined in 45-6-204;
- (F) aggravated kidnapping as defined in 45-5-303;
- (G) possession of explosives as defined in 45-8-335;
- (H) criminal sale of dangerous drugs for profit as included in 45-9-101;
- (I) attempt as defined in 45-4-103 of any of the acts enumerated in subsections (1)(a)(ii)(A) through (1)(a)(ii)(H);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be to the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there are reasonable grounds to believe that:

- (i) the youth committed the delinquent act alleged;
- (ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and
- (iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts will not of itself be grounds for denying the transfer.

(c) the severity of the offense;

(d) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the youth by the use of procedures, services, and facilities currently available to the youth court.



(3) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the court was waived and the case transferred to district court.

(4) The transfer terminates the jurisdiction of the court over the youth with respect to the acts alleged in the petition. No youth may be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(5) Upon order of the court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(6) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county attorney and acceptance by the district court judge.

(7) If a youth is found guilty in district court of any of the offenses enumerated in subsection (1) of this section and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it considers proper; however, no youth under 16 years of age may be confined in the state prison."

Section 101. Section 41-5-523, MCA, is amended to read:

**"41-5-523. (Temporary) Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place the youth for substitute care into a youth care facility as defined in 41-3-1102 or a home approved by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court considers beneficial to the youth; or

(f) order restitution by the youth.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for

consent by a youth to a waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department of institutions for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths.

(3) At any time after a youth has been taken into custody, the court may request that the youth be evaluated at the Montana youth treatment center, for a period not to exceed 60 days, for the sole purpose of advising the court as to whether the youth is seriously mentally ill, as defined in 53-21-102, but the court must first find that reasonable grounds exist to believe that the youth is suffering from a mental disorder as defined in 53-21-102.

(4) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(5) If the court determines that a delinquent youth or youth in need of supervision is in need of treatment at the Montana youth treatment center, the court must first determine, based on testimony of a professional person, as defined in 53-21-102, that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

(6) Upon a finding of serious mental illness, the court may commit a delinquent youth to the department of institutions and recommend that the youth be placed at the Montana youth treatment center. Upon release or discharge from the center, if the court order has not expired or if the youth is less than 21 years of age, he must be retained under the supervision of the department until the expiration of the court order or until he attains the age of 21.

(7) If the court finds that placement in a youth care facility other than a youth group home or youth foster home is necessary and in the best interests of the youth and the community, the court shall determine if the youth can receive appropriate treatment in a youth care facility located in Montana as follows:

(a) If the court finds the youth can receive appropriate treatment in a youth care facility located in Montana that will accept the youth, the court may not place the youth in a youth care facility located outside this state unless an out-of-state facility can provide appropriate treatment that:

(i) can be obtained at a cost less than that offered by any available facility in this state; and

(ii) is available in closer proximity to the youth's place of residence than any facility located in this state.

(b) When the department of social and rehabilitation services is ordered to pay the costs of caring for the child in a youth care facility other than a youth foster home or youth group home, the court shall provide the department at least 5 days' written notice and opportunity to be heard before ordering the placement of the youth.

(8) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes.

(9) Any order of the court may be modified at any time. In the case of a youth committed to the department of institutions, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(10) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(11) The order of commitment to the department of institutions shall read as follows:

## ORDER OF COMMITMENT

State of Montana )  
 ) ss.  
County of ..... )

**In the district court for the .... Judicial District.**

On the .... day of ...., 19.., ....., a minor of this county, .... years of age, was brought before me charged with ....., Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

It is ordered that .... be committed to the department of institutions until .....

**The names, addresses, and occupations of the parents are:**

| Name  | Address | Occupation |
|-------|---------|------------|
| ..... |         |            |
| ..... |         |            |

**The names and addresses of their nearest relatives are:**

.....

**Witness my hand this .... day of ....., A.D. 19...**

**Judge**

**41-5-523. (Effective as provided in Compiler's Comments) Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

- (a) place the youth on probation;
- (b) place the youth for substitute care into a youth care facility as defined in 41-3-1102 or a home approved by the court;
- (c) place the youth in a private agency responsible for the care and rehabilitation of such a youth;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court considers beneficial to the youth; or

(f) order restitution by the youth.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to a waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department of institutions for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths.

(3) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(4) If the court finds that placement in a youth care facility other than a youth group home or youth foster home is necessary and in the best interests of the youth and the community, the court shall determine if the youth can receive appropriate treatment in a youth care facility located in Montana as follows:

(a) If the court finds the youth can receive appropriate treatment in a youth care facility located in Montana that will accept the youth, the court may not place the youth in a youth care facility located outside this state unless an out-of-state facility can provide appropriate treatment that:

(i) can be obtained at a cost less than that offered by any available facility in this state; and

(ii) is available in closer proximity to the youth's place of residence than any facility located in this state.

(b) When the department of social and rehabilitation services is ordered to pay the costs of caring for the child in a youth care facility other than a youth foster home or youth group home, the court shall provide the department at least 5 days' written notice and opportunity to be heard before ordering the placement of the youth.

(5) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes.

(6) Any order of the court may be modified at any time. In the case of a youth committed to the department of institutions, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.



(c) provide for the safe operation of vehicles of less than 26,000 pounds gross vehicle weight if they are used to transport passengers for hire or to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with rules adopted by the department.

(2) Standards of safety adopted pursuant to subsections (1)(b) and (1)(c) must be the same as prescribed for motor carriers, and the same inspection standards and procedures apply. However, standards relating to drivers, other than drivers for motor carriers, do not apply to a vehicle operated exclusively within a 200-mile radius of its work reporting location.

(3) The highway patrol has responsibility for enforcement of standards adopted pursuant to subsection (1)(a). Inspection of a vehicle based in Montana may, at the request of the carrier, be made at the place of business or domicile of the vehicle owner or, if that is not a practicable inspection site, at a designated location and at a mutually agreeable time. After inspection, a vehicle found to conform to the standards adopted pursuant to subsection (1)(a) is entitled to certification and identification to exempt it from further safety inspection until the next required periodic inspection or until a nonconformity with standards is apparent. Nothing in this section prohibits the inspection of a motor vehicle as *provided for* by subsection (1)(a) at a safe location on a public road.

(4) The department shall cooperate with the department of highways to assure minimum duplication and maximum coordination of enforcement effort."

Section 104. Section 46-18-201, MCA, is amended to read:

**"46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

- (i) jail base release;
- (ii) jail time not exceeding 180 days;
- (iii) conditions for probation;
- (iv) restitution;
- (v) payment of the costs of confinement;
- (vi) payment of a fine as provided in 46-18-231;
- (vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court appointed counsel as provided in 46-8-113;

- (ix) community service;
- (x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or
- (xi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Such reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(xi).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e).

(2) If any financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for any misdemeanor or for a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, is not a credit against the sentence unless the court orders otherwise.

(4) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103(2), 45-5-202(3) *relating to aggravated assault*, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102(2) may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-502(3), 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of such imprisonment."

Section 105. Section 46-18-222, MCA, is amended to read:

**"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence.** All mandatory minimum sentences prescribed by the laws of this

state and the restrictions on deferred imposition and suspended execution of sentence prescribed by subsections (4), (5), and (6) of 46-18-201, 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor; or

(5) where applicable, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense."

Section 106. Section 46-18-231, MCA, is amended to read:

**"46-18-231. Fines in felony and misdemeanor cases.** (1) Whenever, upon a verdict or a plea of guilty, a person has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the court may impose a fine, only in accordance with subsection (3), and in lieu of or in addition to a sentence of imprisonment. For those crimes for which penalties are provided in 45-5-103(2), 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2), a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment.

(2) Whenever, upon a verdict or plea of guilty, a person has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the court may impose a fine only in accordance with subsection (3).

(3) The court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine. In determining the amount and method of payment, the court shall take into account the nature of the crime committed, the financial resources of the defendant, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the court not to exceed \$50,000."

Section 107. Section 46-19-103, MCA, is amended to read:

**"46-19-103. Execution of death sentence.** (1) In pronouncing the sentence of death, the court shall set the date of execution which must not be less than 30 days or more than 60 days from the date the sentence is



pronounced. If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, the court in which the defendant was previously sentenced shall, upon dissolution of the stay, set a new date of execution for not less than 5 or more than 90 days from the day the date is set. The defendant is entitled to be present in court on the day the new date of execution is set.

(2) Pending execution of a sentence of death, the sheriff may deliver the defendant to the state prison for confinement, and the state shall bear the costs of imprisoning the defendant from the date of delivery.

(3) The punishment of death must be inflicted by hanging the defendant by the neck until he is dead or, at the election of the defendant, by administration of a continuous, intravenous injection of a lethal quantity of an ultra-fast-acting barbiturate in combination with a chemical paralytic agent until a licensed physician pronounces that the defendant is dead according to accepted standards of medical practice.

(4) The warden of the Montana state prison shall provide a suitable and efficient room or place in which executions will be carried out, enclosed from public view, within the walls of the state prison, and shall provide all implements necessary to the execution. The warden shall, subject to subsection (5), select the person to perform the execution, and the warden or his designee shall supervise the execution.

(5) An execution carried out by lethal injection must be performed by a person selected by the warden and trained to administer the injection. The person administering the injection need not be a physician, registered nurse, or licensed practical nurse licensed or registered under the laws of this or any other state. The warden must allow the execution to be observed by 12 witnesses, 3 of whom may be designated by the person to be executed.

(6) After the execution, the warden shall make a return upon the death warrant showing time, mode, and manner in which it was executed."

Section 108. Section 50-5-101, MCA, is amended to read:

**"50-5-101. (Effective July 1, 1987) Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(4) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(5) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(6) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(7) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(8) "Federal acts" means federal statutes for the construction of health care facilities.

(9) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(10) "Health care facility" or "facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(11) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

(12) "Health systems agency" means an entity which is organized and operated in the manner described in 42 U.S.C. 300l-2 and which is capable, as determined by the secretary of the United States department of health and human services, of performing each of the functions described in 42 U.S.C. 300l-2.

(13) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(14) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and his family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component.

(15) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(16) "Infirmery" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

- (a) an "infirmery—A" provides outpatient and inpatient care;
- (b) an "infirmery—B" provides outpatient care only.

(17) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

(18) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(19) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more persons or personal care to more than four persons who are not related to the owner or administrator by blood or marriage. The term does not include adult foster care licensed under 53-5-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for physically disabled persons licensed under 53-19-111, *youth care facilities* licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of institutions.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or persons with related problems.

(e) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(20) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(21) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(22) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(23) "Offer" means the holding out by a health care facility that it can provide specific health services.

(24) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(25) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(26) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(27) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(28) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(29) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(30) "State health plan" means the plan prepared by the department pursuant to 42 U.S.C. 300m-2(a)(2)."

Section 109. Section 50-73-102, MCA, is amended to read:

**"50-73-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702 and the state coal mine inspectors employed by the division.

(2) "Excavations" and "workings" mean all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working places, whether abandoned or in use.

(3) "Gassy mine" means a mine is considered to be potentially gassy. The division may further define this term in its rules.

(4) "Mine" and "coal mine" mean all parts of the property of a mining plant under one management which contribute, directly or indirectly, to the mining or handling of coal.

(5) "Mine examiner" means a person charged with the examination of the condition of the mine before the miners are permitted to enter it and who is commonly known as the "fire boss".

(6) "Mine foreman" means a person who is charged with the general direction of the underground work or both the underground work and the outside work of a coal mine and who is commonly known and designated as "mine boss".

(7) "Operator", as applied to the party in control of a mine under this chapter, means the person, firm, or body corporate which is the immediate proprietor as owner or lessee of the plant and, as such, is responsible for the condition and management thereof.

(8) "Shaft" means any vertical opening through the strata which is or may be used for the purpose of ventilation or escape or for hoisting or lowering of men or material in connection with the mining of coal.

(9) "Slope" and "drift" mean respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft."

Section 110. Section 53-2-813, MCA, is amended to read:

**"53-2-813. Mill levy for counties transferring public assistance and protective services.** (1) For the purpose of this part, 12 mills must be levied annually in those counties opting for state assumption.

(2) The proceeds of the mill levy established in subsection (1) must be deposited in the state special revenue fund in the state treasury for the purpose of paying the expenses of the department. The mill levy may not exceed 12 mills, notwithstanding actual expenditures made by the department.

(3) For a county retaining or reassuming operational responsibility for medical assistance or monetary payments to needy persons as provided in 53-2-812, the levy provided in subsection (1) must be reduced by the mill levy equivalent expended by that county or the department for such purposes in the fiscal year immediately preceding the option to retain or reassume such responsibility."

Section 111. Section 53-5-503, MCA, is amended to read:

**"53-5-503. Definitions.** As used in this part, the following definitions apply:

(1) "Abuse" means the infliction of physical or mental injury or the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) "Exploitation" means the unreasonable use of an older person, his money, or his property to the advantage of another by means of duress, menace, fraud, or undue influence.

(3) "Long-term care facility" means a facility defined in 50-5-101.

(4) "Mental injury" means an identifiable and substantial impairment of an older person's intellectual or psychological functioning or well-being.

(5) "Neglect" means the failure of a guardian, employee of a public or private residential institution, facility, home, or agency, or any other person legally responsible in a residential setting for an older person's welfare to care for an older person by failing to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person.

(6) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 53-5-525(2), the person 60 years of age or older must be unable to protect himself from abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

(7) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function."

Section 112. Section 53-6-141, MCA, is amended to read:

**"53-6-141. Amount, scope, and duration of assistance.** (1) The amount, scope, and duration of medical assistance granted eligible persons shall be determined by the department of social and rehabilitation services. Payments on behalf of persons in state-operated institutions shall be made only from funds appropriated specifically for this purpose, as such funds are available.

(2) If available funds are not sufficient to provide medical care for all eligible persons, the department shall have the authority to set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical care and services made available.

(3) For the purpose of determining eligibility and amount of assistance to be granted to those individuals covered in subsections (1)(g) and (1)(h) of 53-6-131, the department shall establish a maintenance standard."

Section 113. Section 53-20-202, MCA, is amended to read:

**"53-20-202. Definitions.** As used in this part, the following definitions apply:

(1) "Comprehensive developmental disability system" means a system of services, including but not limited to the following basic services, with the intention of providing alternatives to institutionalization:

- (a) evaluation services;
- (b) diagnostic services;
- (c) treatment services;
- (d) day-care services;
- (e) training services;
- (f) education services;

- (g) employment services;
- (h) recreation services;
- (i) personal-care services;
- (j) domiciliary-care services;
- (k) special living arrangements services;
- (l) counseling services;
- (m) information and referral services;
- (n) follow-along services;
- (o) protective and other social and sociolegal services; and
- (p) transportation services.

(2) "Department" means the department of social and rehabilitation services.

(3) "Developmental disabilities" means disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurological handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals if the disability originated before the person attained age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap of the person.

(4) "Developmental disabilities facility" means any service or group of services offering care to the developmentally disabled on an inpatient, outpatient, residential, clinical, or other programmatic basis.

(5) "Planning and advisory council" or "council" means the developmental disabilities planning and advisory council created in 2-15-2204."

Section 114. Section 61-3-102, MCA, is amended to read:

**"61-3-102. General fund reimbursement.** Any moneys appropriated from the general fund for the operation of the department in performing its duties under this title or for the manufacture of number plates shall be reimbursed to the general fund from the motor vehicle account, state special revenue fund, if there are moneys in the account above the amount required for the normal operation of the department in performing its duties under this title."

Section 115. Section 61-5-121, MCA, is amended to read:

**"61-5-121. Disposition of fees.** (1) The disposition of the fees from driver's licenses provided for in 61-5-111(7)(a), motorcycle endorsements provided for in 61-5-111(7)(b), and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 33 ⅓% of each driver's license fee and of each duplicate driver's license fee must be deposited into the Montana highway patrolmen's retirement pension trust fund.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 3 ½% of each driver's license fee and of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing licenses or duplicate licenses.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 5% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing motorcycle endorsements.

(d) The amount of 23 ¼% of each driver's license fee and of each duplicate driver's license fee and the amount of 35% of each motorcycle endorsement fee must be deposited into the state traffic education account.

(e) The amount of 40% of each driver's license fee and of each duplicate driver's license fee and the amount of 60% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, he shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. He shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the Montana highway patrolmen's retirement pension trust fund, the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(d), and (1)(e).

(b) If fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the Montana highway patrolmen's retirement pension trust fund, the state special revenue fund, the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), (1)(d), and (1)(e)."

Section 116. Section 61-9-402, MCA, is amended to read:

**"61-9-402. Audible and visual signals on police and emergency vehicles and on-scene command vehicles.** (1) A police vehicle shall be equipped with a siren capable of giving an audible signal and may, but need not, be equipped with alternately flashing or rotating red or blue lights as specified herein. The use of signal equipment described herein shall impose upon the drivers of other vehicles the obligation to yield right-of-way



and/or to stop and to proceed past such signal or light only with caution and at a speed which is no greater than is reasonable and proper under the conditions existing at the point of operation.

(2) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with a siren and an alternately flashing or rotating red light as specified herein.

(3) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at 500 feet in normal sunlight.

(4) Every bus used for the transportation of school children shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two red and two amber alternating flashing lights and to the rear two red and two amber alternating flashing lights. These lights shall have sufficient intensity to be visible at 500 feet in normal sunlight. The warning lights shall be of a type and located on each bus as prescribed by the state board of education and approved by the department.

(5) Police vehicles and authorized emergency vehicles may, and emergency service vehicles shall, in addition to any other equipment and distinctive markings required by this chapter be equipped with alternately flashing or rotating amber lights as specified herein. The use of signal equipment described herein shall impose upon the drivers of other vehicles the obligation to yield right-of-way and/or to stop and to proceed past such signal or light only with caution and at a speed which is no greater than is reasonable and proper under the conditions existing at the point of operation.

(6) Blue, red, and amber lights required in this section shall be mounted as high as and as widely spaced laterally as practicable and capable of displaying to the front two alternately flashing lights of the specified color located at the same level and to the rear two alternately flashing lights of the specified color located at the same level or as an alternative, one rotating light of the specified color, mounted as high as is practicable which shall be both visible front and rear. These lights shall have sufficient intensity to be visible at 500 feet in normal sunlight. The use of blue lights as required in subsection (1) of this section shall be restricted to police vehicles as defined in 61-1-118.

(7) Every police car and authorized emergency vehicle may be equipped with a portable signal lamp that is green in color and capable of magnetic attachment to the exterior roof of the vehicle for purposes of designation as the on-scene command and control vehicle in an emergency or disaster. The green light shall have sufficient intensity to be visible at 500 feet in normal sunlight."

Section 117. Section 61-10-108, MCA, is amended to read:

**"61-10-108. Reduction under special circumstances.** The maximum axle and axle group loads stated in 61-10-105 are subject to reasonable reduction in the discretion of the department of highways during periods when road subgrades have been weakened by water saturation or other causes."

Section 118. Section 61-10-122, MCA, is amended to read:

**"61-10-122. Discretion of issuer — conditions.** The department of highways or local authority may issue or withhold a special permit at its discretion or, if the permit is issued, limit the number of trips or establish seasonal or other time limitations within which the vehicle, combination of vehicles, load, object, or other thing described may be operated on the public highways indicated, or otherwise limit or prescribe conditions of operation of the vehicle, combination of vehicles, load, object, or other thing when necessary to assure against damage to the road foundation, surfaces, or structures or safety of traffic, and may require an undertaking or other security considered necessary to compensate for injury to a roadway or road structure. During harvest no permit may be denied to oversize harvest or harvest-related agricultural machinery solely on the grounds that the travel takes place on a Saturday or Sunday. No permit may be denied to dealers in implements of husbandry and self-propelled machinery solely on the grounds that the travel may take place on a Saturday or Sunday."

Section 119. Section 61-10-124, MCA, is amended to read:

**"61-10-124. Special permits — fee.** (1) Except as provided in subsection (2)(b), in addition to the regular registration and gross vehicle weight fees, a fee of \$10 for each trip permit and a fee of \$75 for each term permit issued for size and weight in excess of that specified in 61-10-101 through 61-10-110 shall be paid for all movements under special permits on the public highways under the jurisdiction of the department of highways.

(2) (a) Except as provided in subsection (2)(b), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; and an overheight vehicle, combination of vehicles, load, or other thing in excess of 13 ½ feet, or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. Special permits for vehicle combinations of more than two trailers are not permitted under this section. Special permits for vehicle combinations may specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). The fee for this permit is \$75. This permit covers a period of 1 year and expires on December 31 of each year with no grace period.

(c) With payment of the appropriate gross weight fee required by 61-10-203 and with payment of the fee prescribed in subsection (1), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of highways, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit."

Section 120. Section 61-10-128, MCA, is amended to read:

**"61-10-128. When authorities may restrict right to use roadway.** (1) A local authority may not alter the limitations provided in 61-10-101 through 61-10-110 or substitute other limitations or requirements, except as provided in this section.

(2) The department of highways by order, or a local road authority by ordinance or resolution, may prohibit the operation of or impose restrictions on the weight and speed of a vehicle traveling on a public highway under its respective jurisdiction and for which it is responsible for maintenance whenever the highway will be seriously damaged or destroyed by deterioration, rain, snow, or other climatic conditions, unless the use of vehicles on the highway is prohibited or the permissible vehicle weights and speed are reduced. The department of highways or the authority which enacts the ordinance or resolution shall erect signs designating the department's order or the authority's ordinance or resolution at each end of that portion of the highway affected, and the order or ordinance or resolution is not effective until the signs are erected. The department, or the authority by ordinance or resolution, may prohibit the operation of trucks or other commercial vehicles, or impose limitations on their weight on designated highways. These prohibitions and limitations shall be designated by appropriate signs placed on the highways."

Section 121. Section 61-10-141, MCA, is amended to read:

**"61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads — enforcement of motor carrier safety standards.** (1) A peace officer, officer of the highway patrol, or employee of the department of highways may weigh any vehicle regulated by 61-10-101 through 61-10-110, either by means of portable or stationary scales, and may require that the vehicle be driven to the nearest scales if those scales are within 2 miles. That person may then require the driver to unload immediately that portion of the load necessary to decrease the weight of the vehicle to conform to the maximum allowable weights specified in 61-10-101 through 61-10-110.

(2) Commodities and material unloaded as required by this section shall be cared for and removed from the highway right-of-way by the owner or operator of the vehicle at the risk of that owner or operator. The removal shall be within a reasonable time designated by the person who has compelled the unloading.

(3) The department of *highways* may establish, maintain, and operate weigh stations, either intermittently or on a continuous schedule, and may require vehicles, except passenger cars and pickup trucks under 8,000 pounds G.V.W., to enter for the purpose of weighing and inspection for compliance with all laws pertaining to their operation and safety requirements.

(4) The department of *highways* shall work with the highway patrol in the enforcement of safety standards adopted pursuant to 44-1-1005. For the purposes of such joint enforcement, the highway patrol is designated as the lead agency. The highway patrol and the department of *highways* shall cooperate to assure minimum duplication and maximum coordination of enforcement effort.

(5) In order to enforce compliance with safety standards adopted pursuant to 44-1-1005, the department of *highways* shall designate employees as peace officers. The designated employees must be employed in the administration of the gross vehicle weight functions of the department of *highways*. Each employee so designated as a peace officer may:

(a) issue citations and make arrests in connection with violations of safety standards adopted under 44-1-1005;

(b) issue summons;

(c) accept bail;

(d) serve warrants for arrest;

(e) make reasonable inspections of cargo carried by commercial motor vehicles;

(f) make reasonable safety inspections of commercial motor vehicles utilized by motor carriers; and

(g) require production of documents relating to the cargo, driver, routing, or ownership of such vehicles.

(6) In addition to other enforcement duties assigned under this section, an employee of the department of *highways* has the same authority to enforce provisions of the motor carriers law as that granted the public service commission under 69-12-203."

Section 122. Section 61-10-142, MCA, is amended to read:

**"61-10-142. Display of permit.** A special permit issued under 61-10-121 shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any peace officer, officer of the highway patrol, or employee of the department of *highways*."

Section 123. Section 61-10-143, MCA, is amended to read:

**"61-10-143. Confiscation — action by commission.** A peace officer, officer of the highway patrol, or employee of the department of *highways* who finds a person operating a vehicle, combination of vehicles, load, object, or other thing in violation of the conditions of a special permit may confiscate the permit and forward it to the commission. The commission

may return it to the permittee or revoke, cancel, or suspend it without refund. The commission shall keep a record of all action taken upon confiscated permits, and if a permit is returned to the permittee, the action taken by the commission shall be endorsed on it. A permittee whose permit is suspended or revoked may, upon request, receive a hearing before the commission or person designated by the commission. The commission, after the hearing, may reinstate the permit or revise its previous action."

Section 124. Section 61-11-203, MCA, is amended to read:

**"61-11-203. Definitions.** As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle which is prohibited by law, ordinance, or administrative order.

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide or negligent homicide resulting from operation of a motor vehicle, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

(e) operating a motor vehicle while his license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the scene of the accident and give the required information or to otherwise fail to report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) operating a motor vehicle without a license to do so, 2 points (this subsection (j) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

- (k) speeding, 3 points;
- (l) all other moving violations, 2 points.

(3) There shall be no multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points shall be chargeable against that defendant.

(4) "License" means any type of license or permit to operate a motor vehicle."

Section 125. Section 67-3-101, MCA, is amended to read:

**"67-3-101. Regulation and licensing — general provisions.** In order to promote the general public interest and safety and to carry out the purposes of this title, the department may:

(1) require the annual registration of federal licenses, permits, or certificates of civil aircraft engaged in air navigation within this state, of airmen engaged in aeronautics within this state, and of aeronautics instructors giving instruction in flying subjects and may issue certificates of registration. The certificates of registration constitute licenses of the aircraft, airmen, and instructors for operations within this state to the extent permitted by the federal licenses, certificates, or permits so registered. The department may charge a fee for the registration of each federal license, certificate, or permit not exceeding \$10. It may accept as evidence of the holding of a federal license, certificate, or permit the verified application of the owner of the aircraft, the airman, or the instructor. The application shall contain information which the department may by rule or order prescribe.

(2) register aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation and license aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation, air schools, and aeronautics instructors giving instruction in ground subjects, in accordance with rules to be adopted by the department, and may annually renew these licenses. It may charge for the original licensing of aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation, air schools, and aeronautics instructors not more than \$10 and for the renewal of a license not more than \$10.

(3) upon notification by the federal aviation administration that it has revoked the license or certificate of an aircraft, airman, air school, or aeronautics instructor, temporarily or permanently revoke the license or certificate of registration issued for that aircraft, airman, air school, or aeronautics instructor, giving reasons for the action."

Section 126. Section 67-3-201, MCA, is amended to read:

**"67-3-201. Aircraft registration and licensing.** (1) Except as provided in 67-3-102 and in subsection (7) of this section, a person may not operate or cause or authorize to be operated a civil aircraft within this state unless the aircraft has an appropriate effective registration, license,

certificate, or permit issued or approved by the United States government which has been registered with the department and the registration with the department is in force.

(2) Aircraft customarily kept in this state shall be registered with the department, which may charge a fee therefor of not more than \$10. The registration shall be renewed annually on or before March 1 each year.

(3) Section 67-3-202 and subsections (2) and (4) through (7) of this section shall not apply to:

(a) aircraft owned and operated by the federal government, the state, or any political subdivision thereof;

(b) aircraft owned and held by an aircraft dealer solely for the purpose of resale;

(c) aircraft operated by an airline company and regularly scheduled for the primary purpose of carrying persons or property for hire in interstate or international transportation; or

(d) dismantled or otherwise nonflyable aircraft.

(4) An aircraft shall be registered as property within a particular county of the state. This county shall be the county of the owner's principal residence, if the owner is a natural person, or the owner's principal place of doing business in the state, if the owner is not a natural person. However, if the owner declares by affidavit that the aircraft is customarily kept at a landing facility in another county within the state, he may register the aircraft as property within such other county.

(5) Except as provided in 15-6-210, all aircraft shall be subject to all state, county, and school district tax levies and all other levies designated for aircraft- or airport-related uses. Such aircraft shall not be liable for other city tax levies.

(6) Aircraft not registered in the state but entering the state to engage in commercial operations shall be registered prior to commencing operation.

(7) Owners of ultralight aircraft for which no appropriate effective license, certificate, or permit is issued by the United States government shall file with the department an appropriate registration recognized and approved by the United States government."

Section 127. Section 67-3-202, MCA, is amended to read:

**"67-3-202. Penalty for registration violations.** (1) When an aircraft required to be registered under the provisions of subsections (2) and (4) through (7) of 67-3-201 is not registered on or before March 1 of the current calendar year, a penalty fee of \$100 shall be added to the registration fee and collected. Registration of an aircraft in the name of the applicant for the year immediately preceding the year for which application for registration is made shall be prima facie evidence that the aircraft has been based in this state during the year for which application for registration is made.

(2) Except for aircraft exempt from property taxation as provided in 15-6-210, an application for registration shall be accompanied by a copy of the receipt for or statement of personal property tax paid, signed by the treasurer of the county where the aircraft is registered, or a statement of lien assignment against real property, signed by the county assessor where the aircraft is registered. A person who pays personal property tax on his aircraft to any jurisdiction other than the county where the aircraft is required to be registered is liable for the tax in that county without credit for such other taxes paid. In addition to this civil liability, a person who attempts to establish the situs of his aircraft in any jurisdiction other than the county where the aircraft is required to be registered with intent to avoid payment of taxes to that county commits the offense of false swearing as defined in 45-7-202.

(3) A person who operates an aircraft required to be registered in the state without having displayed upon such aircraft a certificate of registration issued by the department for that aircraft commits a misdemeanor."

Section 128. Section 67-11-303, MCA, is amended to read:

**"67-11-303. Bonds and obligations.** (1) An authority may borrow money for any of its corporate purposes and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the authority, including revenues derived from:

- (a) an airport or air navigation facility or facilities;
- (b) taxes levied pursuant to 67-11-301 or other law for airport purposes;
- (c) grants or contributions from the federal government; or
- (d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that no such bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds and on any then outstanding bonds for which revenues from the same source or sources are pledged exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenues from the pledged source in such year at least equal to the amount of such principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Except as otherwise provided herein, any bonds issued pursuant to this chapter by an authority may be payable as to principal and interest solely from revenues of the authority and shall state on their face the applicable limitations or restrictions regarding the source from which such principal and interest are payable.

(4) Bonds issued by an authority or municipality pursuant to the provisions of this chapter are declared to be issued for an essential public and



governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) For the security of any such bonds, the authority or municipality may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenues referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities.

(6) Subject to the conditions stated in this subsection (6), the governing body of any municipality having a population in excess of 10,000, with respect to bonds issued pursuant to this chapter by the municipality or by an authority in which the municipality is included, may by resolution covenant that in the event that at any time all revenues, including taxes, appropriated and collected for such bonds are insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the municipality for the payment of such deficiency; and may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on such bonds, it will levy a general tax upon all the taxable property in the municipality for the payment of such deficiency, and such taxes are not subject to any limitation of rate or amount applicable to other municipal taxes but are limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event more than one municipality having a population in excess of 10,000 is included in an authority issuing bonds pursuant to this chapter, the municipalities may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the revenues appropriated for such bonds in such manner as the municipalities may determine. The resolution shall state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies. No such resolution becomes effective until the question of its approval has been submitted to the qualified electors of the municipality at a special election called for that purpose by the governing body of the municipality and a majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election is governed, to the extent applicable, as provided for municipal general obligation bonds in Title 7, chapter 7, part 42, for an election called by cities and towns, and as provided for county general obligation bonds in Title 7, chapter 7, part 22, for an election called by counties. If a majority of the electors voting thereon vote against approval of the resolution, the municipality has no authority to make the covenant or to levy a tax for the payment of deficiencies pursuant to this section, but such municipality or authority may nevertheless issue bonds under this chapter payable solely from the sources referred to in subsection (1) above."

Section 129. Section 69-4-332, MCA, is amended to read:

**"69-4-332. Issuance of bonds.** (1) After the expiration of 30 days from the date of the adoption of the ordinance levying the assessments, the governing body may issue negotiable, interest-bearing bonds in a principal amount not exceeding the unpaid balance of the assessments levied. Whenever any ordinance authorizing the issuance of any bonds pursuant to the

improvement contemplated shall have been adopted, such ordinance shall be published once in a newspaper in which the original notice of hearing was published.

(2) The bonds shall bear interest *as provided in 17-5-102*, payable as specified by the governing body over a period not exceeding 20 years. The bonds shall be of such form and denomination and shall be payable in principal and interest at such times and place and shall be sold, authorized, and issued in such manner as the governing body may determine. The bonds shall be dated no earlier than the date on which the special assessment shall begin to bear interest and shall be secured by and payable from the levy and collection of the special assessments in anticipation of the collection of which they are issued. Any premium received on the sale of the bonds may be applied as other bond proceeds, or if not so applied, the same shall be placed in the fund for the payment of principal of and interest on the bonds.

(3) The bonds shall be signed by a member of the governing body designated by the governing body and shall be countersigned by the appropriate treasurer, with the corporate seal thereto affixed as appropriate, and attested to by the clerk of the governing body. Interest may be evidenced by interest coupons attached to such bonds and signed by a facsimile signature of one of the individuals who signed the bond."

Section 130. Section 69-14-805, MCA, is amended to read:

**"69-14-805. Violations of loading platform provisions.** Every railroad company neglecting or refusing to comply with the requirements of 69-14-801 and 69-14-803 through 69-14-805 shall be deemed guilty of a misdemeanor and be subject to a fine of not less than \$500 for every 30 days such failure shall continue after notice as aforesaid."

Section 131. Section 71-3-302, MCA, is amended to read:

**"71-3-302. Priority in case of death of employer.** In case of the death of any employer, the wages of each miner, mechanic, salesperson, clerk, servant, and laborer for services rendered within 4 months next preceding the death of the employer, in the amount actually owed, are preferred debts under 72-3-807(1)(d) and must be paid before other claims against the estate of the deceased person."

Section 132. Section 71-3-603, MCA, is amended to read:

**"71-3-603. Extent of liens.** (1) The person rendering the service or doing the work or labor named in 71-3-601(1) through (3) is only entitled to the liens as provided herein for services, work, or labor for the period of 3 calendar months, or any part thereof next preceding the filing of the claim, as provided in 71-3-605.

(2) The person granting the privilege mentioned in 71-3-601(4) is only entitled to the lien as provided therein for sawlogs, piling, railroad ties, cordwood, or other timber cut during the 3 months next preceding the filing of the claim, as provided in 71-3-606."

Section 133. Section 71-3-611, MCA, is amended to read:

**"71-3-611. Enforcement of lien.** (1) The liens provided for in this part shall be enforced by a civil action in the district court of the county wherein the lien was filed and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial and the proceedings and laws to secure property, so as to hold it for the satisfaction of any lien that may be against it.

(2) Any person who shall bring a civil action to enforce the lien provided for, any person having a lien as provided for, or who shall be made a party to any such civil action has the right to demand that such lien be enforced against the whole or any part of the sawlogs, piling, railroad ties, cordwood, or other timber or manufactured lumber or shingles upon which he has performed labor or which he has assisted in securing or obtaining or which he has cut on his timberland during the 3 months next preceding the filing of his lien, for all his labor upon or for all his assistance in obtaining or securing said sawlogs, piling, railroad ties, cordwood, or other timber or in manufacturing said lumber into shingles during the whole or any part of the 3 months mentioned in 71-3-603, or for timber cut during the whole or any part of the 3 months above mentioned.

(3) Where proceedings are commenced against any lot of sawlogs, piling, railroad ties, cordwood or other timber or lumber or shingles, as herein provided, and some of the lienors claim liens against these specific sawlogs, piling, railroad ties, cordwood, or other timber or lumber or shingles proceeded against and others against the same generally to secure their claim for work and labor, the priority of the liens shall be determined as hereinbefore provided."

Section 134. Section 72-11-103, MCA, is amended to read:

**"72-11-103. Degrees of kindred — ascending and descending direct line.** The direct line is divided into a direct line descending and a direct line ascending. The first is that which connects *an ancestor* with those who descend from him. The second is that which connects a person with those from whom he descends."

Section 135. Section 72-16-454, MCA, is amended to read:

**"72-16-454. Farmhouses and other structures taken into account.** For the purposes of the 35% requirement of 72-16-452, an interest in a closely held business that is the business of farming includes an interest in residential buildings and related improvements on the farm which are occupied on a regular basis by the owner or lessee of the farm or by persons employed by the owner or lessee for purposes of operating or maintaining the farm."

Section 136. Section 72-17-206, MCA, is amended to read:

**"72-17-206. Designation of physician by donor — absence of designation.** The donor may designate in his will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures, except as provided in 72-17-205 and 72-17-301(2). In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or

physician for the purpose, except as provided in 72-17-205 and 72-17-301(2)."

Section 137. Section 72-17-311, MCA, is amended to read:

**"72-17-311. Eye enucleations — technicians — qualifications.**

(1) Eye enucleations for purposes of anatomical gifts may be performed:

- (a) by a licensed physician or surgeon; or
- (b) by a technician trained in eye enucleation.

(2) *An acceptable* course in eye enucleation must include the anatomy and physiology of the eye, instruction in maintaining a sterile field during the enucleation procedure, and use of appropriate instruments and sterile procedures for removal and preservation of corneal tissue.

(3) Certification of satisfactory completion of a course in eye enucleation must be provided by the ophthalmologist who teaches the course. This certification qualifies a technician to perform eye enucleations for a period of 3 years from the date of completion of the course."

Section 138. Section 75-1-1101, MCA, is amended to read:

**"75-1-1101. Environmental contingency account objectives. (1)**

There is created an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental contingency account is controlled by the governor.

(2) Except as provided in subsection (4), at the beginning of each fiscal year, 5% of the funds appropriated to the department of natural resources and conservation from the resource indemnity trust interest account, not to exceed \$175,000 in fiscal year 1987, must be allocated to the environmental contingency account.

(3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental contingency account upon the authorization of the governor to meet unanticipated public needs consistent with the following objectives:

(a) to support water development projects in communities that face an emergency or imminent need for such services or to prevent the physical failure of a water project;

(b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including:

- (i) natural disasters adequately covered by other funding sources; or
- (ii) fire;

(c) to respond to an emergency or imminent threat to persons, property, or the environment caused by mineral development; and

(d) to fund the environmental quality protection fund provided for in 75-10-704 or to take other necessary actions, including the construction of

facilities, to respond to actual or potential threats to persons, property, or the environment caused by hazardous wastes or other hazardous materials.

(4) The environmental contingency account may receive no additional allocation for any fiscal year in which the balance in the account exceeds \$1,000,000 at the beginning of that fiscal year.

(5) Interest from funds in the environmental contingency account accrues to the resource indemnity trust interest account.

(6) The governor shall submit to the legislature at the beginning of each regular session a complete financial report on the environmental contingency account, including a description of all expenditures made since the preceding report."

Section 139. Section 75-20-216, MCA, is amended to read:

**"75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies.** (1) After receipt of an application, the department and department of health shall within 90 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and list the deficiencies therein; and upon correction of these deficiencies and resubmission by the applicant, the department and department of health shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503 and the department of health shall commence a study to enable it or the board of health to issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department and department of health shall use, to the extent they consider applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) The department of health shall within 1 year following the date of acceptance of an application and the board of health or department of health, if applicable, within an additional 6 months issue any decision, opinion, order, certification, or permit required under the laws administered by the department of health or the board of health and this chapter. The department of health and the board of health shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction for the primary and reasonable alternate locations in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters that the department of health and board of health administer, and any of the criteria specified in subsections (2) through (7) of 75-20-503 that are a part of the determinations made under the laws administered by the department of health and the board of health. Although the decision,

opinion, order, certification, or permit issued under this subsection is conclusive, the board retains authority to make the determination required under 75-20-301(2)(c). The decision, opinion, order, certification, or permit of the department of health or the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit shall be served upon the department and the board and shall be utilized as part of their final site selection process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules adopted by the board of health, the department of health shall provide an opportunity for public review and comment.

(4) Within 22 months following acceptance of an application for a facility as defined in (a) and (d) of 75-20-104(10) and for a facility as defined in (b) and (c) of 75-20-104(10) which is more than 30 miles in length and within 1 year for a facility as defined in (b) and (c) of 75-20-104(10) which is 30 miles or less in length, the department shall make a report to the board which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) The departments of highways; commerce; fish, wildlife, and parks; state lands; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

Section 140. Section 76-3-103, MCA, is amended to read:

**"76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires otherwise, the following words or phrases shall have the following meanings:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to himself no rights which are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(3) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter.

(4) "Examining land surveyor" means a registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.

(5) "Governing body" means a board of county commissioners or the governing authority of any city or town organized pursuant to law.

(6) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot, the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

(7) "Occasional sale" means one sale of a division of land within any 12-month period.

(8) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(9) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(10) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body.

(11) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant thereto.

(12) "Registered land surveyor" means a person licensed in conformance with Title 37, chapter 67, to practice surveying in the state of Montana.

(13) "Registered professional engineer" means a person licensed in conformance with Title 37, chapter 67, to practice engineering in the state of Montana.

(14) "Subdivider" means any person who causes land to be subdivided or who proposes a subdivision of land.

(15) "Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and shall include any resubdivision and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes."

Section 141. Section 80-4-427, MCA, is amended to read:

**"80-4-427. Injunction.** If a person without a license is found to have engaged in any business for which a license is required under parts 5 and

6 of this chapter, the court shall enjoin him from further business until he has been duly licensed. It is not necessary that the department show that an individual has been injured by the actions complained of in order to issue the injunction. The procedure for injunctive relief is the same as any other action for an injunction under Title 27. The injunction provided by this section is an additional remedy to the criminal penalty provided for in 80-4-428."

Section 142. Section 81-8-216, MCA, is amended to read:

**"81-8-216. Penalties.** (1) A person who violates any provision of 81-8-214, 81-8-215, 81-8-251 through 81-8-256, and 81-8-258 through 81-8-263 or rules adopted by the department under 81-8-231 is guilty of a misdemeanor and upon conviction shall be fined not less than \$100 or more than \$600, imprisoned in the county jail not less than 30 days or more than 6 months, or both. A person convicted of a subsequent violation of 81-8-214, 81-8-215, 81-8-251 through 81-8-256, and 81-8-258 through 81-8-263 or rules adopted to implement those sections shall be fined not less than \$200 or more than \$1,000, imprisoned in the county jail for not less than 3 months or more than 6 months, or both, and the department may cancel his certificate.

(2) Of all fines assessed and collected under this section, 50% shall be paid into the state treasury and credited to the special revenue fund for the use of the department and 50% shall be paid into the general revenue fund of the county in which the conviction occurred."

Section 143. Section 82-4-232, MCA, is amended to read:

**"82-4-232. Area mining required — bond — alternative plan.** (1) Area strip mining, a method of operation which does not produce a bench or fill bench, is required where strip mining is proposed. All highwalls must be reduced and the steepest slope of the reduced highwall shall be no greater than 20 degrees from the horizontal. Highwall reduction shall be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading shall eliminate all highwalls and spoil peaks. The area of land affected shall be restored to the approximate original contour of the land. When directed by the department, the operator shall construct in the final grading such diversion ditches, depressions, or terraces as will accumulate or control the water runoff. Additional restoration work may be required by the department according to rules adopted by the board.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure whatsoever to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator shall as a minimum be required to:

(a) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity; and if not utilized immediately, stockpile this



material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil; and if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in (b) above with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in (a) above.

(4) All available topsoil shall be removed in a separate layer, guarded from erosion and pollution, and kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material which is best able to support vegetation shall be returned as the top layer.

(5) As determined by rules of the board, time limits shall be established requiring backfilling, grading, subsidence stabilization, water control, high-wall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling shall be completed before necessary equipment is moved from the operation.

(6) (a) The permittee may file a request with the department for the release of all or part of a performance bond or deposit. Within 30 days after any application for bond or deposit release has been filed with the department, the permittee shall submit a copy of an advertisement notice placed at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the prospecting or mining operation. The notice is considered part of any bond release application and must contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed, and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that he has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of his intention to seek release from the bond.

(b) Upon receipt of the request and copies of the notification made under subsection (6)(a), the department shall, within 30 days, conduct an inspection and evaluation of the reclamation work involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of such pollution, and the estimated cost of abating such pollution. The department shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond within 60 days of the filing of the request if no public hearing is held pursuant to subsection (6)(f) or, if a public hearing is held pursuant to that subsection, within 30 days thereafter.

(c) The department may release the bond or deposit in whole or in part if it is satisfied the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this part according to the following schedule:

(i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded area in accordance with his approved reclamation plan, the department shall release 60% of the bond or collateral for the applicable permit area.

(ii) After revegetation has been established on the regraded lands in accordance with the approved reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the portion of bond may be released under this subsection (6)(c)(ii) if provisions for sound future maintenance by the operator or the landowner have been made with the department. No part of the bond or deposit may be released under this subsection (6)(c)(ii):

(A) as long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

(B) before soil productivity for prime farm lands to which the release would be applicable has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey.

(iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities, the department shall release the remaining portion of the bond, but not before the expiration of the period specified for responsibility and not until all reclamation requirements of this part are fully met.

(d) If the department disapproves the application for release of the bond or portion thereof, it shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(e) When an application for total or partial bond release is filed with the department, it shall notify the municipality in which a prospecting or

mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to such operations has the right to file written objections to the proposed release from bond to the department within 30 days after the last publication of the notice provided for in subsection (6)(a). If written objections are filed and a hearing requested, the department shall inform all the interested parties of the time and place of the hearing and, within 30 days of the request for such hearing, hold a public hearing in the locality of the operation proposed for bond release. The date, time, and location of the public hearing must be advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks, and the hearing must be held in the locality of the operation proposed for bond release or at the state capital, at the option of the objector, within 30 days of the request for such hearing.

(g) Without prejudice to the rights of the objectors or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve such written objections.

(h) For the purpose of the hearing under subsection (6)(f), the department may administer oaths; subpoena witnesses or written or printed materials; compel the attendance of witnesses or the production of materials; and take evidence, including but not limited to site inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.

(7) An operator may propose alternative plans other than backfilling, grading, highwall reduction, topsoiling, or seeding to a permanent diverse vegetative cover if the restoration will be consistent with the purpose of this part. These plans shall be submitted to the department, and after consultation with the landowner, if the plans are approved by the board and complied with within the time limits as may be determined by the board as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, topsoiling, or revegetation requirements of this part may be modified by the board. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of 82-4-222(1)(k).

(8) If alternate revegetation is proposed, a management plan must be submitted showing how the area will be utilized and any data necessary to show that the alternate postmining land use can be achieved. Any plan must require the operation as a minimum to:

(a) restore the land affected to a condition capable of supporting the use which it was capable of supporting prior to any mining operation or to

a higher or better use of which there is a reasonable likelihood, if the use or uses do not present any actual or probable threat of water diminution or pollution, and if the permit applicant's proposed land use following reclamation is not deemed to be impractical, unreasonable, or inconsistent with applicable land use policies and plans, would not involve unreasonable delay in implementation, and would not violate federal, state, or local law; and

(b) prevent soil erosion to the extent achieved prior to mining."

Section 144. Section 82-11-131, MCA, is amended to read:

**"82-11-131. Privilege and license tax.** (1) For the purpose of providing funds for defraying the expenses of the operation and enforcement of this chapter and expenses of the board, an operator or producer of oil and gas shall pay an assessment not to exceed 2/10 of 1% of the market value of each barrel of crude petroleum originally produced, saved and marketed, or stored within the state or exported from the state and the same rate on the market value of each 10,000 cubic feet of natural gas produced, saved and marketed, or stored within the state or exported therefrom.

(2) The board shall, by rule adopted pursuant to the provisions of the Montana Administrative Procedure Act, fix the amount of the assessment and may from time to time reduce or increase the amount thereof as the expenses chargeable against the oil and gas conservation fund may require. However, the assessment fixed by the board may not exceed the limits prescribed in this section. The amount of the assessment shall be a percentage factor (not to exceed 100%) of the rate set forth in subsection (1) above, and the same percentage factor shall be applied by the board in fixing the amount of the assessment on each barrel of crude production and each 10,000 cubic feet of natural gas mentioned in that subsection. A producer of the crude petroleum and natural gas shall pay the assessment on each barrel of crude petroleum and each 10,000 cubic feet of natural gas produced for himself, as well as for another, including a royalty holder, and the producer shall be reimbursed for the payments made on crude oil and natural gas produced for another in the same manner as he is reimbursed for net proceeds tax paid *under 15-23-607* on crude petroleum or natural gas produced for another.

(3) The department of revenue shall collect the privilege and license tax assessment in the same manner as the oil and gas severance tax is collected under Title 15, chapter 36."

Section 145. Section 85-2-322, MCA, is amended to read:

**"85-2-322. Hearing — order.** (1) The department shall conduct a hearing on the proposed suspension or closure, or both. Notice of the hearing must be published at least once in each week for 3 successive weeks, not less than 30 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which the source is located. The department shall serve by mail a copy of the notice and proposal not less than 30 days before the hearing upon each person or public agency known from the examination of the records of the department to be a claimant, appropriator, or permitholder of water in the source.

(2) The department may by order suspend action on and shall close the source and refuse to accept a class of applications if it finds on the basis of the hearing that there is substantial evidence in support of the allegations required by 85-2-321 to be contained in the proposal.

(3) As part of fulfilling the requirements of 2-4-623, the order must define the source and must state the class of applications to which the suspension or closure, or both, applies.

(4) Upon adoption of the order, the department shall refuse to accept any application for a permit under this part for the class of application for which closure is ordered under this section and 85-2-321. If the order suspends action on pending applications, the department shall notify the applicant that action on his application is suspended.

(5) Upon notice under 85-2-307 of intent to combine the hearings under 85-2-309 with the hearings under this section, the department may suspend action on pending applications of the class until the hearing is conducted under this section and, as part of its final order, may grant, deny, or condition the applications under 85-2-306(3), 85-2-310, and 85-2-311 or continue the suspension under this section."

Section 146. Section 85-2-421, MCA, is amended to read:

**"85-2-421. Purpose.** The purpose of 85-2-421 through 85-2-424 and 85-2-426 is to facilitate the maintenance of a reliable record of water right ownership on both the state and local levels by requiring that water right transfers be filed with the department and that the department notify the water court and the county clerk and recorder of each transfer filed."

Section 147. Section 85-2-422, MCA, is amended to read:

**"85-2-422. Definition.** As used in 85-2-421 through 85-2-424 and 85-2-426, "water right" means the right to use water as documented by a claim to an existing right, a permit, or a certificate of water right."

Section 148. Section 85-2-507, MCA, is amended to read:

**"85-2-507. Limiting withdrawals — modification of order.** (1) At the time set for the hearing, the board shall proceed to hear oral and written evidence relevant to the designation or modification of the controlled groundwater area presented by the bureau, the department, and any other interested party. A full record shall be kept of all evidence taken at the hearing. The procedure shall be such as to secure a full, fair, and orderly proceeding and to permit all relevant evidence to be received. The common-law and statutory rules of evidence shall apply only upon stipulation of all parties.

(2) After the conclusion of the hearing, the board shall make written findings and an order. The board shall by order declare the area in question to be a controlled groundwater area if the board finds on the basis of the hearing that:

(a) the public health, safety, or welfare requires a corrective control be adopted; and

(b) (i) there is a wasteful use of water from existing wells or undue interference with existing wells;

(ii) any proposed use or well will impair or substantially interfere with existing rights to appropriate surface water or groundwater by others; or

(iii) the facts alleged in the petition as required by 85-2-506(2) are true.

(3) The order shall define the boundary of the controlled groundwater area and shall indicate which of the groundwater aquifers located within the area in question are included within the controlled groundwater area. Any number of groundwater aquifers which wholly or partially overlie one another may be included in the same controlled groundwater area.

(4) The order may include the following corrective control provisions:

(a) a provision closing the controlled groundwater area to further appropriation of groundwater, in which event the department shall thereafter refuse to accept any applications for beneficial water use permits to appropriate groundwater located within such controlled area;

(b) a provision determining a permissible total withdrawal of groundwater in the controlled area by day, month, or year and permitting the board to apportion such permissible total withdrawal among the appropriators holding valid rights to the groundwater in the controlled area in accordance with the relative dates of priority of such rights;

(c) a provision according preference, without reference to relative priorities, to withdrawals of groundwater in the controlled area for domestic and livestock purposes first and thereafter to withdrawals for other beneficial purposes, including but not limited to agricultural, industrial, municipal (other than domestic), and recreational purposes, in such order as the board considers advisable under the circumstances;

(d) a provision reducing the permissible withdrawal of groundwater by any appropriator or well in the controlled area;

(e) when two or more wells in the controlled area are used by the same appropriator, a provision adjusting the total permissible withdrawal of groundwater by the appropriator or a provision forbidding the use of one or more such wells;

(f) a provision requiring and specifying a system of rotation of use of groundwater in the controlled area;

(g) provisions making such additional requirements as are necessary to protect the public health, safety, and welfare in accordance with the intent, purposes, and requirements of this part and the laws of the state.

(5) (a) If at the conclusion of the hearing the board finds that sufficient facts are not available to designate or modify a permanent controlled groundwater area, the board may by order designate the area in question to be a temporary controlled groundwater area. Such order may include the corrective control provisions contained in subsection (4). A temporary controlled groundwater area shall be designated as such for a period not to exceed 2 years from the date of the board's order designating the temporary controlled groundwater area. The board may, for sufficient cause,

extend the time period for an additional 2 years, and in this case all groundwater appropriators in the controlled groundwater area shall be notified of the extension.

(b) During the 2-year period, the department shall commence studies necessary to obtain the facts needed to assist in the designation or modification of a permanent controlled groundwater area. Facts gathered during the study period shall be presented at a hearing prior to the designation or modification of a permanent controlled groundwater area. All parties appearing at the first hearing shall be served notice of this hearing by mail at least 30 days prior to the date set for the hearing. The service shall be complete upon deposit of notice at the post office, postage prepaid, addressed to each person on whom service is to be made. Mailing of the notice, when completed, shall be considered to be sufficient notice of the hearing to all persons directly affected. The department shall file in its records proof of service by its own affidavit. The hearing shall be conducted by the board in the manner of the first hearing, and the board shall make written findings of fact and conclusions of law and issue an order according to the provisions set forth in subsections (1) through (4). In the event the department does not complete the necessary study in the 2-year period or extension thereof, the temporary controlled groundwater area designation will terminate at the end of the 2-year period or extension.

(6) The department may enforce the order and bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(7) The order of the board shall be published and mailed by the department in the manner and for the length of time as prescribed by 85-2-506 for the publication and mailing of the notice of hearing, except that a copy of the written findings and order of the board shall be mailed instead of a copy of the proposal and, except further, that a copy of the order, together with a copy of the written findings, shall be mailed to each petitioner at his last-known address. The department shall file a copy of the order with the county clerk of each county within which any part of the controlled groundwater area lies, and the county clerk shall record the order without fee. The department shall file in its records proof of service by its own affidavit of service. Upon publication and mailing of such order as prescribed herein, the order shall be final and conclusive unless an appeal therefrom is taken.

(8) The board may by order suspend, modify, or revoke any order made as provided in this section upon such notice and in such manner as is reasonable under the circumstances. A copy of each suspension, modification, or revocation shall be served or filed and recorded as provided for orders in subsection (7).

(9) While a matter is pending before the board, the department may restrict further development of the subarea."

Section 149. Section 85-8-350, MCA, is amended to read:

**"85-8-350. Judgment on dismissal of proceedings — assessment of costs.** (1) In case the petition or proceedings are dismissed as provided

in 85-8-327, a judgment shall be entered for the costs, expenses, and liabilities incurred in said proceedings against the petitioners and in favor of the commissioners, but for the benefit of those who have rendered services or advanced money in the prosecution of said proceedings or have recovered costs on successful contests therein.

(2) In case the proceedings are dismissed at any time or the district is discontinued for any cause subsequent to the time provided in 85-8-327, a judgment shall be entered directing the commissioners of the district to assess the costs, expenses, and liabilities incurred in said proceedings, up to and including the time of such dismissal and discontinuation, on an acreage basis against the lands in said district, which assessment shall be a lien upon said lands from the date of said judgment superior to the lien of any other judgment, mortgage, or mechanic's lien against said lands. Said assessment shall be verified by the commissioners of the district the same as assessments to pay costs of construction. Such assessments shall be spread upon the tax rolls of the counties in which said district is situated and shall be collected by the county treasurers of such counties the same as assessments to pay costs of construction are collected. Such assessments shall be payable on or before November 30 following the date upon which they are so spread upon the assessment roll of such counties. The money so collected shall be paid out upon warrants issued by the commissioners of the district to those who have rendered service or advanced money in connection with said district or have recovered costs on successful contests therein. Should such assessment, for any cause, be not sufficient for all such costs, expenses, and liabilities, then additional assessments shall be made and collected in like manner until sufficient funds have been raised to pay all such costs, expenses, and liabilities."

Section 150. Section 85-8-624, MCA, is amended to read:

**"85-8-624. Assessments on improvements — taxpayers' approval, limitations, and election procedures.** (1) It shall require a vote of the persons on the assessment rolls in any existing district to make Chapter 409, Laws of 1973, applicable to such districts.

(2) Nothing in Chapter 409, Laws of 1973, confers upon districts created for drainage purposes only the authority to levy assessments on benefits to improvements.

(3) The election provided for by subsection (1) shall be governed by the following rules:

(a) Notice of the election shall be as provided in 13-1-401(4).

(b) The manner of conducting the election shall be as provided in 85-8-302 and as nearly as practicable in accordance with the provisions of the general election laws of the state, except that no registration may be required.

(c) The qualifications of electors shall be as provided in 85-8-305, except that, in addition to persons holding title or evidence of title to lands within the district, any person as therein defined who does not own land within the district but has been assessed or will have his improvements



assessed under Chapter 409, Laws of 1973, or who will be assessed for benefits received shall be entitled to one vote. Commissioners shall prepare a list of such persons and the election administrator or deputy election administrator shall give them notice as provided in 13-1-401(4).

(d) The commissioners of any district in existence prior to March 21, 1973, who wish to hold an election to determine if the district shall be governed by Chapter 409, Laws of 1973, shall at any regular or special meeting adopt a resolution calling for an election to determine whether or not the voters of said district wish to be governed by Chapter 409, Laws of 1973. The resolution shall contain a short summary of the changes made by Chapter 409, Laws of 1973, and the summary must be included in the notice provided for by 13-1-401(4). In addition, the commission shall provide copies of Chapter 409, Laws of 1973, to any person interested in obtaining a copy of the same and the notice to the persons in the district calling the election shall describe where and how copies may be obtained. The commissioners may authorize a reasonable charge for providing said copies, not to exceed 20 cents per page.

(e) The ballot shall include the summary as provided for in the preceding subsection and the form of the ballot shall conform as closely as possible to that provided for in Title 13, chapter 27.

(f) A simple majority of those who cast valid ballots shall determine the outcome of the election."

Section 151. Section 87-1-209, MCA, is amended to read:

**"87-1-209. Acquisition and sale of lands or waters.** (1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

- (a) for fish hatcheries, nursery ponds, or game farms;
- (b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;
- (c) for public hunting, fishing, or trapping areas;
- (d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;
- (e) for state parks and outdoor recreation;
- (f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the commission, may acquire by condemnation lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) The department, with the consent of the commission, may dispose of lands and waters acquired by it on those terms after public notice

*as required by subsection (3)(b), without regard to other laws which provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable.*

(b) Notice of sale describing the lands or waters to be disposed of shall be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if no newspaper is published in that county, then in any newspaper with general circulation in that county.

(c) The notice shall advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid shall be accepted upon payment of the balance due within 10 days after mailing notice by registered or certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders shall be similarly notified in succession until a sale is completed. Deposits shall be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids which do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or waters at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process. The department shall convey the lands and waters without covenants of warranty by deed executed by the governor or in his absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(4) The department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas which provide access to fishing sites for the public. In no case may the total cost of such installment contracts exceed the cost of purchases authorized by the department and appropriated by the legislature."

Section 152. Section 87-3-101, MCA, is amended to read:

**"87-3-101. General restrictions.** Except as provided in 87-2-803(4), it is unlawful for anyone to take, capture, shoot, kill, or attempt to take, capture, shoot, or kill any game animal or game bird:

(1) from any self-propelled or drawn vehicle;

(2) on, from, or across any public highway or the shoulder, berm, or borrow-pit right-of-way of any public highway, as defined in 61-1-202, in the state of Montana; or

(3) by the aid or with the use of any set gun, jacklight or other artificial light, trap, snare, or salt lick; nor may any such set gun, jacklight or other artificial light, trap, snare, salt lick, or other device to entrap or entice game animals or game birds be used, made, or set."

Section 153. Section 87-5-109, MCA, is amended to read:

**"87-5-109. Taking of species for educational, scientific, or other purposes.** (1) The director may permit the taking, possession, transportation, exportation, or shipment of species or subspecies of wildlife which appear on the state list of endangered species, on the United States' list of endangered native fish and wildlife, as amended and accepted in accordance with 87-5-107(5), or on the United States' list of endangered foreign fish and wildlife, as such list may be modified hereafter, for scientific, zoological, or educational purposes, for propagation in captivity of such wildlife, or for other special purposes.

(2) Upon good cause shown and where necessary to alleviate damage to property or to protect human health, endangered species may be removed, captured, or destroyed but only pursuant to permit issued by the director and, where possible, by or under the supervision of an agent of the department. Endangered species may be removed, captured, or destroyed without permit by any person in emergency situations involving an immediate threat to human life. Provisions for removal, capture, or destruction of nongame wildlife for the purposes set forth above shall be set forth in regulations issued by the department pursuant to 87-5-105."

Section 154. Section 90-8-104, MCA, is amended to read:

**"90-8-104. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the Montana economic development board provided for in 2-15-1805.

(2) "Capital base" means equity capital or net worth.

(3) "Certified Montana capital company" means:

(a) a development credit corporation created pursuant to Title 32, chapter 4; or

(b) a profit or nonprofit entity organized and existing under the laws of Montana, created for the purpose of making venture or risk capital available for qualified investments and that has been certified by the board.

(4) "Montana business" means a business which is located or principally based within Montana.

(5) "Qualified investment" means a debt or equity financing of or a purchase and leaseback financing of a Montana business that meets both of the following criteria:

(a) the business is engaged in one or more of the following activities:

(i) manufacturing;

(ii) agricultural, fishery, or forestry production and processing;

(iii) mineral production and processing, except for conventional oil and gas exploration;

(iv) recognized nonfossil forms of energy generation as defined in 15-32-102;

- (v) transportation;
  - (vi) research and development of products or processes associated with any of the activities enumerated in (i) through (v) above;
  - (vii) wholesale or retail distribution activities for which products produced in Montana comprise 50% or more of the gross sales receipts;
  - (viii) any activity conducted in the state for which 50% or more of the gross receipts are derived from the sale of products or services outside Montana; and
  - (ix) tourism; and
  - (b) the business is a small business as defined in rules adopted by the board.
- (6) "Qualified Montana capital company" means a certified Montana capital company that has been designated a qualified capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202."

**Section 155. Code commissioner instruction — short form amendment.** Wherever the phrase "aid to dependent children" appears in the Montana Code Annotated or in any legislation enacted during the 50th legislative session, the code commissioner is instructed to substitute "aid to families with dependent children".

**Section 156. Repealer.** Sections 2-17-106, 2-17-110, 7-15-4122, 7-33-4203, and 50-5-421 through 50-5-424, MCA, are repealed.

Approved April 7, 1987.

## CHAPTER NO. 371

[HB 69]

**AN ACT TO INCREASE THE TAXABLE VALUATION REQUIRED FOR CREATION OF A NEW ELEMENTARY SCHOOL DISTRICT OR NEW HIGH SCHOOL DISTRICT; TO PROVIDE THAT THERE BE A COMPELLING NEED FOR CREATION OF A NEW DISTRICT; AMENDING SECTIONS 20-6-216, 20-6-217, AND 20-6-325, MCA; AND PROVIDING AN EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-6-216, MCA, is amended to read:

**"20-6-216. Limitations for creation of new elementary district.** A new elementary district may be created out of the territory of an existing elementary district or districts if:

- (1) the taxable value of the taxable property of the territory proposed to be included in such new district is \$1 million or more, except that when

50,000 acres or more of such new district are nontaxable Indian land, this limitation shall not be applicable;

(2) the taxable value of the taxable property of each existing district from which territory would be detached will be \$2 million or more after the territory is detached;

(3) the ANB in any of the existing districts is not reduced to less than 15;

(4) the territory to be included in the new district shall consist only of parcels of land that are contiguous; and

(5) *there is a compelling need, such as a significant increase in school-age population of the territory to be included in the new district, the extreme isolation of such population, or an emergency situation."*

Section 2. Section 20-6-217, MCA, is amended to read:

**"20-6-217. Procedure for creation of new elementary district.**

(1) The petition requesting the creation of a new elementary district out of the territory of an elementary district or districts shall be addressed to the county superintendent and shall:

(a) describe the territory that is requested to be incorporated in the new district and the taxable value of such territory as shown by the last completed assessment roll;

(b) state the reasons why the creation of a new district is requested, in accordance with the provisions of 20-6-216(5); and

(c) be signed by the parents or guardians of not less than 10 children between the ages of 6 and 16 years who reside in the territory that would be included in the new district and who reside more than 3 miles over the shortest practical route from an operating school.

(2) When a county superintendent receives a valid petition requesting the creation of a new district, he shall:

(a) file such petition;

(b) set a hearing place, date, and time for consideration of such petition that is not more than 40 days after the receipt of the petition; and

(c) give notice of the place, date, and time of the hearing. The notices shall be posted in the districts affected by the request in the manner prescribed in this title for school elections, with at least one such notice posted in the territory to be included in the new district.

(3) The county superintendent shall conduct the hearing as scheduled unless before or at the time of the hearing he receives a protest petition signed by a majority of the electors of the proposed new district who are qualified to vote under the provisions of 20-20-301. A valid protest petition shall conclusively deny the creation of a new district. If a hearing is conducted, any resident or taxpayer of the affected districts shall be heard. If the county superintendent considers it advisable and in the best interests of the residents of the proposed new district and the residents of the

remaining district, he shall grant the petitioned request and order the creation of a new elementary district with its boundaries coinciding with the boundaries defined in the petition. Otherwise, he shall, by order, deny the request. In the order creating the new district, the county superintendent shall establish the effective date for its creation and the procedures for effecting an orderly transition.

(4) Either of the county superintendent's orders may be appealed to the board of county commissioners within 30 days after the date of such order. Such appeal shall be in writing, signed by not less than three resident taxpayers, and shall state sufficient facts to show the appellants' right to appeal the order. The board of county commissioners shall call a hearing of such appeal for the first regular meeting of the commission that will allow notice of the hearing to be given in accordance with the requirements for notice of school elections. After considering the material presented at the county superintendent's hearing and such other material as is presented at its hearing, the board of county commissioners shall render a decision on the creation of such new elementary district. Such decision shall be final.

(5) When a new elementary district is created, the county superintendent shall appoint the trustees of the new district, giving preference in his selections to any trustees who were trustees of an old district and who reside in the new district. Any trustee position vacancies that may occur in the other districts shall be filled in the manner provided for filling trustee position vacancies for such district. Any trustee appointed under the provisions of this section shall serve until a successor is elected at the next regular school election and qualified.

(6) The order of the county superintendent or, if his order is appealed, the decision of the board of county commissioners creating a new district under this section shall be null and void, and the new district shall cease to exist, if such district does not open and operate a school within 2 years after the date of such order or decision. If the new district does not satisfy this requirement, the territory shall be reincorporated in the district or districts in which it was located before the creation of such new district and the trustees shall thereafter be without capacity to act.

(7) If a petition has been filed under the provisions of this section and denied by the county superintendent, no new petition may be filed until 1 year after the final decision on the original petition."

Section 3. Section 20-6-325, MCA, is amended to read:

**"20-6-325. Procedure for creation of new high school district out of existing districts — limitation for creation.** (1) To create a new high school district, a petition requesting the creation of a new high school district out of the territory of an existing high school district or districts must be addressed to the county superintendent and must:

(a) describe the territory that is requested to be incorporated in the new district and the taxable value of such territory as shown by the last completed assessment roll;

(b) state the reasons why the creation of a new district is requested; and

(c) be signed by the parents or guardians of not less than 50 children who are at least 14 years old but less than 18 years old and who reside in the territory that would be included in the new district and who reside more than 20 miles over the shortest practical route from an operating high school.

(2) When a county superintendent receives a valid petition requesting the creation of a new district, he shall:

(a) file such petition;

(b) set a hearing place, date, and time for consideration of the petition that is not more than 40 days after the receipt of the petition; and

(c) give notice of the place, date, and time of the hearing. Notices must be posted in the high school districts affected by the request in the manner prescribed in 20-20-204 for school elections, with at least one such notice posted in the territory to be included in the new district.

(3) The county superintendent shall conduct the hearing as scheduled unless before or at the time of the hearing he receives a protest petition signed by a majority of the electors of the proposed new district who are qualified to vote under the provisions of 20-20-301. A valid protest petition conclusively denies the creation of a new district. If a hearing is conducted, any resident or taxpayer of the affected districts must be heard. If the county superintendent considers it advisable and in the best interests of the residents of the proposed new district, he shall grant the petitioned request and order the creation of a new district with its boundaries coinciding with the boundaries defined in the petition. Otherwise, he shall by order deny the request. In the order creating the new district, the effective date for its creation must be the following July 1.

(4) The county superintendent's order may be appealed to the superintendent of public instruction within 30 days after the date of such order. An appeal must be in writing and be signed by not less than 10 residents of the proposed new district. The superintendent of public instruction shall:

(a) call a hearing on the appeal not less than 20 days or more than 30 days from receipt of the appeal;

(b) provide notice of the hearing in the manner prescribed in subsection (2)(c);

(c) consider the material presented at the county superintendent's hearing and pertinent other material; and

(d) render a decision on the creation of such new high school district. The decision is final.

(5) When a new high school district is created, the trustees of the elementary district in which the high school buildings are located are the trustees of the new district. A trustee appointed under the provisions of this section shall serve until a successor is elected at the next regular school election and is qualified.

(6) If the district does not open and operate a school within 1 year after the effective date of the creation of the new district, the order of the

county superintendent or, if his order is appealed, the decision of the superintendent of public instruction creating a new district under this section is void and the new district ceases to exist. If the new district does not satisfy this requirement, the territory must be reincorporated in the district or districts in which it was located before the creation of the new district and the trustees are without capacity to act.

(7) If a petition has been filed under the provisions of this section and denied by the county superintendent, no new petition may be filed until 1 year after the final decision on the original petition.

(8) For the purposes of this section, the taxable value of the taxable property of the territory proposed to be included in the new district must be at least \$1 million, unless 50,000 acres or more of such proposed new district are nontaxable Indian land, *and the taxable value of the taxable property of each existing district from which territory would be detached must be at least \$2 million after the territory is detached.*"

Section 4. **Effective date.** This act is effective July 1, 1987.

Approved April 7, 1987.

## CHAPTER NO. 372

[HB 121]

AN ACT REVISING LAWS RELATING TO SCHOOL ELECTIONS BY STANDARDIZING THE DATE FOR SUBMITTING A NOMINATION; ALLOWING POLLS TO OPEN AS EARLY AS 7 A.M.; PROVIDING FOR NEWSPAPER NOTICE IN LIEU OF POSTED NOTICE; PROVIDING WHEN ABSENTEE BALLOTS MUST BE PRINTED AND AVAILABLE; DELETING THE REQUIREMENT THAT TRUSTEES SHALL ADMINISTER OATHS TO ELECTION JUDGES; AND AMENDING SECTIONS 20-3-305, 20-20-106, 20-20-204, AND 20-20-401, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-3-305, MCA, is amended to read:

**"20-3-305. Candidate qualification and nomination.** (1) Any person who is qualified to vote in a district under the provisions of 20-20-301 shall be eligible for the office of trustee.

(2) Any five electors qualified under the provisions of 20-20-301 of any district, except a first-class elementary district, may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy shall be submitted to the clerk of the district not less than 40 days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated shall also be indicated."



Section 2. Section 20-20-106, MCA, is amended to read:

**"20-20-106. Poll hours.** (1) The polls for any school election in any district shall open not later than noon. The trustees may order the polls to open earlier, but no earlier than 7 a.m.

(2) If the school election is held on the same day as an election held by a political subdivision under 13-1-104(3) and at the same polling place, the polls shall be opened and closed at the times required for the school election.

(3) If the school election is held on the same day as a general or primary election, the polls shall be opened and closed at the times required for the general or primary election.

(4) Once opened, the polls shall be kept open continuously until 8 p.m., except that whenever all the registered electors at any poll have voted, the poll shall be closed immediately."

Section 3. Section 20-20-204, MCA, is amended to read:

**"20-20-204. Election notice.** (1) (a) When the trustees of any district call a school election, they shall give notice of the election not less than 20 days or more than 30 days before the day of the election by:

(i) *publication of the notice in a newspaper of general circulation in the district; or*

(ii) *posting notices in three public places in the district, provided that in incorporated cities and towns at least one notice shall be posted at a public place in each ward or precinct.*

(b) Whenever, in the judgment of the trustees, the best interest of the district will be served by the supplemental publication of the school election notice in a radio or television broadcast, the trustees may cause such notification to be made.

(2) The notice of a school election, unless otherwise required by law, shall specify:

(a) the date and polling places of the election;

(b) the hours the polling places will be open;

(c) each proposition to be considered by the electorate;

(d) if there are trustees to be elected, the number of positions subject to election and the length of term of each position; and

(e) where and how absentee ballots may be obtained.

(3) If more than one proposition is to be considered at the same school election, each proposition must be set apart and separately identified in the same notice or published in separate notices."

Section 4. Section 20-20-401, MCA, is amended to read:

**"20-20-401. Trustees' election duties — ballot certification.** (1) The trustees are the general supervisors of school elections unless the

trustees request and the county election administrator agrees to conduct a school election under 20-20-417.

(2) Not less than 15 days before an election, the clerk of the district shall prepare a certified list of the names of all candidates entitled to be on the ballot and the official wording for each ballot issue. The clerk shall arrange for printing the ballots. *Ballots for absentee voting must be printed and available at least 11 days prior to the election.* Names of candidates on school election ballots need not be rotated.

(3) Before the opening of the polls, the trustees shall cause each polling place to be supplied with the ballots and supplies necessary to conduct the election."

**Section 5. Oath of judges.** Before votes are cast, the school election judges shall take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other.

**Section 6. Codification instruction.** Section 5 is intended to be codified as an integral part of Title 20, chapter 20, part 4, and the provisions of Title 20, chapter 20, apply to section 5.

Approved April 7, 1987.

## CHAPTER NO. 373

[HB 220]

AN ACT TO GENERALLY REVISE THE AGRICULTURAL SEED LAWS; TO PERMIT THE DEPARTMENT OF AGRICULTURE TO DEFINE BY RULE NOXIOUS WEED SEEDS THAT ARE PROHIBITED OR RESTRICTED IN THE SEED LABELING LAW; TO ESTABLISH CERTAIN LICENSING REQUIREMENTS; AMENDING SECTIONS 80-5-102 THROUGH 80-5-105, 80-5-107 THROUGH 80-5-113, 80-5-202, 80-5-204, 80-5-205, AND 80-5-207, MCA; REPEALING SECTIONS 80-5-101, 80-5-106, 80-5-201, AND 80-5-203, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural seeds" means the seeds of grass, forage, cereal, fiber crops, and any other kinds of seeds commonly recognized within this state as agricultural seeds. The term includes lawn seeds and mixtures of seeds.

(2) "Approximate percentage" and "approximate number" mean the percentage or number with the variations above and below that value as allowed according to the tolerance limits defined in the "rules for seed testing" adopted by the association of official seed analysts.

(3) "Bin-run seed sales" means seed sales from one farmer to another farmer with seeds sold "as is" without guaranty or analysis.

(4) "Certifying agency" means:

(a) an agency authorized under the laws of a state, territory, or possession of the United States to officially certify seed and which has standards and procedures to assure the genetic purity and identity of the seed certified; or

(b) an agency of a foreign country determined by the department to adhere to procedures and standards for seed certification that are comparable to those adhered to generally by the seed certifying agencies described in subsection (4)(a).

(5) "Controlling the pollination" means to use a method of hybridization that will produce pure seed which is at least 75% hybrid seed. Hybrid designations must be treated as variety names.

(6) "Flower seeds" means seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and that are commonly known and sold under the name of flower seeds in this state.

(7) "Hybrid", as the term applies to varieties of seed, means the first generation seed of a cross produced by controlling the pollination and by combining:

(a) two or more inbred lines;

(b) one inbred or a single cross with an open pollinated variety; or

(c) two or more selected clones, seed lines, varieties, or species.

(8) "Indigenous seeds" means the seeds of those plants that are naturally adapted to an area where the intended use is for revegetation of disturbed sites. These plants include grasses, forbs, shrubs, and legumes.

(9) "Labeling" means to affix, before offering the seed for sale, on the exterior of the container in a conspicuous place a label written or printed in the English language that has not been altered, giving the information required under this chapter.

(10) "Montana certified seed grower" means a member of an authorized Montana seed certifying agency who has consented to produce seed under the rules for certified classes of seed, with respect to the maintenance of genetic purity and variety identity, set forth by the establishing agency.

(11) "Name of the state in which the seed was grown" means any of the several states of the United States or a foreign country.

(12) "Other crop seeds" means any agricultural, vegetable, or flower seeds other than the seed or the mixture of seeds under consideration.

(13) "Percentage of germination" means the percentage of seeds that show normal sprouts as evidence of vitality when the seeds are subjected to the proper moisture and temperature conditions with proper aeration for the customary length of time for each specific kind of seed, as specified in the "rules for seed testing" adopted by the association of official seed analysts.

(14) "Percentage viability" means the percentage of live seed capable of producing a normal seedling under optimum growing conditions, after all forms of dormancy have been overcome, if present.

(15) "Person" means any individual, firm, partnership, corporation, or association.

(16) "Prohibited noxious weed seeds" means the seeds of perennial plants that not only reproduce by seed but also may spread by underground roots, stems, and other reproductive parts and that, when well established, are highly destructive and difficult to control in this state by ordinary good cultural practice. Prohibited noxious weed seeds include the seeds of:

- (a) leafy spurge (*Euphorbia esula*);
- (b) Russian knapweed (*Centaurea repens*); and
- (c) plants that are designated by rule of the department as prohibited noxious weeds.

(17) "Protected variety" means a variety for which a certificate has been issued by the United States plant variety protection office or for which an application for protection has been filed granting the owner or his authorized agent exclusive rights in the sale and distribution of the variety.

(18) "Restricted noxious weed seeds" means the seeds and bulbets of any plant designated as restricted weed seeds under rules adopted by the department. The term includes the seeds of:

- (a) spotted knapweed (*Centaurea maculosa*); and
- (b) dyers woad (*Isatis tinctoria*).

(19) "Screening" means chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed from seed by any kind of cleaning or conditioning.

(20) "Seed conditioning plant" means any place of business that repackages, conditions, blends, treats, or otherwise manipulates agricultural seeds.

(21) "Seed dealer" means any person who offers for sale, sells, or barter agricultural seeds.

(22) "Seed labeler" means any person affixing labels to agricultural seeds, with his name and address listed as required in 80-5-102 when such seed is distributed in Montana.

(23) "Sell" means to offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade. The term includes furnishing agricultural seed to growers for the production of a crop on contract.

(24) "Vegetable seeds" means seeds of those crops that are or may be grown in gardens or on truck farms and are or may be sold generally under the name of vegetable seeds.

(25) "Weed seeds" means the seeds or bulbets of all plants generally recognized as weeds within this state and includes noxious weed seeds.

Section 2. Section 80-5-102, MCA, is amended to read:

**"80-5-102. Labeling of agricultural seeds.** Any person offering for sale a package, parcel, or lot of agricultural seeds, as defined in [section 1], that contains 1 pound or more of agricultural seeds, whether in package or in bulk, must have affixed to it a label specifying:

(1) a lot number or other distinguishing mark;

(2) kind. The name of each kind of seed present in excess of 5% shall be shown on the label and need not be accompanied by the word "kind". When two or more kinds of seed are named on the label, the name of each kind shall be accompanied by the percentage of each. When only one kind of seed is present in excess of 5% and no variety name or type designation is shown, the percentage of that kind may be shown as "pure seed" and such percentage shall apply to seed of the kind named.

(3) variety, as follows:

(a) the following kinds of agricultural seeds shall be labeled to show the variety name or the words "variety not stated":

|                 |                      |
|-----------------|----------------------|
| alfalfa         | oat                  |
| barley          | pea, field           |
| bean, field     | rye                  |
| beet, field     | safflower            |
| brome, smooth   | sorghum              |
| clover, crimson | sorghum-sudan hybrid |
| clover, red     | soybean              |
| clover, white   | sudan grass          |
| corn, field     | sunflower            |
| corn, pop       | trefoil, birdsfoot   |
| fescue, tall    | wheat, club          |
| flax            | wheat, common        |
| millet, foxtail | wheat, durum         |

(b) if the name of the variety is given, the name may be associated with the name of the kind with or without the words "kind and variety". The percentage in this case may be shown as "pure seed" and shall apply only to seed of the variety named. If separate percentages for the kind and the variety or hybrid are shown, the name of the kind and the name of the variety or the term "hybrid" shall be clearly associated with the respective percentages. When two or more varieties are present in excess of 5% and are named on the label, the name of each variety shall be accompanied by the percentage of each.

(4) that the seed is hybrid, if any one kind or kind and variety of seed present in excess of 5% is "hybrid" seed. The percentage that is hybrid shall be at least 95% of the percentage of pure seed shown unless the percentage of pure seed which is hybrid seed is shown separately. If two or more kinds or varieties are present in excess of 5% and are named on the label, each that is hybrid shall be designated as "hybrid" on the label. No one kind or variety of seed may be labeled as "hybrid" if the pure seed contains less than 75% hybrid seed. Any one kind or kind and variety that has

pure seed which is less than 95% but more than 75% hybrid seed as a result of incompletely controlled pollination in a cross shall be labeled to show:

- (a) the percentage of pure seed that is hybrid seed; or
- (b) a statement such as "Contains from 75% to 95% hybrid seed";
- (5) state or country of origin, if known, of alfalfa, red clover, white clover, native range grasses, and field corn other than hybrid. If the origin is unknown, the fact shall be stated.
- (6) the approximate percentage of germination of agricultural seed, together with the date of test of germination. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately, with the provision that any portion or all of the percentage of hard seeds may be added to the percentage of germination and stated as "total germination and hard seed".
- (7) *the germination date that must include the calendar month and year in which the germination test was completed;*
- (8) *the purity analysis that must include:*
  - (a) the approximate percentage by weight of pure seed, meaning the freedom of agricultural seeds from inert matter and from other seeds;
  - (b) the approximate percentage by weight of sand, dirt, broken seeds, sticks, chaff, and other inert matter combined in agricultural seeds;
  - (c) the approximate total percentage by weight of weed seeds;
  - (d) the approximate percentage by weight of other crop seeds in agricultural seeds; and
  - (e) the name and approximate number of each kind or species of restricted noxious weed seeds occurring per pound of seed;
- (9) the full name and address of the seedsman, importer, dealer or agent, or other person, firm, or corporation selling the seed;
- (10) in the case of mixtures of agricultural seeds which contain two or more kinds of seed in excess of 5% by weight of each, when sold as mixtures:
  - (a) name of mixture;
  - (b) name and approximate percentage by weight of each kind of agricultural seed present in the mixture in excess of 5% by weight of the total mixture;
  - (c) approximate percentage by weight of broken seeds and other inert matter in the mixture of agricultural seeds;
  - (d) approximate percentage by weight of weed seeds as defined in [section 1];
  - (e) approximate percentage by weight of other crop seeds in the mixture of agricultural seeds;

(f) name and approximate number of each kind or species of restricted noxious weed seeds occurring per pound of mixtures of agricultural seeds, subject, however, to restrictions *established by rule*;

(g) approximate percentage of germination of each kind of agricultural seed present in the mixture in excess of 5% by weight, together with the month and year the seed was tested. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately, with the provision that any portion or all of the hard seed may be added to the percentage of germination and stated as "total germination and hard seed".

(h) full name and address of the vendor of the mixture."

Section 3. Section 80-5-103, MCA, is amended to read:

**"80-5-103. Exchange of seed between labelers.** (1) When seed is exchanged or transferred from one seed labeler to another, it shall be accompanied by a shipping document which clearly shows the kind(s) of seed and quantity of each kind. Each container of seed in a lot shall carry a lot number designation.

(2) *While seed is in the possession of a licensed seed labeler, it must carry a lot number on each container at all times. When seed is made available for sale or sold, a complete label must be attached to each container of a lot."*

Section 4. Section 80-5-104, MCA, is amended to read:

**"80-5-104. Labeling of vegetable, flower, and indigenous seeds.** (1) Vegetable and flower seeds in packets and in larger containers shall be labeled with the required information as follows:

(a) each container of 1 pound or less:

(i) the commonly accepted name of the kind or the kind and variety of the seed;

(ii) the name and address of the person who labeled the seed or who sells the seed within this state;

(iii) the name and number per pound of each kind of restricted noxious weed seeds as prescribed by rules adopted under 80-5-105;

(iv) in the case of seed which has a percentage of germination less than the standard prescribed in the Federal Seed Act:

(A) the percentage of germination;

(B) the percentage of hard seed, if more than 1%;

(C) the month and year the test to determine the data required by this section was completed;

(D) the words "below standard germination" in not less than 8-point boldface type;

(b) each container of more than 1 pound:

- (i) the name of the kind and variety of the contents;
  - (ii) the lot numbers or other lot identification;
  - (iii) the name and number per pound of each kind of restricted noxious weed seeds as prescribed by rules adopted under 80-5-105;
  - (iv) the percentage of germination and whether the percentage of germination meets or exceeds the standard established in the Federal Seed Act;
  - (v) the percentage of hard seed, if more than 1%;
  - (vi) the month and year the test to determine the data required by this section was completed;
  - (vii) the name and address of the person who labeled the seed or who sells the seed within this state.
- (2) Indigenous seeds, as defined in [section 1], in amounts of 1 pound or more, whether in package or bulk, must be labeled with the following information:
- (a) the statement "Labeled only for reclamation purposes";
  - (b) lot number or other distinguishing mark;
  - (c) the common name, genus, species, and subspecies when applicable, including the name of each kind of seed present in excess of 5%. When two or more kinds of seed are named on the label, the label shall specify the percentage of each. When only one kind of seed is present in excess of 5% and no variety name or type designation is shown, the percentage must apply to seed of the kind named. If the name of the variety is given, the name may be associated with the name of the kind. The percentage in this case may be shown as "pure seed" and must apply only to seed of the variety named.
  - (d) state or country of origin, if known. If the origin is unknown, that fact shall be stated.
  - (e) the approximate percentage of viable seed, together with the date of test. When labeling mixtures, the percentage viability of each kind shall be stated.
  - (f) the approximate percentage by weight of pure seed, meaning the freedom of seed from inert matter and from other seeds;
  - (g) the approximate percentage by weight of sand, dirt, broken seeds, sticks, chaff, and other inert matter;
  - (h) the approximate total percentage by weight of other seeds;
  - (i) the name and approximate number of each kind of species of restricted noxious weed seeds occurring per pound of seed;
  - (j) the full name and address of the person, firm, or corporation selling the seed."

Section 5. Section 80-5-105, MCA, is amended to read:



**"80-5-105. Prohibitions.** A person, firm, corporation, partnership, or association may not sell or transport for use in planting in this state any seed that:

- (1) contains prohibited noxious weed seeds;
- (2) contains restricted noxious weed seeds in excess of *either*:
  - (a) *the maximum numbers per pound allowed under rules adopted by the department; or*
  - (b) *the maximum numbers per pound as follows:*

| Common name       | Species                     | Number of<br>seeds per<br>pound |
|-------------------|-----------------------------|---------------------------------|
| <i>dyers woad</i> | <i>(Isatis tinctoria)</i>   | 0                               |
| spotted knapweed  | <i>(Centaurea maculosa)</i> | 0                               |
| wild oats         | <i>(Avena fatua)</i>        | 45                              |
|                   |                             | (per pound of<br>grass seed)    |
|                   |                             | 9                               |
|                   |                             | (per pound of<br>cereal seed)   |

- (3) contains in excess of 2% or more of weed seed;
- (4) is offered or exposed for sale more than 12 calendar months from the last day of the month in which the germination test was completed. This 12-month limitation does not apply when seed is packaged in hermetically sealed containers within 12 months after harvest. The container must be conspicuously labeled in not less than 8-point type to indicate that:
  - (a) the container is hermetically sealed;
  - (b) the seed has been preconditioned as to moisture content;
  - (c) the germination test is valid for a period not to exceed 18 months from the date of the germination test for seeds offered for sale on a wholesale basis and for a period not to exceed 36 months for seeds offered for sale at retail;
  - (d) the germination of vegetable seed at the time of packaging was equal to or above standards prescribed in the Federal Seed Act of August 1939, 7 U.S.C. 1551 through 1610, amended October 15, 1967, with subsequent revisions;
  - (5) is labeled, advertised, or otherwise represented as being certified seed of any class thereof unless:
    - (a) it has been determined by a seed certifying agency that such seed conforms to standards of purity and identity as to kind, species (and subspecies, if appropriate), or variety; and
    - (b) the seed bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind, species (and subspecies, if appropriate), or variety;

(6) is labeled with a variety name for which a U.S. certificate of plant variety protection has been issued or applied for under the provisions of the Plant Variety Protection Act (7 U.S.C. 2321, et. seq.) without the authority of the owner of the variety or is labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which the certificate or application for "protection" specifies sale only as a class of certified seed, provided that seed from a certified lot may be labeled as to variety name when used in a mixture by or with approval of the owner of the variety."

Section 6. Section 80-5-107, MCA, is amended to read:

**"80-5-107. Exemptions.** *Seed or mixtures of same shall be exempt from the provisions of this part:*

- (1) when possessed, exposed for sale, or sold for food purposes only;
- (2) when sold to merchants or dealers to be conditioned before being sold or offered for sale for seeding purposes;
- (3) when in store for the purpose of conditioning or not possessed, sold, or offered for sale for seeding purposes within the state."

Section 7. Section 80-5-108, MCA, is amended to read:

**"80-5-108. Analysis by seed laboratory — reports.** The seed laboratory of the agricultural experiment station shall analyze and test seeds sold or offered or exposed for sale in this state at a time and place and to the extent the director of the agricultural experiment station and the department determine. The laboratory shall report to the department all violations as they appear. It *may* also annually before September 1 make a report to the department of all tests made and the results, which may be published by the department."

Section 8. Section 80-5-109, MCA, is amended to read:

**"80-5-109. Testing of submitted samples.** The seed laboratory shall analyze any *official* seed samples taken from seed lots offered for sale in the state *or* submitted by the department *using methods such as those established under the Federal Seed Act and the procedural guidelines developed by the association of official seed analysts.*"

Section 9. Section 80-5-110, MCA, is amended to read:

**"80-5-110. Laboratory testing of samples — fees.** Any citizen of this state may request the seed laboratory to examine, analyze, and test samples of seed upon payment of the fee and compliance with rules governing the submission of seed samples for such service. Samples of seed analyzed and tested shall be charged for at rates *established by rule of the department as recommended by the agricultural experiment station.* All fees collected by the seed laboratory shall be used to defray the expenses incurred by the laboratory under 80-5-102 through 80-5-113."

Section 10. Section 80-5-111, MCA, is amended to read:

**"80-5-111. Certificate of test presumptive evidence.** The certificate of the seed laboratory, giving results of any examinations, analyses, or

tests of any seed samples made under the authority of the department, is presumptive evidence of the correctness of the facts stated in it."

Section 11. Section 80-5-112, MCA, is amended to read:

**"80-5-112. Enforcement — rules.** The department shall administer and enforce 80-5-102 through 80-5-113. For that purpose, the department may adopt rules. The department may issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of seed which the department finds in violation of 80-5-102 through 80-5-113. The order shall prohibit further sale of the seed until the department has evidence that the law has been complied with. The seed may not be confiscated or destroyed. Upon proper correction, by reconditioning, labeling, or otherwise, and when, in the judgment of the department, the requirements of 80-5-102 through 80-5-113 have been met, the stop sale order shall be lifted and the seed may be sold. The department shall adopt all necessary rules relating to the agricultural experiment station's duties under 80-5-102 through 80-5-113."

Section 12. Section 80-5-113, MCA, is amended to read:

**"80-5-113. Penalty.** Any person, firm, or corporation which sells or offers or exposes for sale or distribution in the state any seed for seeding purposes without complying with the requirements of 80-5-102 through 80-5-113 is guilty of a misdemeanor and upon conviction shall be fined not less than \$100 or more than \$300 plus costs of such prosecution and upon conviction of the second or any subsequent offense shall be fined not less than \$500 or more than \$1,000 plus costs of such prosecution."

Section 13. Section 80-5-202, MCA, is amended to read:

**"80-5-202. Licensing — application — fee.** (1) All seed conditioning plants shall obtain a license from the department *for each plant* before doing business in this state; however, a seed grower, when conditioning seed from his own production, is not required to be licensed under this part.

(2) *Each conditioning plant must post in a conspicuous location in the facility:*

- (a) *its fees for conditioning services; and*
- (b) *the license designation for the facility.*

(3) *All seed labelers and growers who label or affix written claims to their seed shall obtain a license from the department before doing business in Montana. The following persons, however, are excluded from the licensing requirements under this subsection:*

(a) *a Montana certified seed grower when labeling certified seed from his own production; and*

(b) *any person who updates germination test data by affixing to the package of seed a supplemental label bearing new germination data, the lot number, and his name and address.*

(4) *No person may sell or distribute seed in Montana without obtaining a seed dealer's license from the department for each place where seed is located, except for:*

(a) *a person who distributes seed only in sealed packages of 10 pounds or less that are properly labeled;*

(b) *a Montana certified seed grower when selling certified seed from his own production; and*

(c) *a grain producer when making bin-run seed sales.*

(5) *Each person selling seed from a location other than the licensed place must be listed on the application for license.*

(6) *The department shall set by rule the period for which a license is issued under this section.*

(7) *The department may establish by rule minimum standards for equipment and handling procedures for facilities to be licensed.*

(8) *Each license shall cost no more than \$50 a year. The fee must include the cost of application for a license and must be nonrefundable. The department may by rule establish license fees which bear a reasonable relationship to the cost of administering this part.*

(9) *An application for a license under this section must be made in a manner and on forms provided by the department. Such application must contain among other things:*

(a) *the location of each seed conditioning plant if the application is for a seed conditioning plant license;*

(b) *a sample label if the application is for a seed labeler license; and*

(c) *a list of persons selling seed if the application is for a seed dealer's license."*

Section 14. Section 80-5-204, MCA, is amended to read:

**"80-5-204. Screenings — restrictions on movements.** All screenings whether from seed conditioning plants or other sources represent both a valuable and potentially hazardous product. Their movements are restricted as follows:

(1) *The viability of prohibited noxious weed seed as defined in [section 1] shall be destroyed before screenings are utilized in feed or in any other way in which they may propagate their kind. However, if these screenings are sold for feed, it shall be the responsibility of the feed buyer to haul under a tarp cover or other tight container until the provisions of this part are met.*

(2) *The department may adopt rules to restrict or exempt from restriction the holding and movement of screenings when the public interest is served by so doing."*

Section 15. Section 80-5-205, MCA, is amended to read:

**"80-5-205. Violations.** The following acts caused within the state of Montana are prohibited:

- (1) the failure or refusal to obtain a license as required in 80-5-202;
- (2) the misbranding or mislabeling of *seed*;
- (3) the violation or failure to comply with rules issued under the authority of this part."

Section 16. Section 80-5-207, MCA, is amended to read:

**"80-5-207. Violation — cancellation of license — enforcement proceedings.** (1) *Distribution of seeds that are not legally labeled or failure to comply with this chapter or rules issued under its authority constitutes sufficient grounds for the department to cancel or deny a license to a licensee, provided that the licensee is given a reasonable opportunity to correct inadvertent and nonrecurring deficiencies.*

(2) Any person convicted of violating the provisions of this part or rules promulgated under the authority of this part is guilty of a misdemeanor and shall be fined not less than \$100 or more than \$300 for the first violation and not less than \$500 or more than \$1,000 for each subsequent violation.

(3) Nothing in this part shall be construed as requiring the department or its representatives to report violations of this part when it believes that the public interest will be best served by a suitable notice of warning.

(4) It is the duty of each county attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(5) The department is authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this part or any rule promulgated under this part notwithstanding the existence of other remedies at law. An injunction is issued without bond.

(6) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this part may within 30 days bring action in the district court of the county or any county where the alleged violation occurred for trial of the issues bearing upon such act."

Section 17. **Inspection.** To enforce this chapter, the department may enter, at reasonable times, any public or private premises, including any vehicle of transport, and upon entry to the premises, the department may obtain samples, examine seeds and labels, inspect equipment, and review records relating to distribution of seed in Montana. The department may take any sample of seeds as may be required; however, the department shall pay, upon request, the firm current market value for each sample.

Section 18. **Publication of reports.** The department may publish the names and addresses of persons licensed under this chapter.

Section 19. **Repealer.** Sections 80-5-101, 80-5-106, 80-5-201, and 80-5-203, MCA, are repealed.

**Section 20. Extension of authority.** Any existing authority of the department of agriculture to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 21. Codification instruction.** Sections 1, 17, and 18 are intended to be codified as an integral part of Title 80, chapter 5, and the provisions of Title 80, chapter 5, apply to sections 1, 17, and 18.

**Section 22. Effective dates.** (1) Section 20 and this section are effective on passage and approval, except rules adopted by the department may not take effect until October 1, 1987.

(2) The remaining sections of this act are effective October 1, 1987.

Approved April 7, 1987.

## CHAPTER NO. 374

[HB 253]

AN ACT TO PROVIDE FOR THE REMOVAL OF CERTAIN PREVIOUSLY ADDED AREAS FROM AN URBAN TRANSPORTATION DISTRICT UPON PETITION OF 51 PERCENT OF THE QUALIFIED ELECTORS OF SUCH AREA; TO PROVIDE THAT IF THE REMOVED AREA WAS ORIGINALLY ADDED TO THE DISTRICT BY ANNEXATION WITHIN THE PREVIOUS 5 YEARS, SUCH AREA IS NOT SUBJECT TO THE DISTRICT'S CURRENT INDEBTEDNESS; AND AMENDING SECTION 7-14-241, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-14-241, MCA, is amended to read:

**"7-14-241. Procedure to enlarge district.** (1) The boundaries of any transportation district may be enlarged if 51% of the qualified electors of the area to be added to the existing district sign a petition requesting addition to such district.

(2) However, each addition must be approved by a majority vote of the transportation board.

(3) *The area added to a district pursuant to subsection (1) may be removed if the area does not directly receive transportation services from the district and 51% of the qualified voters in the area sign a petition requesting to be removed from the district. The removal of the area is effective 60 days after submission of the petition to the transportation board, unless within that time it is determined that the petition contains insufficient signatures for removal of territory. An insufficient petition must be returned to the petitioners who may submit it again within 90 days.*

(4) (a) All property within any addition to the district shall be subject to all existing indebtedness of the district.

*(b) Property within an area removed from the district is not subject to the district's existing indebtedness if the area had been added to the district within 5 years of the date the petition for removal was submitted to the transportation board."*

Approved April 7, 1987.

## CHAPTER NO. 375

[HB 282]

AN ACT TO AUTHORIZE AN URBAN TRANSPORTATION DISTRICT TO LEVY 1 MILL OF PROPERTY TAX FOR THE PROVISION OF SPECIAL TRANSPORTATION SERVICES FOR SENIOR CITIZENS AND HANDICAPPED PERSONS; AMENDING SECTION 7-14-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-14-111, MCA, is amended to read:

**"7-14-111. Transportation for senior citizens and handicapped persons.** (1) A county, *urban transportation district*, or municipality may, in addition to all other property tax levies authorized by law, levy up to 1 mill of property taxes to fund special transportation services for senior citizens and handicapped persons.

(2) The proceeds of the levy *may be used to:*

(a) contract with public or private transportation providers for services to senior citizens and handicapped individuals; or

(b) augment or subsidize provisions for the transportation of senior citizens and handicapped individuals provided by public transportation providers.

(3) If the *taxing jurisdiction* determines that it is not in the best interest of senior citizens and handicapped individuals to use the tax levy as provided for in subsection (2), the *taxing jurisdiction* may use the proceeds of the levy to establish and operate an independent transportation system for senior citizens and handicapped individuals.

(4) Counties, *urban transportation districts*, and municipalities are encouraged to enter into interlocal agreements to provide regional transportation services to senior citizens and handicapped persons and may create regional advisory committees to coordinate regional transportation services."

Section 2. **Effective date.** This act is effective July 1, 1987.

Approved April 7, 1987.

**CHAPTER NO. 376**

[HB 316]

AN ACT PROVIDING FOR INVOLUNTARY COMMITMENT AND TREATMENT IN THE LOCAL COMMUNITY OF PERSONS WHO ARE MENTALLY ILL; AMENDING SECTIONS 53-21-102, 53-21-106, 53-21-115, 53-21-116, 53-21-120, 53-21-121 THROUGH 53-21-123, AND 53-21-126 THROUGH 53-21-128, MCA; PROVIDING FOR A REPORT TO THE LEGISLATURE; AND INCLUDING A SUNSET PROVISION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-21-102, MCA, is amended to read:

**"53-21-102. Definitions.** As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Court" means any district court of the state of Montana.

(3) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Friend of respondent" means any person willing and able to assist a mentally ill person, a person alleged to be mentally ill, a seriously mentally ill person, or a person alleged to be seriously mentally ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the friend of respondent.

(6) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. No correctional institution or facility or jail is a mental health facility within the meaning of this part.



(8) *"Mentally ill" means suffering from a mental disorder which has not resulted in self-inflicted injury or injury to others or the imminent threat thereof but which:*

*(a) has resulted in behavior that creates serious difficulty in protecting the person's life or health even with the available assistance of family, friends, or others;*

*(b) is treatable, with a reasonable prospect of success and consistent with the least restrictive course of treatment as provided in 53-21-127(3), at or through the facility to which the person is to be committed;*

*(c) has deprived the person of the capacity to make an informed decision concerning treatment;*

*(d) has resulted in the person's refusing or being unable to consent to voluntary admission for treatment; and*

*(e) poses a significant risk of the person's becoming seriously mentally ill, within the meaning of this section, or will, if untreated, predictably result in further serious deterioration in the mental condition of the person. Predictability may be established by the patient's medical history.*

(9) "Next of kin" shall include but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(10) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(11) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

(12) "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by the department.

(13) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(14) "Respondent" means a person alleged in a petition filed pursuant to this part to be *mentally ill* or seriously mentally ill.

(15) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health. For this purpose, injury means physical injury. No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic or is mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this part.

(16) "State hospital" means the Montana state hospital."

Section 2. Section 53-21-106, MCA, is amended to read:

**"53-21-106. Certification of professional persons.** (1) The department shall certify professional persons as defined in 53-21-102(12)(b) for the purpose of this part.

(2) The department, with reference to recognized national standards in the field of mental health, shall adopt standards and rules governing the certification of professional persons.

(3) The rules for certification must address but are not limited to:

(a) the type of education that an individual has received, including degrees;

(b) the type of experience or training received by the individual;

(c) continuing education, training, instruction, and work experience necessary to maintain certification;

(d) an examination instrument to be used to determine an individual's proficiency and understanding of mental health laws, diagnosis, and treatment procedures;

(e) the procedure for categorical certification qualifying the level of professional authority and responsibility of an individual; and

(f) specific procedures for certification, recertification, and revocation of certification."

Section 3. Section 53-21-115, MCA, is amended to read:

**"53-21-115. Procedural rights.** In addition to any other rights which may be guaranteed by the constitution of the United States and of this state, by the laws of this state, or by this part, any person who is involuntarily detained or against whom a petition is filed pursuant to this part has the following rights:

(1) the right to notice reasonably in advance of any hearing or other court proceeding concerning him;

(2) *the right to know, in advance of any hearing, the names and addresses of any witnesses who will testify in support of the petition;*

(3) the right in any hearing to be present, to offer evidence, and to present witnesses in any proceeding concerning him;

(4) the right in any hearing to cross-examine witnesses;

(5) the right to be represented by counsel;

(6) the right to remain silent;

(7) the right in any hearing to be proceeded against according to the rules of evidence applicable to civil matters generally;

(8) the right to view and copy all petitions on file with the court concerning him;

(9) the right to be examined by a professional person of his choice when such professional person is willing and reasonably available;

(10) the right to be dressed in his own clothes at any hearing held pursuant to this part; and

(11) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing held pursuant to this part."

Section 4. Section 53-21-116, MCA, is amended to read:

**"53-21-116. Right to be present at hearing or trial — appointment of counsel.** The person alleged to be *mentally ill* or seriously mentally ill has the right to be present at any hearing or trial. If he has no attorney, the judge shall appoint one to represent him at either the hearing or the trial, or both, who shall be compensated from the public funds of the county where the respondent resides."

Section 5. Section 53-21-120, MCA, is amended to read:

**"53-21-120. Detention to be in least restrictive environment — preference for mental health facility — court relief — prehearing detention of mentally ill person prohibited.** (1) A person detained pursuant to this part shall be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part shall be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and trial cannot be held within 7 days, the individual may be sent to the state hospital until time of trial if arrangements can be made to return him to trial. Such trial must be held within 30 days. The county of residence shall pay the cost of travel and professional services associated with the trial. No person may be detained in any hospital or other medical facility which is not a mental health facility unless such hospital or facility has agreed in writing to admit the person.

(3) A person may be detained in a jail or other correctional facility only if no mental health facility is available or if the available mental health facilities are inadequate to protect the person detained and the public. As soon as a mental health facility becomes available or the situation has changed sufficiently that an available mental health facility is adequate for the protection of the person detained and the public, then the detained person shall be transferred from the jail or correctional facility to the mental health facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain.

(5) *No detention may be ordered under this part for a person concerning whom a petition has been filed under 53-21-121(1)(b).*

(6) *No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic,*

*mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this part."*

Section 6. Section 53-21-121, MCA, is amended to read:

**"53-21-121. Petition for commitment — contents of — notice of.** (1) The county attorney, upon the written request of any person *having direct knowledge of the facts*, may file a petition with the court:

(a) *alleging that there is a person within the county who is seriously mentally ill and requesting that the person be committed to a mental health facility for a period of no more than 3 months; or*

(b) *alleging that there is a person within the county who is mentally ill and requesting that the person be committed to a mental health facility for a period of no more than 30 days.*

(2) The petition shall contain:

(a) the name and address of the person requesting the petition and his interest in the case;

(b) the name of the respondent and, if known, the address, age, sex, marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental illness;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the person for whom evaluation is sought;

(e) the name and address of the person's next of kin to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person whom the county attorney believes might be willing and able to be appointed as friend of respondent;

(g) the name, address, and telephone number of the attorney, if any, who has most recently represented the person for whom evaluation is sought; if there is no attorney, there shall be a statement as to whether to the best knowledge of the person requesting the petition the person for whom evaluation is sought is indigent and therefore unable to afford the services of an attorney; and

(h) a statement of the rights of the respondent which shall be in conspicuous print and identified by a suitable heading.

(3) Notice of the petition shall be hand-delivered to the respondent and to his counsel on or before the initial appearance of the respondent before the judge or justice of the peace. Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, and friend of respondent shall be hand-delivered or mailed to the person or persons legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, and any other person identified by the county attorney as a possible friend of respondent other than the one named as the friend of

respondent. The notice may provide, other than as to the respondent and his counsel, that no further notice will be given unless written request is filed with the clerk of court."

Section 7. Section 53-21-122, MCA, is amended to read:

**"53-21-122. Petition for commitment — filing of — initial hearing on.** (1) The petition shall be filed with the clerk of court who shall immediately notify the judge.

(2) (a) If a judge is available, he shall consider the petition, and if he finds no probable cause, it shall be dismissed.

(b) (i) If the judge finds probable cause, counsel shall be immediately appointed for the respondent, and the respondent shall be brought forthwith before the court with his counsel. The respondent shall be advised of his constitutional rights, his rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition.

(ii) The judge shall:

(A) appoint a professional person;

(B) appoint a friend of respondent; and

(C) set a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

(iii) The desires of the respondent shall be taken into consideration in the appointment of the friend of respondent and in the confirmation of the appointment of the attorney.

(3) If a judge is not available in the county, the clerk shall notify a resident judge by telephone and read the petition to him. If the judge finds no probable cause, the petition shall be dismissed. If the judge finds probable cause, he shall cause the clerk to issue an order appointing counsel and a professional person and setting a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The order shall also direct that the respondent be brought forthwith before a justice of the peace with his counsel to be advised of his constitutional rights, his rights under this part, and the contents of the clerk's order, as well as to furnish him with a copy. The justice of the peace shall ascertain the desires of the respondent with respect to the appointment of his counsel, and this shall be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present."

Section 8. Section 53-21-123, MCA, is amended to read:

**"53-21-123. Examination of respondent following initial hearing — recommendation of professional person.** (1) Following the initial hearing, whether before a judge or justice of the peace, the respondent shall be examined by the professional person without unreasonable delay. The examination may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney of his findings in person or by phone and shall make a written report of his examination to the court, with copies to the respondent's attorney and the county attorney.

(2) The following action shall be taken based on the professional person's findings:

(a) If he recommends dismissal, he shall additionally notify counsel and the respondent, *if he has been detained*, shall be released and the petition dismissed. However, the county attorney may, upon good cause shown, request the court to order an additional, but no more than one, examination by a different professional person for a period of no more than 4 hours.

(b) If he finds that commitment proceedings should continue, the hearing shall be held as scheduled.

(3) The court may not order further evaluation pending the hearing unless sound medical reasons require additional time for a complete evaluation. Such reasons shall be set forth in the order, along with the amount of additional time needed."

Section 9. Section 53-21-126, MCA, is amended to read:

**"53-21-126. Trial or hearing on petition.** (1) The respondent shall be present unless his presence has been waived as provided in 53-21-119(2), and he shall be represented by counsel at all stages of the trial. The trial shall be limited to the determination of whether or not the respondent is *mentally ill* or seriously mentally ill within the meaning set forth in this part.

(2) The standard of proof in any hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters, except that mental disorders shall be evidenced to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others shall be evidenced by overt acts, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(3) The professional person appointed by the court shall be present for the trial and subject to cross-examination. The trial shall be governed by the Montana Rules of Civil Procedure except that, if tried by a jury, at least two-thirds of the jurors must concur on a finding that the respondent is seriously mentally ill. The written report of the professional person that indicates the professional person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely because it is contained in the report. The court may order the trial closed to the public for the protection of the respondent.

(4) The professional person may testify as to the ultimate issue of whether the respondent is *mentally ill* or seriously mentally ill. *Testimony*

*from a professional person or others must be received on each element of the definition of mentally ill or seriously mentally ill as those terms are defined in 53-21-102.*

(5) The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue."

Section 10. Section 53-21-127, MCA, is amended to read:

**"53-21-127. Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not *mentally ill* or seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed.

(2) (a) If it is determined in a proceeding under 53-21-121(1)(a) that the respondent is seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not more than 3 months;

(ii) order the respondent to be placed in the care and custody of his relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a period of more than 3 months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill.

(3) *If it is determined in a proceeding under 53-21-121(1)(b) that the respondent is mentally ill within the meaning of this part, the court shall order that he receive treatment for a period of no more than 30 days. The court shall choose the least restrictive course of treatment reasonably available to the respondent. The court must make a separate finding, setting forth the reason therefor if the order includes a requirement of inpatient treatment or involuntary medication. The court may not order inpatient treatment in the Montana state hospital at Warm Springs under this subsection (3). The respondent may not be required to pay for court-ordered treatment unless he is financially able.*

(4) *Before ordering any treatment for a respondent found to be mentally ill under subsection (3), the court shall make findings of fact that treatment*

*appropriate to the needs of the respondent is available. The court shall also indicate on the order the name of the facility that is to be responsible for the management and supervision of the respondent's treatment. No person may use physical force to administer medication. A court may use any legal means to enforce an order to take medication, including immediate detention not to exceed 72 hours, until the mentally ill person can be returned to the court."*

Section 11. Section 53-21-128, MCA, is amended to read:

**"53-21-128. Petition for extension of commitment period.** (1) *To extend the 3-month period of detention provided for in 53-21-127(2), the procedure set forth in this subsection (1) must be followed:*

(a) Not less than 2 calendar weeks prior to the end of the 3-month period, the professional person in charge of the patient at the place of detention may petition the court for extension of the detention period. The petition shall be accompanied by a written report and evaluation of the patient's mental and physical condition. The report shall describe any tests and evaluation devices which have been employed in evaluating the patient, the course of treatment which has been undertaken for the patient, and the future course of treatment anticipated by the professional person.

(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, his next of kin, if reasonably available, the friend of respondent appointed by the court, and the patient's counsel. If any person so notified requests a hearing prior to the termination of the previous detention authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

(c) Procedure on the petition for extension when a hearing has been requested shall be the same in all respects as the procedure on the petition for the original 3-month commitment except the patient is not entitled to trial by jury. The hearing shall be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. Court costs and witness fees, if any, shall be paid by the county that paid the same costs in the initial commitment proceedings.

(d) If upon the hearing the court finds the patient not seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed. If the court finds that the patient continues to suffer from serious mental illness, the court shall order commitment, custody in relatives, outpatient therapy, or other order as set forth in 53-21-127(2) except that no order may affect his custody for more than 6 months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall not order continuation of an alternative which does not include a comprehensive, individualized plan of treatment for the patient. A court order for the



continuation of an alternative shall include a specific finding that a comprehensive, individualized plan of treatment exists.

*(2) To extend the period of treatment provided for in 53-21-127(3), the procedure set forth in this subsection (2) must be followed:*

*(a) Not less than 7 days prior to the end of the 30-day period of treatment ordered under 53-21-127(3), the professional person in charge of the respondent's care may petition the court for extension of the treatment period. The petition must be accompanied by a written report and evaluation of the respondent's mental and physical condition. The report shall describe any tests and evaluation devices which have been employed in evaluating the respondent, the course of treatment which has been undertaken for the respondent, and the future course of treatment anticipated by the professional person.*

*(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the respondent, his next of kin, if reasonably available, the friend of respondent appointed by the court, if any, and the respondent's counsel. If any person so notified requests a hearing prior to the termination of the previous detention authority, the court shall immediately set a time and place for a hearing on a date not more than 5 days from the receipt of the request and notify the same people, including the professional person in charge of the respondent. If a hearing is not requested, the court shall enter an order of treatment for a period not to exceed 30 days.*

*(c) Procedure on the petition for extension when a hearing has been requested shall be the same in all respects as the procedure on the petition under 53-21-121(1)(b) for the original treatment except that the respondent is not entitled to trial by jury. The hearing shall be held in the district court for the county in which the treatment is being supervised unless otherwise ordered by the court. Court costs and witness fees, if any, shall be paid by the county that paid the same costs in the initial proceedings.*

*(d) If upon the hearing the court finds the respondent not mentally ill within the meaning of this part, the petition shall be dismissed. If the court finds that the respondent continues to be mentally ill, the court shall order treatment for the respondent for a period not to exceed 30 days. In its order, the court shall describe what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not considered suitable. The court may not order continuation of an alternative which does not include a comprehensive, individualized plan of treatment for the respondent. A court order for the continuation of an alternative shall include a specific finding that a comprehensive, individualized plan of treatment exists.*

*(3) Further extensions of the period of detention provided for in 53-21-127(2) may be obtained under the same procedure described in subsection (1) of this section except that the patient's custody may not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1) of this section, including a statement of the findings required by subsection (1).*

*(4) The period of treatment provided for in 53-21-127(3) may be extended only once under this section."*

**Section 12. Establishment of treatment plan for mentally ill person.** (1) A person ordered to receive treatment under 53-21-127(3) must have an individualized treatment plan.

(2) The treatment plan must be developed by appropriate professional persons and must be implemented no later than 5 days after the treatment order has been made.

(3) The treatment plan must contain:

(a) a statement of the nature of the specific problems and specific needs of the patient;

(b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of commitment;

(c) a description of intermediate and long-range treatment goals, with a projected timetable for their attainment;

(d) a statement and rationale for the plan of treatment for achieving these intermediate and long-range goals; and

(e) criteria for release to less restrictive treatment conditions and criteria for discharge.

(4) The treatment plan may include prescription by a physician of reasonable and appropriate medication that is consistent with accepted medical standards.

**Section 13. Compliance with treatment plan.** If the respondent fails to comply or clearly refuses to comply with all or part of the treatment plan, the professional person appointed under 53-21-122 shall make all reasonable efforts to solicit the respondent's compliance. Such effort must be documented and reported to the court with a recommendation to the court as to whether the respondent should:

(1) have his case dismissed; or

(2) be given a supplemental hearing.

**Section 14. Supplemental hearing.** (1) If the respondent requests a hearing to prove he has complied with the treatment plan as provided in [section 13], the hearing must be scheduled within 5 days. The respondent, his attorney, the friend of respondent, and the designated professional person must be notified at least 48 hours in advance.

(2) At the hearing, the court must determine whether the respondent has failed to comply with the treatment plan established pursuant to [section 12].

(3) (a) If the court determines that the respondent has failed or refused to comply with the treatment plan, it may order the respondent to comply with the treatment plan for the remainder of the 30-day period.

(b) If the respondent no longer meets the definition of mentally ill, the court shall discharge the respondent from the order and dismiss the case.

Section 15. **Codification instruction.** Sections 12 through 14 are intended to be codified as an integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to sections 12 through 14.

Section 16. **Report to legislature.** The mental disabilities board of visitors shall report to the 51st legislature on the effects of this act, including the effects on the treatment and rights of the mentally ill and the seriously mentally ill and the procedures established by this act, and shall include in the report any recommendations it may have.

Section 17. **Extension of authority.** Any existing authority of the department of institutions or the mental disabilities board of visitors to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 18. **Termination.** This act terminates July 1, 1989.

Approved April 7, 1987.

## CHAPTER NO. 377

[HB 365]

AN ACT TO REQUIRE THE BOARD OF PUBLIC EDUCATION TO ADOPT RULES FOR STUDENT ASSESSMENT IN THE PUBLIC SCHOOLS OF THE STATE; AND AMENDING SECTIONS 20-2-121 AND 20-3-106, MCA.

WHEREAS, the Legislature recognizes that the Board of Public Education has the duty, as provided in Article X, section 9, of the Montana Constitution to exercise general supervision over the public school system in Montana; and

WHEREAS, the Legislature recognizes the value of measuring the academic performance of Montana schools and of assessing student performance in comparison to: education costs per student; student performance levels in other states and the nation; and, most importantly, Montana education achievement goals.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-2-121, MCA, is amended to read:

**"20-2-121. Board of public education — powers and duties.** The board of public education shall:

(1) effect an orderly and uniform system for teacher certification and specialist certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by 20-4-102 and 20-4-111;

(2) consider the suspension or revocation of teacher or specialist certificates and appeals from the denial of teacher or specialist certification in accordance with the provisions of 20-4-110;

(3) administer and order the distribution of state equalization aid in accordance with the provisions of 20-9-344;

(4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of 20-10-111;

(5) approve or disapprove a reduction of the number of hours in a district's school year in accordance with the provisions of 20-1-302;

(6) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for such days in accordance with the provisions of 20-1-303 and 20-1-304;

(7) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of 20-7-101 and 20-7-102;

(8) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of 20-7-201;

(9) adopt policies for the conduct of special education in accordance with the provisions of 20-7-402;

(10) adopt rules for issuance of documents certifying equivalency of completion of secondary education in accordance with 20-7-131;

(11) adopt policies for the conduct of programs for gifted and talented children in accordance with the provisions of 20-7-903 and 20-7-904;

(12) *adopt rules for student assessment in the public schools; and*

(13) perform any other duty prescribed from time to time by this title or any other act of the legislature."

Section 2. Section 20-3-106, MCA, is amended to read:

**"20-3-106. Supervision of schools — powers and duties.** The superintendent of public instruction has the general supervision of the public schools and districts of the state, and he shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) serve on the teachers' retirement board in accordance with the provisions of 2-15-1010;

- (5) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 20-6-311;
- (6) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;
- (7) approve or disapprove school isolation within the limitations prescribed by 20-9-302;
- (8) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;
- (9) establish a system of communication for calculating joint district revenues in accordance with the provisions of 20-9-151;
- (10) approve or disapprove the adoption of a district's emergency budget resolution under the conditions prescribed in 20-9-163 and publish rules for an application for additional state aid for an emergency budget in accordance with the approval and disbursement provisions of 20-9-166;
- (11) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);
- (12) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(5) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;
- (13) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;
- (14) distribute state equalization aid in support of the foundation program in accordance with the provisions of 20-9-342, 20-9-346, and 20-9-347;
- (15) distribute state impact aid in accordance with the provisions of 20-9-304;
- (16) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;
- (17) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 20-7-705;
- (18) request, accept, deposit, and expend federal moneys in accordance with the provisions of 20-9-603;
- (19) authorize the use of federal moneys for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;
- (20) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;
- (21) approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of 20-1-303 and 20-1-304;

(22) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with such standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(23) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(24) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(25) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(26) as the governing agent and executive officer of the state of Montana for vocational education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(27) consider applications for the designation of a postsecondary vocational-technical center in accordance with the provisions of 20-7-311;

(28) establish a fund for the handling of postsecondary vocational-technical center fees in accordance with the provisions of 20-7-333;

(29) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(30) administer the traffic education program in accordance with the provisions of 20-7-502;

(31) administer the school food services program in accordance with the provisions of 20-10-201, 20-10-202, and 20-10-203;

(32) review school building plans and specifications in accordance with the provisions of 20-6-622;

(33) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408;

*(34) provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of such student assessment for the board of public education and the legislature; and*

(35) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

**Section 3. Exemption from fiscal note process.** For the purposes of this act, the board of public education is exempt from the fiscal note provisions of 20-2-115.

Approved April 7, 1987.

**CHAPTER NO. 378**

[HB 492]

AN ACT INCREASING THE FEE FOR ISSUANCE OF AN ORIGINAL CERTIFICATE OF OWNERSHIP AND TRANSFER OF TITLE, THE FEE FOR REPLACEMENT OF A LOST CERTIFICATE, THE FEES FOR FILING OF SECURITY INTERESTS, AND THE FEES FOR REGISTRATION OF VEHICLES; AMENDING SECTIONS 61-3-103, 61-3-203, 61-3-204, AND 61-3-321, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-3-203, MCA, is amended to read:

**"61-3-203. Fee for original certificate of ownership and transfer of title — disposition.** A charge of \$4 *must* be made for issuance of an original certificate of ownership of title and for a transfer of registration which *must* be collected by the county treasurer. The fees *must* be distributed as follows:

(1) *Three* dollars of each fee *must* be remitted to the department by the county treasurer with each application for original certificate of ownership or transfer of registration.

(2) Prior to March 1, 1966, and each March thereafter, the county commissioners of each county shall divide the fees retained by the county to:

(a) the city road fund of each city and town within the county based on the number of motor vehicles registered inside the corporate limits of each city or town; and

(b) the county road fund based on the number of motor vehicles registered outside the corporate limits of cities and towns."

Section 2. Section 61-3-204, MCA, is amended to read:

**"61-3-204. Lost certificates.** In the event any certificate of ownership is lost, mutilated, or becomes illegible, the owner shall immediately make application for and obtain a duplicate thereof, upon furnishing satisfactory evidence of such facts and upon payment of a fee of \$3. Revenue from this fee *must* be deposited in the motor vehicle recording account of the state special revenue fund."

Section 3. Section 61-3-103, MCA, is amended to read:

**"61-3-103. Filing of security interests, rights, procedure, fees.** (1) No security interest in a motor vehicle shall be valid as against creditors, subsequent purchasers, or encumbrancers unless a lien notice, on a form approved by the department, that shows a security interest has been created, has been filed with the department as provided in this section. The department shall not file any security interest or other lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted

to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor. The department shall file the security interest or lien by entering the name and address of the secured party upon the face of the certificate of ownership. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer where the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess such motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under the provisions of 61-4-101, must be perfected in accordance with Title 30, chapter 9, and no endorsement on the certificate of title is necessary for perfection.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected by filing under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." No other information regarding such additional security interests need be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter shall be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) The filing of a security interest or other lien, as herein provided, perfects a security interest which has attached at the time the certificate of ownership noting such interest is issued. Issuance of a certificate of ownership constitutes constructive notice to subsequent purchasers or encumbrancers, from the time of filing, of the existence of the security interest.

(6) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 shall be applicable except that deposits must be made with the department.

(7) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment shall be required to pay the department the sum of \$1 for each day thereafter that he fails to file such satisfaction.

(8) Upon receipt of any liens, or notice of liens dependent on possession, or attachments, etc., against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner,



conditional sale vendor, mortgagees, or assignees of any thereof a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and/or attaching creditor.

(9) It shall not be necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(10) A fee of \$4 *must* be paid to the department to file any security interest or other lien against a motor vehicle. The \$4 fee shall include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering such satisfaction or release on the records of the department and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of \$4 *must* be paid the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department, or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section *must* be deposited by the department in the motor vehicle recording account of the state special revenue fund."

Section 4. Section 61-3-321, MCA, is amended to read:

**"61-3-321. Registration fees of vehicles — public-owned vehicles exempt from license or registration fees — disposition of fees.**

(1) Registration or license fees shall be paid upon registration or reregistration of motor vehicles, trailers, housetrailleurs, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under (other than motor-trucks), \$5;

(b) motor vehicles weighing over 2,850 pounds (other than motor-trucks), \$10;

(c) electrically driven passenger vehicles, \$10;

(d) all motorcycles and quadricycles, \$2;

(e) tractors and/or trucks, \$10;

(f) buses shall be classed as motortrucks and licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds maximum gross loaded weight and housetrailleurs of all weights, \$2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds maximum gross loaded weight (except housetrailleurs), \$5;

(i) trailers and semitrailers over 6,000 pounds maximum gross loaded weight, \$10;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or bridge materials, new and secondhand, shall pay a fee of \$15 annually, regardless of size or capacity.

(2) All rates shall be 25% higher for motor vehicles, trailers, and semitrailers not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle except passenger cars used for towing a trailer or semitrailer.

(4) If any motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year shall be one-half of the regular fee.

(5) An additional fee of \$3 per year for each registration of a vehicle shall be collected as a registration fee. Revenue from this fee shall be forwarded by the respective county treasurers to the state treasurer for deposit in the motor vehicle recording account of the state special revenue fund.

(6) The provisions of this part with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers, or tractors owned or controlled by the United States of America or any state, county, or city.

(7) The provisions of this section relating to the payment of registration fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332(7), or 61-3-335."

Section 5. **Effective date.** This act is effective January 1, 1988.

Approved April 7, 1987.

## CHAPTER NO. 379

[HB 566]

AN ACT TO PROVIDE THAT AN AWARD OF JOINT CUSTODY IN A SEPARATION OR DISSOLUTION OF MARRIAGE PROCEEDING IS NOT IN THE BEST INTEREST OF THE CHILD IF THERE IS A FINDING BY THE COURT OF SPOUSE ABUSE OR CHILD ABUSE BY ONE OF THE PARENTS; TO ADD CHEMICAL DEPENDENCY OR ABUSE BY ONE OF THE PARENTS TO THE RELEVANT FACTORS THE COURT MUST CONSIDER; AND AMENDING SECTIONS 40-4-212 AND 40-4-224, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-4-212, MCA, is amended to read:

**"40-4-212. Best interest of child.** The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including, *but not limited to:*

(1) the wishes of the child's parent or parents as to his custody;

- (2) the wishes of the child as to his custodian;
- (3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;
- (4) the child's adjustment to his home, school, and community;
- (5) the mental and physical health of all individuals involved;
- (6) *physical abuse or threat of physical abuse by one parent against the other parent or the child; and*
- (7) *chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent."*

Section 2. Section 40-4-224, MCA, is amended to read:

**"40-4-224. Joint custody — modification — consultation with professionals.** (1) Upon application of either parent or both parents for joint custody, the court shall presume joint custody is in the best *interest* of a minor child unless the court finds, under the factors set forth in 40-4-212, that joint custody is not in the best *interest* of the minor child. If the court declines to enter an order awarding joint custody, the court shall state in its decision the reasons for denial of an award of joint custody. Objection to joint custody by a parent seeking sole custody is not a sufficient basis for a finding that joint custody is not in the best *interest* of a child, nor is a finding that the parents are hostile to each other. *However, a finding that one parent physically abused the other parent or the child is a sufficient basis for finding that joint custody is not in the best interest of the child.*

(2) For the purposes of this section, "joint custody" means an order awarding custody of the minor child to both parents and providing that the physical custody and residency of the child shall be allotted between the parents in such a way as to assure the child frequent and continuing contact with both parents. The allotment of time between parties shall be as equal as possible; however, each case shall be determined according to its own practicalities with the best *interest* of the child as the primary consideration.

(3) Any order for joint custody may be modified pursuant to 40-4-219 to terminate the joint custody.

(4) The court may, at any time, direct the parties to consult with appropriate professionals for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy that has arisen in the implementation of a plan for custody."

Approved April 7, 1987.

**CHAPTER NO. 380**

[HB 654]

**AN ACT CREATING A SPECIAL BEER AND TABLE WINE LICENSE FOR CERTAIN NONPROFIT ARTS ORGANIZATIONS; AND AMENDING SECTION 16-4-501, MCA.***Be it enacted by the Legislature of the State of Montana:*

**Section 1. Special beer and table wine license for nonprofit arts organizations.** (1) A nonprofit arts organization as defined in subsection (4) is entitled to a special beer and table wine license to sell beer and table wine to patrons of exhibitions, productions, performances, or programs sponsored or presented by the organization in a specific theatre or other appropriately designated place for on-premises consumption.

(2) The proceeds derived from sales of beer and table wine, except for reasonable operating costs, must be used to further the purposes of the organization.

(3) The department shall have access to the organization's records to determine whether the organization is entitled to a license under this section.

(4) For the purposes of this section, the term "nonprofit arts organization" means an organization governed under Title 35, chapter 2, that is organized and operated for the principal purpose of providing artistic or cultural exhibitions, presentations, or performances for viewing or attendance by the general public. Assets of the corporation must be irrevocably dedicated to the activities for which the license is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of a member or individual except a nonprofit organization, association, or corporation. An artistic or cultural exhibition, presentation, or performance includes:

(a) an exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums; and

(b) a musical or dramatic performance or series of performances.

(5) A license issued under this section is not subject to the provisions of 16-4-105.

**Section 2.** Section 16-4-501, MCA, is amended to read:

**"16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee as follows:

(a) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, \$500; for each storage depot, \$400;

(b) each beer wholesaler, \$400; each table wine distributor, \$400; each subwarehouse, \$400;

(c) each beer retailer, \$200; with a wine license amendment, an additional \$200;

(d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license; for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, \$200;

(e) any unit of a nationally chartered veterans' organization, \$50.

(2) The permit fee under 16-4-301(1) is computed at the rate of \$15 a day for each day beer and table wine are sold at those events lasting 2 or more days but in no case be less than \$30.

(3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses shall be issued upon payment by the applicant of an annual license fee in the sum of \$300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license, is \$200.

(6) The annual fee for resort retail liquor licenses within a given resort area shall be \$2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as hereinafter provided, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, \$250 for a unit of a nationally chartered veterans' organization and \$400 for all other licensees;

(b) except as hereinafter provided, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, \$350 for a unit of a nationally chartered veterans' organization and \$500 for all other licensees;

(c) except as hereinafter provided, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, \$500 for a unit of a nationally chartered veterans' organization and \$650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest

boundary of such city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and shall be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and shall be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsection (d) of this subsection shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original license fee of \$20,000 for any such license issued. The one-time license fee of \$20,000 shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee.

(8) The fee for one all-beverage license to a public airport shall be \$800. This license is nontransferable.

(9) *The annual fee for a special beer and table wine license for a non-profit arts organization under [section 1] is \$250.*

(10) The license fees herein provided for are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

(11) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 ⅓% of any license fee delinquent on July 1 of the renewal year, 66 ⅔% of any license fee delinquent on August 1 of the renewal year, and 100% of any license fee delinquent on September 1 of the renewal year."

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to section 1.

**Section 4. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 7, 1987.

## CHAPTER NO. 381

[HB 762]

AN ACT CLARIFYING THE LAW RELATING TO THE PROVISION OF SOLID WASTE DISPOSAL SERVICES TO AN AREA ANNEXED BY A MUNICIPALITY; CLARIFYING THAT THE CUSTOMERS OF THE PRIVATE MOTOR CARRIER INCLUDE PERSONS THAT MOVE INTO THE AREA AFTER ANNEXATION; CLARIFYING THE MANNER OF REQUESTING CITY SERVICES; PROVIDING FOR ESTABLISHING ADEQUATE SERVICE; AND AMENDING SECTION 7-2-4736, MCA.

WHEREAS, the Montana Supreme Court, in D & F Sanitation Service v. Billings, \_\_\_\_\_ Mont. \_\_\_\_\_, 713 P.2d 977, 43 St. Rep. 74 (1986), interpreted section 7-2-4736, MCA; and

WHEREAS, the Supreme Court's interpretation of the section was contrary to the commonly understood intent of the statute and results in an unwieldy provision of services.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-2-4736, MCA, is amended to read:

**"7-2-4736. Preservation of existing garbage or solid waste service in the event of annexation.** (1) A municipality that annexes or incorporates additional area receiving garbage and solid waste disposal service by a motor carrier authorized by the public service commission to conduct such service may not provide competitive or similar garbage and solid waste disposal service to *any person or business located in the area* for 5 years following annexation except:

(a) upon a proper showing to the public service commission that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area; *or*

(b) after the expiration of 5 years, if a majority of the residents of the annexed or incorporated area *sign a petition requesting the municipality to provide the service.*

(2) If a proper showing is made that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area *or, after the expiration of 5 years, if a majority of the residents sign a petition requesting service from the municipality, the municipality may provide garbage and solid waste disposal service to the entire annexed or incorporated area.*

(3) *For the purposes of determining whether an existing motor carrier provides adequate service, those services provided by the carrier prior to annexation are considered adequate services."*

Approved April 7, 1987.

**CHAPTER NO. 382**

[HB 779]

AN ACT CLARIFYING EVIDENCE OF TITLE FOR PURPOSES OF DETERMINING A HOLDER OF TITLE TO LAND UNDER THE IRRIGATION DISTRICT LAWS; AMENDING SECTION 85-7-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-7-102, MCA, is amended to read:

**“85-7-102. Evidence of title.** (1) *The following documents shall be sufficient evidence of title for the purpose of this chapter:*

- (a) *the certificate of the county clerk and recorder;*
- (b) *the certificate of the department of state lands;*
- (c) *records of ownership prepared by licensed title insurance agents.*

(2) Where lands have been purchased from the state and part or all of the purchase money has been paid but the patents or deeds from the state to such lands have not been issued, the receipt or receipts held by the purchasers or the certificate of the department of state lands showing the payments on account of purchase shall be evidence of title to such lands under this chapter.

Section 2. **Effective date.** This act is effective July 1, 1987.

Approved April 7, 1987.

**CHAPTER NO. 383**

[HB 804]

AN ACT TO LIMIT THE PREFERENCE RIGHT OF A LESSEE TO RENEW A LEASE FOR STATE AGRICULTURAL OR GRAZING LAND IF THE LESSEE SUBLEASES THE LAND; AMENDING SECTIONS 77-6-205, 77-6-208, AND 77-6-210, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, section 77-6-205, MCA, provides an existing lessee of state land a preference right to renew the lease; and

WHEREAS, the Montana Supreme Court in Jerke v. State Department of Lands, 182 Mont. 294, 597 P.2d 49 (1979), held that it is an unconstitutional application of the preference right statute to allow a lessee to exercise a preference right if the lessee subleases the land and does not use it himself; and



WHEREAS, in Skillman v. Department of State Lands, 188 Mont. 383, 613 P.2d 1389 (1980), the Supreme Court applied the rule in Jerke to deny a lessee a preference right to lease state grazing land when the lessee did not himself use such land; and

WHEREAS, state lands are to be held in trust for the people of Montana; and

WHEREAS, allowing the preference right to be exercised by a lessee who subleases the land would be to install the lessee as the trustee of state land; and

WHEREAS, there are situations where a lessee permits another person to use all or a portion of a lease that should not result in the loss of the preference right.

THEREFORE, the Legislature of the State of Montana finds it appropriate to enact legislation to limit the preference right if a lessee subleases state land in certain circumstances.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 77-6-205, MCA, is amended to read:

**"77-6-205. Renewal leases.** (1) A lessee of state land classed as agricultural, grazing, town lot, city lot, or land valuable for commercial development who has paid all rentals due from him to the state is entitled to have his lease renewed for a period not to exceed the maximum lease period provided in 77-6-109 at any time within 30 days prior to its expiration if no other applications for lease of the land have been received 30 days prior to the expiration of his lease. The renewal shall be at the rental rate provided by law for the renewal period and subject to any other conditions at the time of the renewal imposed by law as terms of the lease. *Except as provided in [section 4], if other applications have been received, the holder of the lease has the preference right to lease the land covered by his former lease by meeting the highest bid made by any other applicant. Applications for lease of lands in this section shall be given preference in the order of their receipt at the office of the department.*

(2) The board shall accept the highest bid. If the lessee exercises the preference right and believes the bid to be excessive, he may request an administrative hearing. Such request must contain a statement of reasons why the lessee believes the bid not to be in the state's best interest and must be accompanied by a deposit equal to 20% of the competitive bid in the case of grazing lands and \$1 per acre in the case of agricultural lands. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the bid may not be in the state's best interests. The board may, after the hearing, reduce the rental from the amount bid if the lessee shows that the bid is not in the best interest of the state because it is above community standards for a lease of such land, would cause damage to the tract, or impair its long-term productivity. If the board reduces the bid, it shall set forth its findings and conclusions in writing and so inform the lessee and competitive bidder. It is the duty of

the board to secure the best lessees possible, so that the state may receive the maximum return possible with the least injury occurring to the land.

(3) A renewal lease may be canceled pursuant to 77-6-113, 77-6-208, 77-6-209, or 77-6-210 for a violation by the lessee that occurred during the previous lease term but no more than 3 years prior to the date on which the notice of cancellation required by 77-6-211 is issued. Cancellation procedures instituted but not completed before renewal are applicable to the renewal lease."

Section 2. Section 77-6-208, MCA, is amended to read:

**"77-6-208. Assignment of leases — subleasing — loss of preference right.** (1) Leases to state lands may be assigned on blanks prescribed by the department, but no assignment is binding on the state unless the assignment is filed with the department, approved by it and payment made of the assignment fee under 77-1-302.

(2) Preference shall always be given to the applicant who wants the land for his own individual use, so that the full advantage coming from the leasing and use of the lands may reach those who actually till the soil and so that they are not compelled to pay a higher rental than that due the state.

(3) If a lessee subleases state lands on terms less advantageous to the sublessee than the terms given by the state, the department shall cancel the lease, subject to the appeal procedure provided in 77-6-211. *If a lessee subleases state lands without filing a copy of the sublease with the department and without receiving its approval, the department may cancel the lease, subject to the appeal procedure provided in 77-6-211.*

(4) *The subleasing of state land may result in loss of the preference right to renew the lease as provided in [section 4].*

(5) *No assignment or series of assignments may be made to avoid the loss of the preference right under [section 4]."*

Section 3. Section 77-6-210, MCA, is amended to read:

**"77-6-210. Cancellation of leases.** (1) The department may cancel a lease for any of the following causes:

(a) fraud, misrepresentation, or concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued;

(b) *subleasing state land contrary to the provisions of [section 4];*

(c) using the land for other purposes than those authorized by the lease; and

(d) for any other cause which in the judgment of the department makes the cancellation of the lease necessary in order to do justice to all parties concerned and to protect the interests of the state.

(2) *Cancellation of a lease under this section does not entitle the lessee to any refund of rentals paid or exemption from the payment of any rentals, penalties, or other compensation due the state."*

**Section 4. Loss of preference right — cancellation of lease — subleasing — pasturing agreements.** (1) Except as provided in subsections (3) and (4), a lessee of state land classed as agricultural or grazing land may not exercise the preference right provided in 77-6-205 if he subleases the land for more than 2 years in the term of the lease.

(2) The department shall cancel a lease of state agricultural or grazing land if the lessee subleases the land for more than 3 years during the term of the lease, unless the sublease is made between members of a family as provided in subsection (3).

(3) A lessee under subsection (1) or (2) may sublease the land for a period of not more than 5 years without losing the preference right or the lease to state land if, during the term of the lease, the land is subleased only to a spouse, son, daughter, adopted child, or sibling of the lessee.

(4) The lessee does not lose the preference right or right to lease because of subleasing as provided under this section if:

(a) the sublease is one-third or less acres of the lease; or

(b) the sublease is considered to be a pasturing agreement and is approved in writing by the department prior to the initiation of the agreement.

(5) For purposes of this section, a sublease may not be considered a pasturing agreement unless the lessee personally retains management and physical control of the land and livestock. "Management" means but is not limited to:

(a) providing all costs for improvements, land maintenance, and range renovation, if range renovation is approved by the department;

(b) making all decisions regarding rotation or other placement of livestock on state land;

(c) making all decisions regarding turn-in and turn-out dates of the livestock on state land; and

(d) making all decisions regarding proper range management, including placement of water, fencing, and salt.

**Section 5. Extension of authority.** Any existing authority of the board of land commissioners to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 6. Codification instruction.** Section 4 is intended to be codified as an integral part of Title 77, chapter 6, part 2, and the provisions of Title 77, chapter 6, part 2, apply to section 4.

**Section 7. Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

**Section 8. Applicability.** (1) Except as provided in subsection (2), this act does not apply to a lessee who has subleased state land during the term of an existing state lease.

(2) This act applies to a lessee of state agricultural or grazing land if, after the effective date of this act, the lessee enters into an agreement to sublease the land to another person.

**Section 9. Effective date.** This act is effective on passage and approval.

Approved April 7, 1987.

## CHAPTER NO. 384

[HB 823]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO GROUP DISABILITY INSURANCE; AND AMENDING SECTIONS 33-22-504, 33-22-508, 33-22-509, 33-22-701, 33-22-703, AND 33-22-704, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-22-504, MCA, is amended to read:

**"33-22-504. Newborn infant coverage.** (1) No group disability policy or certificate of insurance which, in addition to covering persons in the insured group, also covers members of such person's family may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of persons *covered under the policy* from and after the moment of birth.

(2) If the policy or certificate issued thereunder, in addition to covering persons in the insured group, also covers members of such person's family, it shall contain an additional provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any person *covered under the policy*.

(3) The coverage for newborn infants shall be the same as provided by the policy for other covered persons; provided, however, that for newborn infants there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons."

**Section 2.** Section 33-22-508, MCA, is amended to read:

**"33-22-508. Conversion on termination of eligibility.** (1) A group disability insurance policy issued or renewed after October 1, 1981, shall contain a provision that if the insurance or any portion of it on a person, his dependents, or family members covered under the policy ceases because of termination of his employment or of his membership in the class or classes eligible for coverage under the policy, or as a result of his employer discontinuing his business, *or as a result of his employer discontinuing the*

*group disability insurance policy and not providing for any other group disability insurance or plan, such person shall, provided he had been insured for a period of 3 months, be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of hospital or medical service insurance on himself, his dependents, or family members, provided application for the individual policy shall be made and the first premium tendered to the insurer within 31 days after the termination of group coverage.*

(2) The individual policy, at the option of the insured, shall be on any of the forms then customarily issued by the insurer to individual policyholders with the exception of those policies whose eligibility is determined by affiliation other than by employment with a common entity.

(3) The premium on the individual policy shall be at the insurer's then customary rate applicable to the coverage of the individual policy."

Section 3. Section 33-22-509, MCA, is amended to read:

**"33-22-509. Preexisting conditions.** The converted policy may not exclude, as a preexisting condition, any conditions covered by the group contract, *including pregnancy of the insured or the insured's spouse or dependents covered by the group contract at the time of conversion.*"

Section 4. Section 33-22-701, MCA, is amended to read:

**"33-22-701. Scope of part — purpose.** The provisions of this part apply to all group policies of accident and health insurance and group subscriber contracts *for the care and treatment of mental illness, alcoholism, and drug addiction offered to Montana residents by insurers, health service corporations, and all employees' health and welfare funds that provide accident and health insurance benefits to residents of this state.* It is the purpose of this part to preserve the rights of the consumer to have such coverage according to his medical and economic needs."

Section 5. Section 33-22-703, MCA, is amended to read:

**"33-22-703. Coverage for mental illness, alcoholism, and drug addiction.** Insurers, health service corporations, *or any employees' health and welfare fund that provides accident and health insurance benefits to residents of this state under group health insurance or group health plans* shall provide, *for Montana residents covered under hospital and medical expenses incurred insurance group policies and under hospital and medical service plan group contracts,* the level of benefits specified in this section for the necessary care and treatment of mental illness, alcoholism, and drug addiction, subject to the right of the applicant to select any alternative level of benefits above the minimum level of benefits described in subsections (1)(b), (2)(a), (2)(b), and (2)(d) as may be offered by the insurer or service plan corporation:

(1) under basic inpatient expense policies or contracts, inpatient hospital benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) benefits may be limited to not less than 30 calendar days per year as defined in the policy or contract;

(b) the aggregate maximum benefit for alcoholism and drug addiction of inpatient expenses under basic inpatient policies and contracts plus inpatient expenses under major medical policies and contracts may be limited to no less than:

- (i) \$4,000 in any 24-month period; and
- (ii) \$8,000 in lifetime benefits;

(2) under major medical policies or contracts, inpatient benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient benefits may be limited to no less than 30 calendar days per year as defined in the policy or contract. If inpatient benefits are provided beyond 30 calendar days per year, the durational limits, dollar limits, deductibles, and coinsurance factors applicable thereto need not be the same as applicable to physical illness generally.

(b) for outpatient benefits, the coinsurance factor may not exceed 50% or the coinsurance factor applicable for physical illness generally, whichever is greater, and the maximum benefit for mental illness, alcoholism, and drug addiction in the aggregate during any applicable benefit period may be limited to not less than \$1,000;

(c) maximum lifetime benefits shall, for mental illness in the aggregate, be no less than those applicable to physical illness generally;

(d) the aggregate maximum benefit for alcoholism and drug addiction of inpatient expenses under basic inpatient policies and contracts plus inpatient expenses under major medical policies and contracts may be limited to no less than:

- (i) \$4,000 in any 24-month period; and
- (ii) \$8,000 in lifetime benefits."

Section 6. Section 33-22-704, MCA, is amended to read:

**"33-22-704. Applicability.** *This part applies to policies, contracts, or any employees' health and welfare fund that provides accident and health insurance benefits, established, delivered, issued for delivery, or renewed after September 30, 1987, but does not apply to blanket, short term travel, accident only, limited or specified disease, individual conversion policies or contracts, or to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as medicare, or any other similar coverage under state or federal governmental plans."*

Section 7. **Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 7, 1987.

**CHAPTER NO. 385**

[SB 29]

AN ACT TO REVISE THE TIME FOR HOLDING PRESESSION LEGISLATIVE CAUCUSES; AND AMENDING SECTION 5-2-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 5-2-201, MCA, is amended to read:

**"5-2-201. Presession caucus.** *Not later than December 1 of each year following an election when members of the legislature are elected, the parties of each house of the legislature shall hold a presession caucus for holdover senators, senators-elect, and representatives-elect. The purpose of the caucus of each party of each house is to elect officers, appoint committees, and hire any necessary employees."*

Approved April 7, 1987.

**CHAPTER NO. 386**

[SB 69]

AN ACT AUTHORIZING THE DEPARTMENT OF JUSTICE TO DESIGNATE CIVILIAN EMPLOYEES AS PEACE OFFICERS WITH LIMITED JURISDICTION; PROVIDING PENALTIES FOR VIOLATIONS OF SAFETY STANDARDS; AND AMENDING SECTIONS 44-1-1005 AND 61-9-512, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 44-1-1005, MCA, is amended to read:

**"44-1-1005. Motor carriers safety — enforcement — penalties.**  
(1) The department of justice shall:

(a) adopt, by rule, standards for safety of operations of motor carriers, each of whom is considered to consent impliedly to reasonable safety inspections of its motor vehicles utilized in furtherance of its business as a motor carrier;

(b) provide standards for the safe operation of all motor vehicles used in commerce that exceed 26,000 pounds gross vehicle weight, except farm vehicles; and

(c) provide for the safe operation of vehicles of less than 26,000 pounds gross vehicle weight if they are used to transport passengers for hire or to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with rules adopted by the department.

(2) Standards of safety adopted pursuant to subsections (1)(b) and (1)(c) must be the same as prescribed for motor carriers, and the same inspection standards and procedures apply. However, standards relating to drivers, other than drivers for motor carriers, do not apply to a vehicle operated exclusively within a 200-mile radius of its work reporting location.

(3) The highway patrol has responsibility for enforcement of standards adopted pursuant to subsection (1)(a). Inspection of a vehicle based in Montana may, at the request of the carrier, be made at the place of business or domicile of the vehicle owner or, if that is not a practicable inspection site, at a designated location and at a mutually agreeable time. After inspection, a vehicle found to conform to the standards adopted pursuant to subsection (1)(a) is entitled to certification and identification to exempt it from further safety inspection until the next required periodic inspection or until a nonconformity with standards is apparent. Nothing in this section prohibits the inspection of a motor vehicle as defined by subsection (1)(a) at a safe location on a public road.

(4) The department shall cooperate with the department of highways to assure minimum duplication and maximum coordination of enforcement effort.

*(5) The department may designate and train civilian employees as inspectors within the motor carrier safety assistance program. Each civilian inspector is a peace officer whose jurisdiction is limited to enforcement of violations of chapters 5 and 9 of Title 61 and any standards adopted pursuant to subsections (1) and (2) of this section. Each employee so designated as a peace officer may:*

- (a) issue citations and make arrests;*
- (b) issue summons;*
- (c) accept bail;*
- (d) serve warrants of arrest;*
- (e) make reasonable inspections of cargo carried by commercial motor vehicles;*
- (f) make reasonable safety inspections of commercial motor vehicles; and*
- (g) require production of documents relating to the cargo, driver, routing, maintenance, or ownership of such vehicles.*

*(6) Violations of the standards adopted pursuant to subsection (1) are punishable as provided in 61-9-512."*

Section 2. Section 61-9-512, MCA, is amended to read:

**"61-9-512. Violation of rules — penalty.** (1) Any violation of any rules adopted by the department is a misdemeanor.

(2) A person convicted of any standard adopted pursuant to 44-1-1005 shall be fined not less than \$25 or more than \$500 for the first offense and not less than \$25 or more than \$1,000 for each subsequent offense.



(3) *The penalties provided in subsection (2) apply to any motor carrier that is a corporation subject to the standards adopted pursuant to 44-1-1005. The penalties may be imposed against:*

- (a) *a director or officer of the corporation;*
- (b) *any receiver, trustee, lessee, agent, or person acting for or employed by the corporation; or*
- (c) *any broker of property or officer, agent, or employee thereof."*

Section 3. **Extension of authority.** Any existing authority of the department of justice to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 7, 1987.

## CHAPTER NO. 387

[SB 77]

AN ACT MAKING AGGRAVATED KIDNAPPING THAT RESULTS IN THE DEATH BY DIRECT ACTION OF THE DEFENDANT OF A PERSON WHO RESCUES OR ATTEMPTS TO RESCUE THE VICTIM AN AGGRAVATING CIRCUMSTANCE FOR PURPOSES OF DECIDING WHETHER TO IMPOSE THE DEATH PENALTY; AND AMENDING SECTION 46-18-303, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-18-303, MCA, is amended to read:

**"46-18-303. Aggravating circumstances.** Aggravating circumstances are any of the following:

- (1) The offense was deliberate homicide and was committed by a person serving a sentence of imprisonment in the state prison.
- (2) The offense was deliberate homicide and was committed by a defendant who had been previously convicted of another deliberate homicide.
- (3) The offense was deliberate homicide and was committed by means of torture.
- (4) The offense was deliberate homicide and was committed by a person lying in wait or ambush.
- (5) The offense was deliberate homicide and was committed as a part of a scheme or operation which, if completed, would result in the death of more than one person.
- (6) The offense was deliberate homicide as defined in subsection (1)(a) of 45-5-102, and the victim was a peace officer killed while performing his duty.

(7) The offense was aggravated kidnapping which resulted in the death of the victim *or the death by direct action of the defendant of a person who rescued or attempted to rescue the victim.*

(8) The offense was attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at the state prison by a person who has been previously:

(a) convicted of the offense of deliberate homicide; or

(b) found to be a persistent felony offender pursuant to part 5 of this chapter and one of the convictions was for an offense against the person in violation of Title 45, chapter 5, for which the minimum prison term is not less than 2 years."

Approved April 7, 1987.

## CHAPTER NO. 388

[SB 235]

AN ACT INCLUDING 19-YEAR-OLD PUPILS IN THE DETERMINATION OF THE AVERAGE NUMBER BELONGING (ANB) AND THE CALCULATION FOR FUNDING UNDER THE FOUNDATION PROGRAM; AMENDING SECTION 20-1-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-1-101, MCA, is amended to read:

**"20-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Agricultural experiment station" means the agricultural experiment station established at Montana state university.

(2) "Average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending the public schools of a district.

(3) "The board of public education" is the board created by Article X, section 9, subsection (3), of the 1972 Montana constitution and 2-15-1507.

(4) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2), of the 1972 Montana constitution and 2-15-1505.

(5) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2), of the 1972 Montana constitution and 2-15-1506.

(6) "County superintendent" means the county government official who is the school officer of the county.

(7) "District superintendent" means any person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(8) "Postsecondary vocational-technical center" means a school used principally for the provision of postsecondary vocational-technical education to persons who qualify as postsecondary vocational-technical pupils. These centers are designated by the superintendent of public instruction upon direction by the legislature. All other public or private schools are hereby prohibited from using this title.

(9) "Postsecondary vocational-technical education" means vocational-technical education of postsecondary vocational-technical pupils which is conducted by a postsecondary vocational-technical center or other programs as designated by the superintendent of public instruction. Postsecondary vocational-technical education shall include the 13th and 14th year and beyond but will not include work toward a baccalaureate degree.

(10) "Postsecondary vocational-technical pupil" means a person who has completed or left school, is at least 16 years of age, and is available for study in preparation for entering the labor market, for reentering the labor market, or for employment stability or advancement in employment.

(11) "Principal" means any person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher shall be construed as including a principal, as herein defined.

(12) "Pupil" means any child who is 6 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3) but has not yet reached his 19th birthday and who is enrolled in a school established and maintained under the laws of the state of Montana at public expense. *For purposes of calculating the average number belonging (ANB) pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached his 19th birthday by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained under the laws of the state at public expense.*

(13) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

(14) "Regents" means the board of regents of higher education.

(15) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and shall include any food service financially assisted through funds or commodities provided by the United States government.

(16) "The state board of education" is the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the 1972 Montana constitution.

(17) "State university" means the Montana state university, located at Bozeman.

(18) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the constitution of Montana.

(19) "System" means the Montana university system.

(20) "Teacher" means any person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher shall also include any person for whom an emergency authorization of employment of such person has been issued under the provisions of 20-4-111.

(21) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

(22) "Textbook dealer" means any party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state of Montana.

(23) "Trustees" means the governing board of a district.

(24) "University" means the university of Montana, located at Missoula.

(25) "Vocational education" means the instruction to prepare or improve the pupil for gainful employment that does not require a baccalaureate or higher degree. This definition of vocational education shall include guidance and prevocational, related, or technical instruction necessary to prepare the pupil for further vocational education or for entry into employment."

**Section 2. Extension of authority.** Any existing authority of the superintendent of public instruction to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective July 1, 1987.

Approved April 7, 1987.

## CHAPTER NO. 389

[SB 250]

AN ACT PROVIDING THE VOLUNTARY DISSOLUTION OF DOMESTIC INSURERS; AND AMENDING SECTION 33-3-103, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-3-103, MCA, is amended to read:

**"33-3-103. Applicability of general corporation statutes.** (1) The applicable laws of this state as to domestic corporations formed for profit

shall apply as to domestic stock insurers and domestic mutual insurers except where in conflict with the express provisions of this code and the reasonable implications of such provisions.

*(2) Except as provided in [sections 2 through 5], 35-1-901 through 35-1-912 apply to the voluntary dissolution of a domestic insurer."*

**Section 2. Voluntary dissolution of domestic insurers — plan of dissolution.** At least 60 days before an insurer submits a proposed voluntary dissolution to shareholders or policyholders under 35-1-902 or 35-1-903 or voluntarily dissolves under 35-1-901, the insurer must file the plan for dissolution with the commissioner. The commissioner may require the submission of additional information to establish the financial condition of the insurer or other facts relevant to the proposed dissolution. If the shareholders or policyholders adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin to examine the insurer. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds the insurer is insolvent or may become insolvent in the process of dissolution. If the commissioner approves the voluntary dissolution, the insurer may dissolve under 35-1-903 through 35-1-912, except that 35-1-906(3) does not apply. The papers required by 35-1-901 through 35-1-912 to be filed with the secretary of state must instead be filed with the commissioner. The duties required by 35-1-912 to be performed by the secretary of state must instead be performed by the commissioner. If the commissioner does not approve the voluntary dissolution, the commissioner shall petition the court for liquidation or rehabilitation under chapter 2, part 13 of this title.

**Section 3. Conversion to involuntary liquidation.** An insurer may at any time during liquidation under 35-1-901, 35-1-902, or 35-1-903 apply to the commissioner to have the liquidation continued under his supervision; thereupon, the commissioner shall apply to the court for liquidation under 33-2-1341.

**Section 4. Revocation of voluntary dissolution.** If an insurer revokes the voluntary dissolution proceedings under 35-1-907 or 35-1-908, the insurer shall file a copy of the revocation of voluntary dissolution proceedings with the commissioner.

**Section 5. Distribution of assets of a mutual insurer.** The maximum amount that a mutual insurer may pay to a policyholder upon dissolution, in addition to the benefits promised in the insurance policy, is the total of the premium payments made by the policyholder with interest at the legal rate compounded annually. Any excess over such amounts must be deposited with the state treasurer to the credit of the state general fund. A person may participate in the distribution of assets of a mutual insurer only if he has a policy in effect 180 days before the insurer files its plan for dissolution with the commissioner. The amount that a person eligible to participate in the distribution of assets of a mutual insurer may receive must be in the proportion that the premiums paid by the policyholder bear to the total premiums paid to the mutual insurer by all policyholders who had policies in effect 180 days before the insurer filed its plan for dissolution with the commissioner.

**Section 6. Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 7. Codification instruction.** Sections 2 through 5 are intended to be codified as an integral part of Title 33, chapter 3, and the provisions of Title 33, chapter 3, apply to sections 2 through 5.

Approved April 7, 1987.

## CHAPTER NO. 390

[SB 253]

AN ACT TO HAVE SPECIAL REVENUE ACCOUNTS AND PROPRIETARY ACCOUNTS OF THE STATE FUND STRUCTURE EXAMINED TO DETERMINE IF THE UNOBLIGATED BALANCES OF SUCH ACCOUNTS SHOULD BE TRANSFERRED TO THE GENERAL FUND AND WHETHER SUCH ACCOUNTS SHOULD CONTINUE TO EXIST OR BE MODIFIED BASED UPON CERTAIN CRITERIA; AND TO PROVIDE THAT THE DEPARTMENT OF ADMINISTRATION CONDUCT SUCH EXAMINATIONS AND REPORT THE FINDINGS AND RECOMMENDATIONS TO THE LEGISLATIVE FINANCE COMMITTEE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Review of state and other special revenue accounts and proprietary accounts.** (1) Each biennium, the department of administration shall examine all state and other special revenue accounts and proprietary accounts as required by this section and report the findings and recommendations to the legislative finance committee not later than June 1 of the year preceding a regular session of the legislature.

(2) The department shall examine restrictions against the transfer of unobligated balances in state and other special revenue accounts to the general fund. If such restrictions are considered unnecessary by the department and if they may be eliminated by administrative action, the department shall to the fullest extent possible eliminate such restrictions and require the transfer of unobligated balances in the accounts to be made to the general fund, either on an annual or biennial basis. If administrative action is unavailable, the department shall make recommendations for legislative action.

(3) The department shall examine all state and other special revenue accounts and proprietary accounts to determine if they should continue to exist or be eliminated or modified to provide better program operation or fiscal control. In conducting the examination, the department shall consider whether an account:

(a) is accurately classified as a state special revenue account, other special revenue account, or proprietary account;

- (b) is required by the Montana constitution or by statute;
- (c) operates in compliance with the statutes that established the program;
- (d) receives an amount of revenue that is equal to or close to the expenditure required for the activity funded by the account;
- (e) allows the funded program to operate without supplemental general funds; and
- (f) has any restrictions against the transfer of unobligated balances in the account to the general fund.

Approved April 7, 1987.

## CHAPTER NO. 391

[SB 257]

AN ACT CREATING THE TELEPHONE LOW INCOME ASSISTANCE PROGRAM; SETTING ELIGIBILITY STANDARDS FOR ASSISTANCE TO LOW INCOME INDIVIDUALS; IMPOSING AN ADDITIONAL CHARGE ON RESIDENTIAL TELEPHONE CUSTOMERS TO REIMBURSE PARTICIPATING PROVIDERS OF TELECOMMUNICATIONS SERVICES FOR DISCOUNTS GIVEN ELIGIBLE SUBSCRIBERS; REQUIRING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO CERTIFY AND VERIFY THE ELIGIBILITY OF SUBSCRIBERS; REQUIRING THE PUBLIC SERVICE COMMISSION TO MONITOR THE PROGRAM AND ISSUE ANNUAL REPORTS; PROVIDING FOR COMPLIANCE WITH FEDERAL LAW IN ORDER TO RECEIVE MATCHING FEDERAL FUNDS; GRANTING NEW RULEMAKING AUTHORITY TO THE COMMISSION; AND PROVIDING STANDARDS FOR APPLICABILITY.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Creation of program — amount of assistance.** (1) There is a telephone low income assistance program to provide an eligible subscriber with a discount in the monthly charge for local exchange service in the telephone network.

(2) This discount in the charge for local exchange service is the greater of:

- (a) \$2 a month for each eligible subscriber; or
- (b) the amount necessary to obtain the matching waiver available under applicable orders and regulations of the federal communications commission.

**Section 2. Eligibility.** (1) A residential subscriber with single telephone line service at his principal residence is eligible for low income telephone assistance if he is certified by the department of social and rehabilitation services as a recipient of medicaid benefits.

(2) The department shall periodically certify and verify the eligibility of a subscriber to receive low income telephone assistance.

(3) The department may adopt rules to establish procedures for the certification and verification of eligible subscribers.

**Section 3. Reimbursement for discounts.** (1) The public service commission shall authorize an additional monthly charge for each residential access line to fully reimburse providers of local telecommunications services for discounts given eligible subscribers.

(2) The additional monthly charge for local exchange service applies to residential subscribers of providers of local telecommunications services that participate in the low income telephone assistance program.

(3) Participation of each provider in the low income telephone assistance program must be administered separately by the public service commission.

**Section 4. Administration.** (1) The public service commission shall monitor the effectiveness of the low income telephone assistance program and issue annual reports as provided in [section 5].

(2) The commission may adopt rules necessary to administer and implement the low income telephone assistance program and to receive matching federal low income telephone assistance.

**Section 5. Annual reports.** The commission shall, if necessary, provide the federal communications commission with annual reports containing the following information:

(1) a description of qualification and verification procedures and other assistance measures;

(2) the costs of the low income telephone assistance program;

(3) the number of households receiving low income telephone assistance;

(4) the number of eligible subscribers receiving low income telephone assistance, including subscribers who switched from other telephone services to low income telephone service and new subscribers of low income telephone service; and

(5) all other information requested by the federal communications commission concerning the effect of the low income telephone assistance program on eligible subscribership levels.

**Section 6. Federal requirements.** The public service commission, the department of social and rehabilitation services, and participating providers of local telecommunications services shall comply with federal requirements for the receipt of matching federal low income telephone assistance.



**Section 7. Applicability.** (1) [Sections 1 through 6] apply to providers of regulated local telecommunications services with more than 50,000 subscribers.

(2) Regulated providers of local telecommunications services with fewer than 50,000 subscribers may petition the public service commission to participate in or withdraw from the low income telephone assistance program. The public service commission shall grant a petition to participate in or withdraw from the low income telephone assistance program unless federal requirements for obtaining matching federal low income telephone assistance require otherwise.

**Section 8. Codification instruction.** Sections 1 through 7 are intended to be codified as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to sections 1 through 7.

**Section 9. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 7, 1987.

## CHAPTER NO. 392

[SB 289]

AN ACT TO AUTHORIZE THE RETURN TO ANOTHER STATE OF A PERSON ARRESTED IN THIS STATE FOR VIOLATION OF A BAIL, PROBATION, OR PAROLE AGREEMENT, ORDER, OR OTHER CONDITIONAL RELEASE FROM THAT OTHER STATE IF THE AGREEMENT, ORDER, OR OTHER CONDITIONAL RELEASE CONTAINS A WAIVER OF EXTRADITION CLAUSE; TO AUTHORIZE THE USE OF WAIVER OF EXTRADITION CLAUSES IN PROBATION AND PAROLE AGREEMENTS; AND AMENDING SECTIONS 46-18-202 AND 46-23-215, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Prior waiver of extradition.** (1) A person who is alleged to have violated the terms of his bail, probation, parole, or any other conditional release from another state and who is held in this state may be released to the duly authorized agent of that other state without the warrant provided for in 46-30-213 if the following has occurred:

(a) a district court in this state has held a hearing at which the state has presented:

(i) a certified copy of an agreement to waive extradition, signed by the person, or an order from the other state releasing the person on the condition that he waive extradition;

(ii) a certified copy of the warrant or order from the other state directing the return of the person for violating the terms of his release; and

(iii) evidence that the person is the same person named in the warrant or order; and

(b) the district court has found that there is probable cause to believe that the person is the same person charged in the warrant or order. Whenever a district court makes this finding, it shall, except as provided in subsection (2), order that the person be remanded to custody and delivered to agents of the other state. The court shall also advise the person of his right to contest the order by filing a writ of habeas corpus.

(2) If the person wishes to test the validity of the order issued pursuant to subsection (1)(b), the court shall fix a reasonable time for him to apply for a writ of habeas corpus before he may be released to agents from the other state.

Section 2. Section 46-18-202, MCA, is amended to read:

**"46-18-202. Additional restrictions on sentence.** (1) The district court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 which it considers necessary to obtain the objectives of rehabilitation and the protection of society:

- (a) prohibition of the defendant's holding public office;
- (b) prohibition of his owning or carrying a dangerous weapon;
- (c) restrictions on his freedom of association;
- (d) restrictions on his freedom of movement;
- (e) any other limitation reasonably related to the objectives of rehabilitation and the protection of society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving his term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment shall contain a statement of the reasons for the restriction.

(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an individual's rights as enumerated in subsections (1) and (2).

(4) *When the district court imposes a sentence of probation as defined in 46-23-1001, any probation agreement signed by the defendant may contain a clause waiving extradition."*

Section 3. Section 46-23-215, MCA, is amended to read:

**"46-23-215. Conditions of parole.** (1) Every prisoner while on parole shall remain in the legal custody of the institution from which he was released but shall be subject to the orders of the board.

(2) When an order for parole is issued, it shall recite the conditions thereof. *An order for parole or any parole agreement signed by a prisoner may contain a clause waiving extradition.*

(3) Whenever a prisoner in the Montana state prison has been approved for parole on condition that he obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the warden may grant him a furlough, not to exceed 10 days, for purposes of fulfilling the condition. While on such furlough, the prisoner remains in the legal custody of the prison and is subject to all other conditions recited by the board."

Section 4. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 46, chapter 30, and the provisions of Title 46, chapter 30, apply to section 1.

Approved April 7, 1987.

## CHAPTER NO. 393

[SB 300]

AN ACT REVISING CONDITIONS RESULTING IN A CLASS C MOTOR CARRIER BEING CONSIDERED AS A CLASS B MOTOR CARRIER; AND AMENDING SECTION 69-12-302, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 69-12-302, MCA, is amended to read:

**"69-12-302. Conditions resulting in Class C carrier considered as Class B carrier.** (1) A Class C motor carrier operating with more than six contracts which are in effect at any given time and each of which are effective for a minimum of 180 days is considered to be operating as a Class B motor carrier. Before transportation service may commence, pertinent contract information shall be furnished to the commission for each contract on forms prescribed by the commission. The commission shall retain a duplicate of the information in its files, and a copy of the form, confirmed by the commission, must be kept in the cab of the motor carrier when operating under that contract.

(2) All Class C motor carriers must annually submit to the commission the names and addresses of all persons, corporations, or other legal entities with whom the Class C carrier has executed a contract, charter, agreement, or undertaking for the distribution, delivery, or collection of wares, merchandise, or commodities or for transporting persons.

(3) The provisions of this section shall not apply to solid waste contractors, household goods carriers, or house movers, as defined by the department of public service regulation, or any carrier whose authority is *limited to the pickup and delivery of property and is* confined by certificate to transportation within a distance of 50 miles or less from a particular location. *Any carrier whose property authority is incidental to the transportation of persons is not included in the exemption under this subsection."*

Section 2. **Extension of authority.** Any existing authority of the public service commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 7, 1987.

## CHAPTER NO. 394

[SB 302]

AN ACT PROVIDING FOR THE PAYMENT OF HIGH SCHOOL TUITION WHEN A CHILD IS REQUIRED TO ATTEND HIGH SCHOOL OUTSIDE THE STATE OF MONTANA; AND AMENDING SECTION 20-5-311, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-5-311, MCA, is amended to read:

**"20-5-311. High school tuition.** (1) Any child may be enrolled in and attend a high school outside of the high school district in which he resides when such high school is located in Montana or in a county of another state that is adjacent to the state of Montana. When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before July 1 of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. Such application shall be made on a tuition agreement form supplied by the county superintendent. The trustees of the district of residence, the trustees of the district in which the child wishes to attend school, and the county superintendent are the approval agents for tuition to another high school within the county. The county superintendent of the county of residence and the trustees of the district in which the child wishes to attend school are the approval agents for attendance outside the county.

(2) (a) (i) The approval agents shall approve a tuition application when a child lives closer to a high school of another district than any high school located within his resident district or when, due to road or geographic conditions, it is impractical to attend the high school nearest his residence.

(ii) However, the approval agents are not required to approve a tuition application for a student seeking to attend a high school outside the state of Montana or the resident district if the resident district provides transportation. This exception does not apply when:

(A) the child resides in a county different from the county wherein the school he wishes to attend is located; or

(B) the child has enrolled in a high school outside his resident district and has received an approved tuition agreement on or before April 30, 1985. For the purposes of this subsection (2)(a)(ii)(B), the child has the

right to continue his high school education in the receiving high school outside his resident district on an approved tuition agreement, subject to the provisions of this section.

(b) The approval agents shall approve a tuition application when a child, *as a result of a court order*, is required to attend high school outside the district of residence:

(i) *but within the state of Montana or another state that maintains a reciprocal tuition agreement under 20-5-314; or*

(ii) *in a state that does not have a reciprocal tuition agreement pursuant to 20-5-314. The amount of daily tuition may not be greater than the average daily cost per student in the district of residence. The amount of annual tuition may not be greater than the average annual cost per student in the district of residence. The county superintendent shall calculate the average annual and the average daily cost per student. For purposes of this subsection (b), the following do not apply:*

(A) an order issued under Title 40, chapter 4, part 2;

(B) *placement of a child pursuant to Title 20, chapter 7, part 4.*

(c) In approving a tuition agreement under this provision, the approval agents may require the child to attend the high school closest to his residence. The approval agents may approve any other tuition application that satisfies the geographic requirements of this section.

(3) The trustees of the district where the child wishes to attend school shall approve or disapprove any tuition application submitted to them under the provisions of this section within 15 days after the receipt of the application.

(4) The county superintendent shall notify the parent or guardian and the trustees of the district where the child wishes to attend school of the tuition agreement approval or disapproval. If a tuition agreement is disapproved by one or more approval agents, the parent may appeal such disapproval to the county superintendent and, subsequently, to the superintendent of public instruction under the provision for the appeal of controversies in this title.

(5) The approval of any tuition agreement by all of the applicable approval agents or upon appeal shall authorize the child named in such agreement to enroll in and attend the school named in such agreement for the ensuing school fiscal year."

**Section 2. Extension of authority.** Any existing authority of the superintendent of public instruction to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 7, 1987.

**CHAPTER NO. 395**

[SB 362]

AN ACT TO CLARIFY RESPONSIBILITY FOR DETERMINING THE FINANCIAL IMPACT OF RULES, POLICIES, AND STANDARDS PROPOSED BY THE BOARD OF PUBLIC EDUCATION; AND AMENDING SECTION 20-2-115, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-2-115, MCA, is amended to read:

**"20-2-115. Rules with substantial financial impact — fiscal note — effect without funding.** (1) When developing rules, policies, and standards under 20-2-121(6), (7), (9), and (11), the board of public education shall determine the financial impact of the rule, policy, or standard on school districts.

(2) The superintendent of public instruction shall prepare a fiscal note for submission to the board, *using criteria and assumptions developed by the board. The fiscal note must be prepared within 30 days of a request unless the board agrees to a longer time.* The board may also accept other testimony and exhibits on the financial impact to school districts before proceeding to rulemaking.

(3) If the financial impact of the proposed rule, policy, or standard is found by the board to be substantial, the board may not *implement the rule until July 1 following the next regular legislative session* and shall request the next legislature to fund implementation of the proposed rule, policy, or standard through the foundation program. A substantial financial impact is an amount that cannot be readily absorbed in the budget of an existing school district program.

(4) A proposed rule, policy, or standard not found by the board to have a substantial financial impact on school districts or funded by the legislature may be *implemented at any time.*"

Approved April 7, 1987.

**CHAPTER NO. 396**

[SB 370]

AN ACT TO PROVIDE THAT TRANSPORTATION FOR A RESIDENTIAL AND BOARDING STUDENT AT THE MONTANA SCHOOL FOR THE DEAF AND BLIND TO AND FROM THE STUDENT'S RESIDENCE BE PROVIDED BY INDIVIDUAL CONTRACT WITH THE STUDENT'S PARENT OR BY COMMERCIAL TRANSPORTATION; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Transportation of students at school.** (1) The school for the deaf and blind shall provide the transportation expenses allowed in subsection (4) for a residential and boarding student at the school for the deaf

and blind who is a resident of the state of Montana if the student is conveyed to and from the student's residence by:

- (a) a scheduled air carrier as defined in 67-1-101;
- (b) charter with a commercial air operator as defined in 67-1-101;
- (c) a parent or guardian of the student, under an individual transportation contract with the school for the deaf and blind; or
- (d) other transportation arrangements, provided that such transportation is by a carrier of passengers certified by the public service commission and approved by the superintendent of the school for the deaf and blind, pursuant to rules adopted by the board of public education.

(2) The superintendent of the school for the deaf and blind shall determine which method of transportation in subsection (1) is to be provided to a student, pursuant to rules adopted by the board of public education on transportation of residential and boarding students at the school.

(3) A parent or guardian who transports a student to or from the school under an individual transportation contract is entitled to reimbursement for such transportation, pursuant to rules adopted by the board of public education on such reimbursement.

(4) The transportation of a residential and boarding student provided in subsection (1) is limited to one round trip to the student's residence each month during such times as the school is in session. The superintendent of the school for the deaf and blind may grant a variance from this provision, but in no event may a reimbursement for travel expenses be provided more than nine times in any school fiscal year.

**Section 2. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 20, chapter 8, and the provisions of Title 20, chapter 8, apply to section 1.

**Section 3. Effective date.** This act is effective July 1, 1987.

Approved April 7, 1987.

## CHAPTER NO. 397

[HB 146]

### AN ACT PROVIDING FOR IMMUNITY AND INDEMNIFICATION IN CERTAIN CIVIL SUITS AGAINST EMPLOYEES OF DITCH COMPANIES; AND AMENDING SECTION 27-1-701, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Individual immunity for and indemnification of ditch company employees.** (1) As used in this section:

- (a) "ditch company" means a private, not-for-profit irrigation ditch or water user cooperative, corporation, association, or organization;

(b) "employee" means a director, officer, or employee of a ditch company.

(2) An employee of a ditch company is not individually liable for actions and omissions within the course and scope of his employment or position, except as provided in subsection (6). The immunity granted by this subsection does not apply to the liability of a not-for-profit cooperative, corporation, association, or organization.

(3) Upon receiving service of a summons and complaint in an action against him, the employee shall give written notice to his supervisor requesting that a defense to the action be provided by the ditch company. If the employee has no supervisor, he shall give notice of the action to the attorney of the ditch company defending legal actions of that type. Except as provided in subsection (6), the ditch company shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the ditch company. The ditch company shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the ditch company refuses or is unable to provide a direct defense, the employee may retain other counsel. Except as provided in subsection (6), the ditch company shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may otherwise be payable under this section.

(4) The employee must be indemnified by the ditch company for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee's conduct falls within the exclusions provided in subsection (6).

(5) Recovery against a ditch company is a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. In an action against a ditch company, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the ditch company acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment unless the claim constitutes an exclusion provided in subsections (6)(b) through (6)(d).

(6) The employee may not be defended or indemnified by the ditch company for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:

(a) the conduct upon which the claim is based constitutes oppression, fraud, or malice or for any other reason does not arise out of the course and scope of the employee's employment or position;

(b) the conduct of the employee is a criminal offense as defined in Title 45, chapters 4 through 7;

(c) the employee compromised or settled the claim without the consent of the ditch company; or



(d) the employee failed or refused to cooperate reasonably in the defense of the case.

(7) If no judicial determination has been made applying the exclusions provided in subsection (6), the ditch company may determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the ditch company concludes it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the ditch company is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in such action holding that the ditch company had no obligation to defend the employee. The ditch company has no obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the ditch company under this subsection.

Section 2. Section 27-1-701, MCA, is amended to read:

**"27-1-701. Liability for negligence as well as willful acts.** *Except as otherwise provided by law, everyone is responsible not only for the results of his willful acts but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person except so far as the latter has willfully or by want of ordinary care brought the injury upon himself.*"

Section 3. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Approved April 7, 1987.

## CHAPTER NO. 398

[HB 200]

AN ACT CLARIFYING THE DUTIES OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES WITH REGARD TO CHILD REHABILITATION; AND AMENDING SECTION 53-4-113, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-4-113, MCA, is amended to read:

**"53-4-113. Child rehabilitation — duties of department.** The department shall:

(1) enforce all laws pertaining to children and take the initiative in all matters involving the interest of *abused, dependent, and neglected* children;

(2) use funds *allocated or appropriated to the department for the purpose of providing for the special medical or material needs of developmentally disabled or physically handicapped children who are eligible for department programs;*

(3) cooperate for the purposes hereof with all reputable child-helping and child-placing agencies; and

(4) inspect and license public and private *youth care facilities*, child-placing agencies, and *adoption agencies*."

Approved April 7, 1987.

## CHAPTER NO. 399

[HB 259]

AN ACT TO REIMBURSE PERSONS IN STATE SERVICE FOR TAXES CHARGED FOR IN-STATE LODGING; AMENDING SECTION 2-18-501, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-18-501, MCA, is amended to read:

**"2-18-501. Meals, lodging, and transportation of persons in state service.** Every elected official, appointed members of boards, commissions, councils, department directors, and all other state employees shall be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) For travel within the state of Montana, the following provisions apply:

(a) The governor shall be authorized actual and necessary expenses not to exceed \$55 per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging, not exceeding \$24 per day, *and taxes on the allowable cost of lodging*, except as provided in subsection (3), plus \$3 for the morning meal, \$3.50 for the midday meal, and \$8 for the evening meal. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) For travel out of the state of Montana, the following provisions apply:

(a) The governor shall be authorized the actual cost of lodging in addition to a meal allowance not to exceed \$30 per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding \$50 per day, except as provided in subsection (3), plus \$4 for the morning meal, \$6.50 for the midday meal, and \$12 for the evening meal. All claims for the lodging expense reimbursement allowed under this subsection must be documented by an appropriate receipt.

(3) All other elected state officials, appointed members of boards, commissioners, councils, department directors, and all other state employees shall be authorized the actual cost of lodging when traveling in the normal course of their duties to certain designated areas. The department of administration shall designate those areas where the actual cost of lodging shall be reimbursed.

(4) When other than commercial, nonreceiptable lodging facilities are utilized by a state employee while conducting official state business in a travel status, the amount of \$7 will be authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1)(b) or (2)(b) above. However, when overnight accommodations are provided at the expense of any government entity, no reimbursement may be claimed for lodging.

(5) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status shall be subject to reimbursement.

(6) The provisions of this section shall not be construed as affecting the validity of 5-2-301.

(7) The department of administration shall prescribe rules necessary to effectively administer this section for state government.

(8) All commercial air travel shall be by the least expensive class service available."

**Section 2. Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective June 30, 1987.

Approved April 7, 1987.

## CHAPTER NO. 400

[HB 353]

**AN ACT TO INCLUDE DENTISTS IN THE DOCTOR-PATIENT PRIVILEGE; AMENDING SECTION 26-1-805, MCA; AND PROVIDING AN APPLICABILITY DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 26-1-805, MCA, is amended to read:

**"26-1-805. Doctor-patient privilege.** Except as provided in Rule 35, Montana Rules of Civil Procedure, a licensed physician, surgeon, or dentist cannot, without the consent of his patient, be examined in a civil action

as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient."

**Section 2. Applicability.** This act applies to civil actions initiated on or after the effective date of this act.

Approved April 7, 1987.

## CHAPTER NO. 401

[HB 367]

AN ACT PROVIDING THAT FURNISHING HUMAN TISSUE, ORGANS, OR BONES IS A SERVICE AND NOT A SALE; GRANTING IMMUNITY TO TISSUE BANKS FROM LIABILITY FOR INJURIES RESULTING FROM TRANSPLANTING HUMAN TISSUE, ORGANS, OR BONES; AND AMENDING SECTIONS 50-33-102 AND 50-33-104, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-33-102, MCA, is amended to read:

**"50-33-102. Furnishing of blood, blood products, and human tissue, organs, or bones declared service and not sale.** The furnishing of and the injecting, transfusing, *transplanting*, or *transferring* into the human body of whole blood, plasma, blood products, blood derivatives, *human tissue, organs, or bones* by a hospital, long-term care facility, or doctor of any such substances obtained from any source which said hospital, long-term care facility, or doctor is not directly or indirectly financially interested in or has any control over is hereby declared not to be a sale of such whole blood, plasma, blood products, blood derivatives, *human tissue, organs, or bones* for any purpose."

**Section 2.** Section 50-33-104, MCA, is amended to read:

**"50-33-104. Immunity of blood banks and tissue banks.** No blood bank or tissue bank may be held liable in the absence of fault or negligence for injuries resulting from the injecting, transfusing, *transplanting*, or *transferring* of whole blood, plasma, blood products, blood derivatives, *human tissue, organs, or bones* supplied by any such blood bank or tissue bank to any hospital or physician if such blood products or tissue products have been tested by the latest testing procedures in accordance with recommendations of the American association of blood banks or the American association of tissue banks and by such test are not found to be dangerous to the health of the recipient of such blood products or tissue products."

Approved April 7, 1987.

**CHAPTER NO. 402**

[HB 428]

AN ACT TO ALLOW THE REVENUE GENERATED BY THE WINE TAX TO BE UTILIZED IN THE TREATMENT, REHABILITATION, AND PREVENTION OF ALCOHOLISM; AND AMENDING SECTIONS 53-24-108 AND 53-24-206, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-24-108, MCA, is amended to read:

**"53-24-108. Utilization of funds generated by taxation on alcoholic beverages.** (1) Revenue generated by 16-1-404, 16-1-406, 16-1-408, and 16-1-411 to state-approved private nonprofit or public programs whose function is the treatment, rehabilitation, and prevention of alcoholism may be distributed in either of the following manners:

(a) as payment of fees for alcoholism services provided by state-approved private nonprofit or public alcoholism programs and licensed hospitals for detoxification services; or

(b) as grants to state-approved private nonprofit or public alcoholism programs.

(2) State-approved private chemical programs organized for profit are not eligible for revenue generated by 16-1-404, 16-1-406, 16-1-408, and 16-1-411.

(3) No person operating a state-approved alcoholism program may be required to provide matching funds as a condition of receiving a grant under subsection (1) of this section.

(4) In addition to funding received under this section, a person operating a state-approved alcoholism program may accept gifts, bequests, or the donation of services or money for the treatment, rehabilitation, or prevention of alcoholism.

(5) No person receiving funding under this section to support operation of a state-approved alcoholism program may refuse alcoholism treatment, rehabilitation, or prevention services to a person solely because of that person's inability to pay for those services.

(6) A grant made under this section is subject to the following conditions:

(a) The grant application must contain an estimate of all program income, including income from earned fees, gifts, bequests, donations, and grants from other than state sources during the period for which grant support is sought.

(b) Whenever, during the period of grant support, program income exceeds the amount estimated in the grant application, the amount of the excess shall be reported to the grantor.

(c) The excess shall be used by the grantee under the terms of the grant in accordance with one or a combination of the following options:

(i) use for any purpose that furthers the objectives of the legislation under which the grant was made; or

(ii) to allow program growth through the expansion of services or for capital expenditures necessary to improve facilities where services are provided.

(7) Revenue generated by 16-1-404, 16-1-406, 16-1-408, and 16-1-411 for the treatment, rehabilitation, and prevention of alcoholism which has not been encumbered for those purposes by the counties of Montana or the department shall be returned to the state special revenue fund for the treatment, rehabilitation, and prevention of alcoholism within 30 days after the close of each fiscal year and will be distributed by the department the following year as provided in 53-24-206(3)(b)."

Section 2. Section 53-24-206, MCA, is amended to read:

**"53-24-206. Administration of financial assistance.** (1) The department may apply for and receive grants, allotments, or allocations of funds or other assistance for purposes pertaining to the problems of chemical dependency or related social problems under laws and rules of the United States, any other state, or any private organization.

(2) The department may cooperate with any other government agency or private organization in programs on chemical dependency or related social problems. In carrying out cooperative programs, the department may make grants of financial assistance to government agencies and private organizations under terms and conditions agreed upon.

(3) (a) In administering proceeds derived from the liquor license tax, the beer license tax, or the wine tax, the department shall distribute those funds appropriated by the legislature. Money that is appropriated for distribution to approved private nonprofit or public programs on a discretionary basis shall be distributed to those programs that can demonstrate that:

(i) the program is achieving the goals and objectives mutually agreed upon by the program and the department; and

(ii) the receipt of additional funds would be justified.

(b) The remainder of the proceeds shall be distributed to the counties for use by approved private nonprofit or public programs. The distribution of these proceeds is statutorily appropriated as provided in 17-7-502 and must be distributed in the following manner:

(i) Eighty-five percent shall be allocated according to the proportion of each county's population to the state's population according to the most recent United States census.

(ii) Fifteen percent shall be allocated according to the proportion of the county's land area to the state's land area.

(c) Money distributed under subsection (3) may only be used for purposes pertaining to the problems of alcoholism."

Approved April 7, 1987.

**CHAPTER NO. 403**

[HB 480]

AN ACT REVISING THE LAWS PROVIDING FOR AID TO FAMILIES WITH DEPENDENT CHILDREN TO CLARIFY THE ELIGIBILITY OF CHILDREN OF UNEMPLOYED PARENTS; AND AMENDING SECTION 53-4-231, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-4-231, MCA, is amended to read:

**"53-4-231. Eligibility.** (1) Assistance shall be granted under this part to any dependent child, as defined in 53-4-201, who is in need of such assistance.

(2) Aid to dependent children assistance payments may be made to a needy pregnant woman with no other children receiving such payments. Payments may begin no earlier than the third month prior to the month in which the child is expected to be born.

(3) Aid to dependent children shall be granted to or for the care of children of *unemployed parents* who would not otherwise be entitled to such aid because the child is living in the home with both parents. The department may adopt rules to administer *the grant of assistance to children of unemployed parents* pursuant to Title IV, section 407, of the federal Social Security Act, as amended."

Section 2. **Extension of authority.** Any existing authority of the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 7, 1987.

**CHAPTER NO. 404**

[HB 488]

AN ACT EXTENDING THE TERMINATION DATE FOR THE JOINT UNDERWRITING ASSOCIATION FOR MEDICAL LIABILITY INSURANCE; AMENDING SECTION 11, CHAPTER 301, LAWS OF 1985; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11, Chapter 301, Laws of 1985, is amended to read:

**"Section 11. Termination date — enforceability of issued policies.** This act terminates October 1, 1991, after which no new policies may

be issued by the association. However, all issued policies continue in force until their expiration dates."

**Section 2. Effective date.** This act is effective on passage and approval.

Approved April 7, 1987.

## CHAPTER NO. 405

[HB 571]

AN ACT RAISING FROM 16 TO 18 YEARS THE AGE OF CHILDREN COVERED, IN CERTAIN CASES, BY THE OFFENSE OF ENDANGERING THE WELFARE OF CHILDREN; AND AMENDING SECTION 45-5-622, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-5-622, MCA, is amended to read:

**"45-5-622. Endangering the welfare of children.** (1) A parent, guardian, or other person supervising the welfare of a child less than 18 years old commits the offense of endangering the welfare of children if he knowingly endangers the child's welfare by violating a duty of care, protection, or support.

(2) A parent or guardian or any person who is 18 years of age or older, whether or not he is supervising the welfare of the child, commits the offense of endangering the welfare of children if he knowingly contributes to the delinquency of a child less than:

(a) *18 years old* by supplying or encouraging the use of intoxicating substances by the child *or assisting, promoting, or encouraging the child to enter a place of prostitution;* or

(b) *16 years old* by assisting, promoting, or encouraging the child to:

(i) abandon his place of residence without the consent of his parents or guardian; or

(ii) engage in sexual conduct.

(3) A person convicted of endangering the welfare of children shall be fined not to exceed \$500 or imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of endangering the welfare of children shall be fined not to exceed \$1,000 or imprisoned in the county jail for any term not to exceed 6 months, or both.

(4) On the issue of whether there has been a violation of the duty of care, protection, and support, the following, in addition to all other admissible evidence, is admissible: cruel treatment; abuse; infliction of unnecessary and cruel punishment; abandonment; neglect; lack of proper medical care, clothing, shelter, and food; and evidence of past bodily injury.



(5) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering the welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered."

Approved April 7, 1987.

## CHAPTER NO. 406

[HB 674]

AN ACT ALLOWING EITHER THE COURT OR THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO WAIVE A CHILD ADOPTION INVESTIGATION IN CERTAIN CASES AND CLARIFYING THAT AN INVESTIGATION WILL NOT BE HELD WHEN AN ADULT IS ADOPTED; AND AMENDING SECTIONS 40-8-122 AND 40-8-202, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-8-122, MCA, is amended to read:

**"40-8-122. Investigation.** (1) Upon the filing of a petition for adoption, the court shall order an investigation to be made by the department or by a licensed child placing agency or other person named by the court. The investigation may be waived *by the court or the department* if the petitioner is a stepparent of the child or if one of the petitioners is a member of the child's extended family. The report of investigation shall be filed with the court by the investigator within 30 days from the issuance of the order for investigation, unless time therefor is extended by the court. The report of the investigation shall state:

- (a) whether the child is legally free for adoption;
- (b) whether the proposed home is a suitable one for the child;
- (c) that medical and social histories have been provided to the adoptive parent; and
- (d) any other circumstances and conditions which may have a bearing on the adoption and of which the court should have knowledge.

(2) The court may order agencies named in subsection (1) located in one or more counties to make separate investigations on separate parts of the inquiry as may be appropriate.

(3) The report of the investigation shall become a part of the files in the case and shall contain a definite recommendation stating the reasons for or against the proposed adoption."

Section 2. Section 40-8-202, MCA, is amended to read:

**"40-8-202. Procedure.** Except as otherwise inconsistent with this part, the procedure and law for adoption of minors set forth in 40-8-106,

40-8-107, 40-8-121, 40-8-123, 40-8-124, and 40-8-125 shall be applicable in proceedings for the adoption of an adult under the provisions of this part, provided that provisions concerning an *investigation under 40-8-122 and an interlocutory decree* shall not be applicable in the case of the adoption of an adult."

**Section 3. Extension of authority.** Any existing authority of the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 7, 1987.

## CHAPTER NO. 407

[HB 725]

AN ACT TO IMPROVE THE PROCEDURE FOR LOCATING MISSING CHILDREN BY REQUIRING A SCHOOL DISTRICT TO REQUEST PROOF OF IDENTITY AND SCHOOL RECORDS FOR A CHILD WHO ENROLLS IN A SCHOOL DISTRICT; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. School enrollment procedures to aid identification of missing children.** (1) When a child enrolls in a school district for the first time, the school district shall:

(a) require that the child's parent, guardian, or legal custodian present to the school, within 40 days of enrollment, proof of identity of the child; and

(b) request the appropriate school records of the child from the previous school attended by the child. The school enrolling the child shall make the request within 40 days of enrollment of the child.

(2) If a child's parent, guardian, or legal custodian does not present the proof of identity required in subsection (1) within 40 days of enrollment or if the school district does not receive the school records of the child within 60 days of enrollment, the school shall notify the missing children information program provided in 44-2-503 and a local law enforcement authority of the fact that no proof of identity has been presented for the child.

(3) A school district that receives a request for the school records of a child shall transfer the records to the requesting school as soon as possible.

(4) When a school district receives a notice from a law enforcement authority, parent, guardian, or legal custodian that a child who is or has been enrolled in that school has been reported as a missing child, the school district shall:

(a) flag in some manner the student records of the child; and

(b) notify the missing children information program and a local law enforcement authority if a request for the school records is received from another school district.

(5) If it is necessary for a local law enforcement authority to conduct an investigation on a missing child, school personnel may not inform the person claiming custody of the child of the investigation while it is being conducted.

(6) For the purposes of this section:

(a) "proof of identity" means a certified copy of a birth certificate, a certified transcript or similar student records from the previous school, or any documentary evidence that a school district considers to be satisfactory proof of identity; and

(b) "school district" means a school district as defined in 20-6-101 or a nonpublic elementary school or high school in the state.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 44, chapter 2, part 5, and the provisions of Title 44, chapter 2, part 5, apply to section 1.

Section 3. **Effective date.** This act is effective July 1, 1987.

Approved April 7, 1987.

## CHAPTER NO. 408

[HB 777]

AN ACT GENERALLY REVISING FUNDING FOR HAZARDOUS WASTE MANAGEMENT PROGRAMS OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; CREATING A HAZARDOUS WASTE/CERCLA SPECIAL REVENUE ACCOUNT AND A CERCLA MATCH DEBT SERVICE ACCOUNT; ALLOCATING MONEY FROM THE RESOURCE INDEMNITY TRUST FUND TO THESE ACCOUNTS AND SPECIFYING THEIR USES; APPROPRIATING \$200,000 FOR EXPENSES RELATED TO LAWSUITS UNDER SECTION 107 OF THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980, AS AMENDED IN 1986 (CERCLA); AUTHORIZING ISSUANCE OF CERCLA BONDS AND PROVIDING THE FORM AND TERMS THEREOF; AMENDING SECTION 15-38-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-38-202, MCA, is amended to read:

**"15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All moneys paid into the resource indemnity trust fund shall be invested at the discretion of the

board of investments. All the net earnings accruing to the resource indemnity trust fund shall annually be added thereto until it has reached the sum of \$10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches \$100 million. Thereafter, all net earnings and all receipts shall be appropriated by the legislature and expended, provided that the balance in the fund may never be less than \$100 million.

(2) Beginning in fiscal year 1982, provided the amount in the resource indemnity trust fund is greater than \$10 million, 30% of the interest income of the resource indemnity trust fund must be allocated to the water development state special revenue account created by 85-1-604.

(3) Beginning in fiscal year 1988, 12% of the interest income of the resource indemnity trust fund must be allocated to the *hazardous waste/CERCLA special revenue account provided for in [section 2].*"

**Section 2. Hazardous waste/CERCLA special revenue account.** (1) There is a hazardous waste/CERCLA special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the hazardous waste/CERCLA account:

(a) revenues obtained from the interest income of the resource indemnity trust fund under the provisions of 15-38-202, together with interest accruing on those revenues;

(b) all proceeds of bonds or notes issued under [section 4] and all interest earned on proceeds thereof; and

(c) revenues from penalties or damages collected under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended in 1986 (CERCLA).

(3) Appropriations may be made from the hazardous waste/CERCLA account only for the following purposes and subject to the following conditions:

(a) funds are statutorily appropriated, as provided in 17-7-502(4), to the CERCLA match debt service account necessary to make principal, interest, and premium payments due on CERCLA bonds;

(b) not more than one-half of the interest income received for any biennium from the resource indemnity trust fund may be appropriated on a biennial basis for:

(i) implementation of the Montana Hazardous Waste Act, including regulation of underground storage tanks and the state share to obtain matching federal funds;

(ii) implementation of Title 75, chapter 10, part 6, pertaining to state assistance to and cooperation with the federal government for remedial action under CERCLA;

(iii) expenses of the administration of the environmental sciences division of the department in administering and overseeing the implementation of Title 75, chapter 10, parts 4 and 6; and

(iv) state expenses relating to investigation and remedial action for any hazardous substance defined in 75-10-602; and

(c) to the extent funds are available after the appropriations in subsections (3)(a) and (3)(b), the department may, as appropriate, seek authorization from the legislature or, when the legislature is not in session, through the budget amendment process provided for in Title 17, chapter 7, part 4, to spend funds for:

(i) state participation in remedial action under section 104 of CERCLA;

(ii) state costs for maintenance of sites at which remedial action under CERCLA has been completed; and

(iii) the state share to obtain matching federal funds for underground storage tank corrective action.

(4) For the purposes of subsection (3)(c), the legislature finds that a need for state special revenue to obtain matching federal funds for underground storage tank corrective action or for remedial action under section 104 of CERCLA constitutes a serious unforeseen and unanticipated circumstance for the purpose of meeting the definition of "emergency" in 17-7-401. The legislature further finds that the inability of the department to match such federal funds as may become available would seriously impair the functions of the department in carrying out its responsibilities under Title 75, chapter 10, parts 4 and 6.

(5) There is no dollar limit to the hazardous waste/CERCLA account. Unused balances remain in the account until such time as appropriated by the legislature for the purposes specified in this section.

**Section 3. CERCLA match debt service fund.** (1) There is a CERCLA match debt service fund within the debt service fund type established in 17-2-102.

(2) The state pledges, allocates, and directs to be credited to the CERCLA match debt service fund as received an amount necessary to satisfy principal and interest payments due on outstanding CERCLA bonds.

**Section 4. CERCLA bonds.** (1) When authorized by the legislature and within limits of the authorization and the further limitations established in this section, the board of examiners may issue and sell CERCLA bonds of the state in the amount and manner it considers necessary and proper to finance the match requirements under section 104 of CERCLA and to finance the match requirements for federal money for underground storage tank corrective action. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds so issued and interest and redemption premiums payable thereon according to their terms.

(2) Each series of CERCLA bonds may be issued by the board of examiners upon request of the department of health and environmental sciences, at public or private sale, in such denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with such provisions for conversion or

exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at such rate or rates, maturing at such rate or rates, maturing at such time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at such earlier times and prices and upon such notice, with such provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of such banking institution or institutions within or outside the state, as the board of examiners determines subject to the limitations contained in 17-5-731 and this section.

(3) In the issuance of each series of CERCLA bonds, the interest rates, maturities, and any mandatory redemption provisions thereof must be established in such manner that the funds then specifically pledged and appropriated by law to the CERCLA match debt service fund will, in the judgment of the board of examiners, be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of such bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. Such bonds, notes, and any interest coupons appurtenant thereto must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds and notes issued and sold.

(5) All proceeds of bonds or notes issued under this section must be deposited in the hazardous waste/CERCLA special revenue account established in [section 2].

(6) All actions taken by the board of examiners under this section must be authorized by a vote of a majority of the members.

**Section 5. Appropriations.** (1) Any revenues that remain at the end of the 1986-87 biennium from the interest income of the resource indemnity trust fund appropriated to the department of health and environmental sciences for that biennium under the provisions of 15-38-202 is appropriated to the hazardous waste/CERCLA special revenue account provided for in section 2.

(2) There is appropriated \$200,000 from the hazardous waste/CERCLA special revenue account created in section 2 to the department of health and environmental sciences for use during the 1988-89 biennium for costs incurred in the pursuit or evaluation of lawsuits that the department has instituted or may institute under section 107 of CERCLA.

**Section 6. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this

act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. **Effective date.** This act is effective July 1, 1987.

Approved April 7, 1987.

## CHAPTER NO. 409

[HB 803]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE LICENSING AND REGULATION OF INSURANCE AGENTS, SOLICITORS, ADJUSTERS, CONSULTANTS, AND ADMINISTRATORS; AMENDING SECTIONS 33-17-102, 33-17-201, 33-17-202, 33-17-204, 33-17-211 THROUGH 33-17-213, 33-17-231, 33-17-401, 33-17-601, 33-17-602, 33-17-1001, 33-17-1002, 33-17-1004, AND 33-17-1101 THROUGH 33-17-1104, MCA; REPEALING SECTIONS 33-17-203 AND 33-17-605, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-17-102, MCA, is amended to read:

**"33-17-102. Definitions.** *As used in this title, the following definitions apply:*

(1) An "adjuster" is a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of such an independent contractor or for fee or commission investigates and negotiates settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer. *The term does not include a:*

(a) licensed attorney who is qualified to practice law in this state; or

(b) salaried employee of an insurer or of a managing general agent, or a licensed agent who adjusts or assists in adjustment of losses arising under policies issued by the insurer.

(2) A "public adjuster" is an adjuster employed by and representing the interests of the insured. The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters.

(3) An "agent" is an individual, *partnership*, or corporation appointed by an insurer to solicit applications for insurance or annuities or to negotiate insurance on its behalf and, if authorized to do so by the insurer, to effectuate and countersign insurance contracts.

(4) A "consultant" is a person who for a fee examines, appraises, reviews, or evaluates an insurance policy, annuity, or pension contract, plan, or program or who makes recommendations or gives advice on an insurance policy, annuity, or pension contract, plan, or program.

(5) A "solicitor" is an individual appointed and authorized by an agent to solicit applications for insurance, other than life insurance or disability

insurance, as a representative of such agent, and to collect premiums thereon when expressly so authorized by the agent.

(6) A "managing general agent" is an individual, *partnership*, or corporation appointed as an independent contractor by one or more insurers for the principal purpose of exercising general supervision over the business of the insurer in this state, including the authority to appoint agents for such insurers and to terminate such appointments."

Section 2. Section 33-17-201, MCA, is amended to read:

**"33-17-201. (Temporary) License required of agents, managing general agents, and solicitors — forms.** (1) No person shall in this state act as or hold himself out to be an agent or solicitor as to subjects of insurance located, resident, or to be performed in this state unless then licensed as such agent or solicitor under this chapter.

(2) No person may act or hold himself out in this state to be a managing general agent unless licensed as an insurance agent under this chapter and appointed by the insurers represented.

(3) No agent or solicitor shall solicit or take application for, procure, or place for others any kind of insurance as to which he is not then licensed.

(4) No agent shall place any business, other than coverage of his own risks, with any insurer as to which he does not then hold a *validated* appointment or license as agent under this chapter, except as provided in 33-17-1104 as to life or disability insurance agents and in 33-8-213.

(5) The commissioner *may prescribe by rule and make available the forms* required in connection with application for, issuance, continuation, or termination of licenses and appointments.

(6) Unless licensed as a life insurance agent as required by this section, no person shall in this state solicit life insurance or annuities or procure applications therefor or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney, relative to such insurance or annuities for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of such employees. (Terminates July 1, 1989—sec. 22, Ch. 11, Sp. L. March 1986.)

**33-17-201. (Effective July 1, 1989) License required of agents, managing general agents, and solicitors — forms.** (1) No person shall in this state act as or hold himself out to be an agent or solicitor as to subjects of insurance located, resident, or to be performed in this state unless then licensed as such agent or solicitor under this chapter.

(2) No person may act or hold himself out in this state to be a managing general agent unless licensed as an insurance agent under this chapter and appointed by the insurers represented.



(3) No agent or solicitor shall solicit or take application for, procure, or place for others any kind of insurance as to which he is not then licensed.

(4) No agent shall place any business, other than coverage of his own risks, with any insurer as to which he does not then hold a *validated* appointment or license as agent under this chapter, except as provided in 33-17-1104 as to life or disability insurance agents.

(5) The commissioner *may prescribe by rule and make available the forms* required in connection with application for, issuance, continuation, or termination of licenses and appointments.

(6) Unless licensed as a life insurance agent as required by this section, no person shall in this state solicit life insurance or annuities or procure applications therefor or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney, relative to such insurance or annuities for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of such employees."

Section 3. Section 33-17-202, MCA, is amended to read:

**"33-17-202. General qualifications of agents and solicitors.** (1) For the protection of the people of this state the commissioner shall not issue, continue, or permit to exist any agent or solicitor license as to insurance, except in compliance with this chapter, or as to any individual not qualified therefor as follows:

- (a) must be 18 years of age or more;
- (b) must be a resident in and of this state *or of another state if by reciprocal arrangements made by the commissioner with the other state similar privileges therein are granted to residents of this state;*
- (c) must have been appointed as agent by an authorized insurer, subject to issuance of the license;
- (d) if for a solicitor's license, must have been appointed as solicitor by a licensed resident agent, subject to issuance of the license, and intend to make and make the soliciting of insurance a principal vocation;
- (e) must be competent, trustworthy, and of good reputation;
- (f) must have had experience or training or be otherwise qualified in the kind or kinds of insurance as to which he is to be licensed and be reasonably familiar with the provisions of this code which govern his operations as an insurance agent or solicitor;
- (g) must pass *an* examination for the license required under this chapter;
- (h) *if for an agent's license as to life or disability insurance, must not be a funeral director, undertaker, or mortician operating in this or any*

*other state or an officer, employee, or representative thereof or hold an interest in or benefit from such a business in this or any other state.*

(2) In determining the qualifications as to competence, training, experience, and knowledge of the provisions of this code governing his operations as an agent or solicitor, as provided for in subsection (1) above, of applicant agents or solicitors proposing to represent as such only insurers who confine their business in this state substantially to the insuring of the property, interests, and risks of farmers, the commissioner shall relate such qualifications only to the kinds of insurance policies which the applicant will handle as such a licensee."

Section 4. Section 33-17-204, MCA, is amended to read:

**"33-17-204. Licensing of organizations — requisites.** (1) A partnership or corporation *engaged in this state in soliciting or negotiating insurance policies must be licensed as an insurance agent. Each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation, personally engaged in this state on behalf of the corporation in soliciting or negotiating insurance policies, shall be licensed with the commissioner in conjunction with the partnership or corporation license and shall qualify as an individual. A license fee shall be paid for each individual licensed in conjunction with the partnership or corporation license.*

(2) A license shall not be issued to a partnership or corporation unless the transaction of business under the license is within the purposes stated in the partnership agreement or the articles of incorporation.

(3) The partnership or corporate licensee shall promptly notify the commissioner of each change relative to the individuals designated in the license.

(4) *The commissioner may not issue a license to a partnership or corporation unless the secretary of state has issued a valid certificate to the partnership under 35-12-601 or to the corporation under 35-1-203 or 35-2-203."*

Section 5. Section 33-17-211, MCA, is amended to read:

**"33-17-211. Application for license.** (1) Application for an agent or solicitor license must be made to the commissioner by the applicant and be signed and sworn to by the applicant before a notary public.

(2) The commissioner *may designate the forms for application for license, which must require full answers to such questions as may reasonably be necessary to determine the applicant's identity, residence, personal history, business record, experience and training in insurance, and other facts as required by the commissioner to determine whether the applicant meets the applicable qualifications for the license applied for.*

(3) If for an agent's license, the application must state the kinds of insurance proposed to be transacted and be accompanied by written appointment of the applicant as agent by an authorized insurer, subject to issuance of the license.

(4) If for a solicitor's license, the application must be accompanied by written appointment of applicant as solicitor by a licensed agent, subject to issuance of the license.

(5) If the applicant for an agent license is a *partnership* or corporation, the application shall show, in addition, the names of all members, officers, and directors and shall designate each individual who is to exercise the powers to be conferred by the license upon the *partnership* or corporation. Each such individual so designated shall furnish information as to himself, as part of the application, as though for an individual license.

(6) If the applicant for an agent license is an agents' association pursuant to 33-17-205, the application must show the names and residence addresses of the association's officers and trustees.

(7) If for license as either agent or solicitor, the application must also show whether applicant was ever previously licensed to transact any kind of insurance in this state or elsewhere; whether any such license was ever refused, suspended, or revoked; whether any insurer, general agent, or agent, in the case of a solicitor application, claims applicant to be indebted to it and, if so, the details thereof and the defenses, if any, of the applicant thereto; and whether applicant ever had an agency contract canceled and the facts thereof.

(8) The commissioner shall require as part of the application for license the certificate of an officer or representative of the insurer proposed to be represented, in the case of applicants for license as agent, or of the proposed employing agent, in the case of applicants for license as solicitor, as to whether the applicant is known to such officer or representative, whether the insurer or agent has investigated the character and business record of the applicant and the uses to be made of the license, if granted, and his opinion, based on such investigation, as to applicant's trustworthiness and competence.

(9) All such applications must be accompanied by the applicable license fee, appointment of agent fee where applicable, and examination fee where required under 33-17-212, all in the respective amounts stated in 33-2-708."

Section 6. Section 33-17-212, MCA, is amended to read:

**"33-17-212. Examination required.** (1) After completion and filing of the application for license as required under 33-17-211, the commissioner shall subject each applicant for license as agent or solicitor, unless exempted therefrom under subsection (5) below, to an examination as to his competence to act as such agent or solicitor. *The commissioner may either conduct the examination or arrange for the examination to be conducted by a testing service, which shall recover the cost of the examination from the applicant.*

(2) If the applicant is a *partnership* or corporation, the examination shall be so taken by each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license.

(3) Examination of an applicant for an agent's license shall cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

- (a) life insurance;
- (b) disability insurance;
- (c) property insurance; for the purposes of this provision, "marine" insurance shall be deemed to be included in "property" insurance;
- (d) casualty insurance;
- (e) vehicle insurance;
- (f) surety insurance;
- (g) credit life and disability insurance;
- (h) title insurance.

(4) Examination of an applicant for a solicitor's license shall cover all the kinds of insurance, other than life, as to which the appointing agent is licensed.

(5) This section shall not apply to, and no such examination shall be required of:

(a) any individual lawfully licensed as an agent or solicitor as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and thereafter continuing to be so licensed;

(b) any applicant for license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months next preceding date of application unless such previous license was suspended, revoked, or continuation thereof refused by the commissioner, except that the provisions of this subsection (5)(b) do not apply to title agents, as defined in 33-25-105;

(c) any applicant for license as nonresident agent, subject to reciprocal arrangements as provided for in this code;

(d) all applicants for license as agent for an insurer that confines its business in this state substantially to the insuring of the property, interests, and risks of farmers, if exempted from examination by the commissioner, in his discretion, upon written request of the insurer;

(e) transportation ticket agents of common carriers applying for license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on such common carrier, as incidental to their duties as such transportation ticket agents;

(f) agents' associations applying for license under 33-17-205;

(g) mechanical breakdown insurance agents."

Section 7. Section 33-17-213, MCA, is amended to read:

**"33-17-213. Conduct of examinations.** (1) The commissioner shall make any examination required under 33-17-212 available to applicants with reasonable frequency and at *places* in this state reasonably accessible to the applicants.

(2) All the kinds of insurance or classes thereof, as referred to in 33-17-212(3), which the applicant proposes to transact under the license applied for shall be included in the same examination.

(3) The commissioner shall *assure that the examinations are conducted* in a fair and impartial manner and without unfair discrimination as between individuals examined.

(4) The commissioner may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same kind or kinds of insurance.

(5) The examination of a title agent, as defined in 33-25-105, must include but is not limited to questions pertaining to the search and examination of title to real property, insurance principles relating to title insurance, and the fiduciary duties and procedures of escrows, settlements, and closings of real estate transactions."

Section 8. Section 33-17-231, MCA, is amended to read:

**"33-17-231. Appointment of agents — continuation and termination.** (1) Each insurer appointing an agent in this state shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the agent for the insurer, and pay the fee therefor as stated in 33-2-708. *The term of the appointment is for 1 year and runs from June 1 of each year through May 31 of the succeeding year.*

(2) Subject to annual *renewal* by the insurer, each such appointment shall remain in effect until the agent's license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the insurer.

(3) Annually, prior to May 1, each insurer shall file with the commissioner an alphabetical list in duplicate of the names and addresses of all its agents whose appointments in this state are to remain in effect, accompanied by payment of the annual renewal fee as provided in 33-2-708. At the same time the insurer shall also file with the commissioner a termination report of all agents whose appointments in this state are not to remain in effect.

(4) Subject to the agent's contract rights, an insurer may terminate an *agent's* appointment at any time. The insurer shall promptly give written notice of such termination to the commissioner and to the agent. The commissioner may require of the insurer reasonable proof that the insurer has given such notice to the agent.

(5) As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a statement of the facts relative to

the termination and the cause thereof. Any information or statement contained in the notice of termination shall not be admissible as evidence in any action or proceeding against the insurer or any representative thereof by or in behalf of any person affected by such termination."

Section 9. Section 33-17-401, MCA, is amended to read:

**"33-17-401. Nonresident agent — reciprocity.** The commissioner may *issue only a nonresident license* to a person, partnership, or corporation otherwise qualified under this code but not a resident of this state *and only* if pursuant to the laws of the state of his residence a similar privilege is extended to persons resident in Montana."

Section 10. Section 33-17-601, MCA, is amended to read:

**"33-17-601. Administrator defined.** As used in this part, the term "administrator" means any person, corporation, partnership, or association *that collects charges or premiums from residents of this state in connection with life or health insurance coverage or annuities or property or casualty insurance coverage or that adjusts or settles claims on such coverage*, but does not include:

(1) an employer on behalf of its employees or on behalf of the employees of one or more subsidiary or affiliated corporations of such employer;

(2) a union on behalf of its members;

(3) an insurance company which is either licensed in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business or a health service corporation as defined in 33-30-101;

(4) a life, health, *property, or casualty* agent who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(5) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(6) a trust established in conformity with 29 U.S.C. 186, its trustees, or agents and employees acting thereunder;

(7) a trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees, or employees acting thereunder;

(8) a custodian acting pursuant to a custodian account which meets the requirements of section 401(f) of the Internal Revenue Code or its agents and employees;

(9) a bank, credit union, or other financial institution which is subject to supervision or examination by federal or state banking authorities;

(10) a credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized it to do so, provided such company does not adjust or settle claims; or

(11) a person who adjusts or settles claims in the normal course of his practice or employment as an attorney and who does not collect charges or

premiums in connection with life or health insurance coverage or annuities."

Section 11. Section 33-17-602, MCA, is amended to read:

**"33-17-602. Written agreement required.** (1) No person may act as an administrator without a written agreement between the person and the insurer. The written agreement shall be retained as part of the official records of both the administrator and the insurer for the duration of the agreement and for 5 years thereafter. The written agreement shall contain provisions which include the requirements of 33-17-612 through 33-17-617 insofar as these requirements relate to the functions performed by the administrator.

(2) The agreement shall contain a provision with respect to the underwriting or other standards pertaining to the business underwritten by such insurer.

(3) Whenever a policy is issued to a trustee, a copy of the trust agreement and any amendments thereto shall be furnished to the insurer by the administrator and shall be retained as part of the official records of both the administrator and the insurer for the duration of the policy and for 5 years thereafter."

Section 12. Section 33-17-1001, MCA, is amended to read:

**"33-17-1001. Suspension, revocation, or refusal of license.** (1) Except as provided in 33-17-411, the commissioner may suspend for not more than 12 months or may revoke or refuse to continue any license issued under this chapter or any surplus *lines* agent license if, after hearing held on not less than 10 days' advance notice by certified mail of such hearing and of the charges against the licensee given as provided in 33-1-314(3) to the licensee and to the insurers represented, as to an agent, or to the appointing agent, as to a solicitor, he finds that as to the licensee any one or more of the following causes exist:

(a) for any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;

(b) for obtaining or attempting to obtain any such license through misrepresentation or fraud;

(c) for violation of or noncompliance with any applicable provision of this code or for willful violation of any lawful rule or order of the commissioner;

(d) for misappropriation or conversion to his own use or illegal withholding of moneys or property belonging to policyholders, *insurers*, beneficiaries, or others and received in conduct of business under the license;

(e) conviction, by final judgment, of a felony involving moral turpitude;

(f) if in the conduct of his affairs under the license the licensee has used fraudulent or dishonest practices or has shown himself to be incompetent, untrustworthy, or a source of injury and loss to the public.

(2) The license of a *partnership* or corporation may be suspended, revoked, or refused also for any of such causes as relate to any individual designated in the license to exercise its powers.

(3) *The commissioner may suspend, revoke, or refuse to continue a license under subsection (1)(e) without conducting an investigation pursuant to 37-1-203 or making a written finding pursuant to 37-1-204.*"

Section 13. Section 33-17-1002, MCA, is amended to read:

**"33-17-1002. Procedure following suspension or revocation.** (1) Upon suspension or revocation of any such license, the commissioner shall forthwith notify the licensee thereof either in person or by mail addressed to the licensee at his address last of record with the commissioner. Notice by mail shall be deemed effectuated when so mailed. The commissioner shall give like notice to the insurers represented by the agent, in the case of an agent's license, and to the agent by whom appointed, in the case of a solicitor's license.

(2) Suspension or revocation of the license of an agent shall automatically revoke or suspend the licenses of all solicitors appointed by him.

(3) The commissioner shall not again issue a license under this code to or as to any person whose license has been revoked until after expiration of 1 year and thereafter not until such person again qualifies therefor in accordance with the applicable provisions of this code. A person whose license has been revoked twice shall not again be eligible for any license under this code.

(4) If the license of a *partnership* or corporation is so suspended or revoked, no member of such *partnership* or officer or director of such corporation shall be licensed or be designated in any license to exercise the powers thereof during the period of such suspension or revocation unless the commissioner determines upon substantial evidence that such member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked."

Section 14. Section 33-17-1004, MCA, is amended to read:

**"33-17-1004. Acting as insurance agent, solicitor, or adjuster without license — penalty.** Except as provided in 33-17-411, a person, *partnership*, association, or corporation who or which, in this state, acts as an insurance agent, solicitor, or adjuster without having authority to do so by virtue of a license issued and in force pursuant to the provisions of this chapter is guilty of a misdemeanor and upon conviction shall be fined \$500 or imprisoned in the county jail for 90 days, or both."

Section 15. Section 33-17-1101, MCA, is amended to read:

**"33-17-1101. Place of business — display of license — records.** (1) Every *resident* agent shall have and maintain a place of business in this state accessible to the public. A *nonresident* agent may maintain a place of business in this state. An agent's place of business must be that wherein he principally conducts transactions under his license. The *street* address of such place shall appear upon the license, and the licensee shall promptly notify the commissioner of any change in his *street* or *mailing* address.



Nothing in this section prohibits maintenance of such place of business in the licensee's place of residence.

(2) The license of the licensee and the license of each solicitor appointed by and representing the licensee *must* be conspicuously displayed in such place of business *at the street address shown on the license* in a part thereof customarily open to the public.

(3) The agent shall keep at his place of business complete records pertaining to transactions under his license and the licenses of his solicitors, for a period of at least 3 years after completion of the respective transactions, except that title agents, as defined in 33-25-105, shall retain records as provided in 33-25-214 and 33-25-216."

Section 16. Section 33-17-1102, MCA, is amended to read:

**"33-17-1102. Reporting and accounting for premiums.** (1) All premiums or return premiums received by an agent or solicitor *must be held in a separate trust account. The licensee shall at all times act in a fiduciary capacity, and the agent or solicitor shall in the applicable regular course of business account for and pay the same to the insured, insurer, or agent entitled thereto. Except for a title agent as defined in 33-25-105, an agent may deposit and commingle in the same such separate deposit all such funds belonging to others so long as the amount of such deposit so held for each respective other person is reasonably ascertainable from the records and accounts of the licensee.*

(2) Any agent or solicitor not lawfully entitled thereto *may not divert or appropriate* such funds or any portion thereof to his own use."

Section 17. Section 33-17-1103, MCA, is amended to read:

**"33-17-1103. Exchange of business — sharing commissions.** (1) An agent may, *under rules adopted by the commissioner*, place an insurance coverage with an insurer as to which he is not then licensed or appointed as an agent, and the insurer shall accept such business, only when placed through an agent, licensed under this chapter and appointed by the insurer. Both agents involved in such an exchange of business must be licensed as to all of the kinds of insurance represented by the coverage so placed.

(2) The agents involved in a lawful exchange of business under subsection (1) above may divide between them the commission or compensation payable on account of such coverage.

(3) No agent or solicitor shall directly or indirectly share his commissions or other compensation received or to be received by him on account of a transaction under his license with any person not also licensed under this chapter as to the same kind or kinds of insurance involved in such transactions, except as provided in 33-17-1113. This provision shall not affect payment of the regular salaries due employees of the licensee or the distribution in regular course of business of compensation and profits among members or stockholders if the licensee is a firm or corporation or use of funds for family or personal purposes.

(4) This section does not apply as to those transactions with surplus lines agents which are lawful under 33-2-306 or as to life or disability insurance placed as provided in 33-17-1104."

Section 18. Section 33-17-1104, MCA, is amended to read:

**"33-17-1104. Life or disability agent authorized to place excess or rejected business.** A life or disability insurance agent may, *under rules adopted by the commissioner*, place excess or rejected risks in any other life or disability insurer authorized to transact insurance in this state, with the knowledge and approval of the insurer or insurers as to which the agent is so licensed, and may receive a commission thereon without being required to have a license as to such other insurer."

Section 19. **Repealer.** Sections 33-17-203 and 33-17-605, MCA, are repealed.

Section 20. **Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 7, 1987.

## CHAPTER NO. 410

[HB 818]

AN ACT TO ALLOW THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO PRINT A COMPLETE AND UPDATED VOLUME OF THE SCHOOL LAWS OF THE STATE AT HIS DISCRETION; AMENDING SECTION 20-3-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-3-105, MCA, is amended to read:

**"20-3-105. Administrative powers and duties.** In administering the affairs of his office, the superintendent of public instruction shall have the power and it shall be his duty to:

(1) keep a record of his official acts and all documents applicable to the administration of the office, preserve all official reports submitted to him for the period required by law, and surrender them to his successor at the expiration of his term;

(2) preserve all books, educational media, instructional equipment, and any other articles of educational interest and value which come into his possession and surrender them to his successor at the expiration of his term;

(3) cause the printing and distribution of all reports and forms necessary for the proper conduct of business by a district or school in the manner prescribed by the provisions of this title;

(4) provide and keep an official seal of the superintendent of public instruction by which his official acts shall be authenticated;

(5) if he deems necessary, cause the printing of a complete and updated volume of the school laws of the state, which shall be offered and sold at cost of the printing and shipping to any school official or other person;

(6) whenever a replacement volume is not printed under the provisions of subsection (5), cause the printing of a cumulative supplement to the most recent volume of school laws immediately after the conclusion of any session of the legislature at which new school laws or amendments to the school laws were adopted. It shall be offered and sold at cost of the printing and shipping to any school official or other person.

(7) if deemed necessary, publish a biennial report of the superintendent of public instruction;

(8) counsel with and advise county superintendents on matters involving the welfare of the schools and, when requested, give a county superintendent a written answer to any question concerning school law;

(9) call an annual meeting of the county superintendents when he deems it advisable;

(10) as far as he shall find it practicable, address public assemblies on subjects pertaining to education in Montana; and

(11) faithfully work in all practical and possible ways for the welfare of the public schools of the state."

**Section 2. Effective date.** This act is effective on passage and approval.

Approved April 7, 1987.

## CHAPTER NO. 411

[SB 96]

AN ACT TO ESTABLISH ADDITIONAL PENALTIES FOR INDIVIDUALS CONVICTED FOR TWO OR MORE INCIDENTS OF ELDER ABUSE, NEGLECT, OR EXPLOITATION; AND AMENDING SECTION 53-5-525, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 53-5-525, MCA, is amended to read:

**"53-5-525. Penalties.** (1) Any person who purposely or knowingly fails to make a report required by 53-5-511 or discloses or fails to disclose the contents of a case record or report in violation of 53-5-513 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) Any individual who purposely or knowingly abuses, neglects, or exploits an older person is guilty of *an offense* and upon a *first* conviction may be fined an amount not to exceed \$500 or be imprisoned in the county

jail for a term not to exceed 6 months, or both, and upon a second or succeeding conviction may be imprisoned for a term not to exceed 10 years and may be fined an amount not to exceed \$10,000, or both."

Section 2. **Extension of authority.** Any existing authority of the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 9, 1987.

## CHAPTER NO. 412

[SB 113]

### AN ACT CLARIFYING THE STATUTES REGARDING PRESESSION ACTIVITIES OF THE LEGISLATURE; AND AMENDING SECTIONS 5-2-201 THROUGH 5-2-203 AND 5-11-209, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 5-2-201, MCA, is amended to read:

**"5-2-201. Presession caucus.** As soon after the official canvass as possible, but not later than December 1 of each year following an election when members of the legislature are elected, the majority and minority parties of each house of the legislature shall hold a presession caucus for hold-over senators, senators-elect, and representatives-elect. The purpose of the caucus of each party of each house is to *nominate officers and establish the basis for additional presession activity, including hiring staff and appointing committees.*"

Section 2. Section 5-2-202, MCA, is amended to read:

**"5-2-202. Presession activity.** (1) Members of the legislature *nominated* to leadership positions during the presession caucus and members *nominated or appointed* to the legislative administration committees, committee on committees, and rules committees may meet and perform necessary organizational tasks prior to the session, including but not limited to appointing committees, hiring staff, and assigning space and seating.

(2) Members of the house appropriations committee and of the senate finance and claims committee named *prior to the session* may begin reviewing requests for appropriations immediately and may visit state agencies and institutions to discuss requests."

Section 3. Section 5-2-203, MCA, is amended to read:

**"5-2-203. Compensation and expenses.** (1) Members of the legislature attending the presession caucus are entitled to receive compensation and expenses as provided in 5-2-302.

(2) While engaged in presession business, members *nominated to serve as officers of the legislature* and members of the committees named in

5-2-202 are entitled to receive compensation and expenses as provided in 5-2-302.”

Section 4. Section 5-11-209, MCA, is amended to read:

**“5-11-209. Codes — availability to legislators — reserved for use by legislative committees.** (1) Immediately after the Montana Code Annotated statute text and histories are bound following each legislative session, the legislative council shall make available one set of these volumes to each member of the legislature at a charge of \$10.

(2) The legislative council shall reserve 50 sets of the Montana Code Annotated statute text and histories for the use of *the standing and select committees of the legislature*.

(3) Costs associated with providing code sets as required by this section shall be paid out of the state special revenue fund account established under 1-11-301.”

Approved April 9, 1987.

## CHAPTER NO. 413

[SB 134]

AN ACT TO MAKE THE CRIME OF CONVEYING A DANGEROUS DRUG TO A PERSON SUBJECT TO OFFICIAL DETENTION A FELONY PUNISHABLE BY A PRISON TERM NOT TO EXCEED 10 YEARS; AND AMENDING SECTION 45-7-307, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-7-307, MCA, is amended to read:

**“45-7-307. Transferring illegal articles or unauthorized communication.** (1) (a) A person commits the offense of transferring illegal articles if he knowingly or purposely transfers any illegal article or thing to a person subject to official detention or is transferred any illegal article or thing by a person subject to official detention.

(b) A person convicted of transferring illegal articles shall be:

(i) imprisoned in the state prison for a term not to exceed 20 years, if he conveys a weapon to a person subject to official detention;

(ii) *imprisoned in the state prison for a term not to exceed 10 years, if he conveys a dangerous drug, as defined in 50-32-101, to a person subject to official detention; or*

(iii) fined not to exceed \$100 or imprisoned in the county jail for any term not to exceed 10 days, or both, if he conveys any other illegal article or thing to a person subject to official detention.

(c) Subsection (1)(b)(iii) does not apply unless the offender knew or was given sufficient notice so that he reasonably should have known that the article or thing he conveyed was an illegal article.

(2) (a) A person commits the offense of unauthorized communication if he knowingly or purposely communicates with a person subject to official detention without the consent of the person in charge of such official detention.

(b) A person convicted of the offense of unauthorized communication shall be fined not to exceed \$100 or imprisoned in the county jail for any term not to exceed 10 days, or both."

Approved April 9, 1987.

## CHAPTER NO. 414

[SB 151]

AN ACT AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ISSUE AN INTERIM PERMIT FOR THE APPROPRIATION OF GROUND WATER IN MUSSELSHELL COUNTY PURSUANT TO SECTION 85-2-317, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, agricultural and stockwater users in Musselshell County are experiencing water shortages during periods of low flow in the Musselshell River; and

WHEREAS, alternatives for additional water supplies, such as off-stream reservoir storage, would be very costly; and

WHEREAS, abandoned coal mines near Roundup could provide substantial supplemental water; and

WHEREAS, the Deadman Basin Water Users Association has applied to the Department of Natural Resources and Conservation for a permit to appropriate approximately 13,000 acre-feet annually; and

WHEREAS, the use of this water would exceed 3,000 acre-feet per year and therefore requires legislative approval pursuant to 85-2-317, MCA.

THEREFORE, The Legislature of the State of Montana finds it appropriate to authorize the Department of Natural Resources and Conservation to issue a permit to appropriate ground water to the Deadman Basin Water Users Association.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Authorization to issue permit to appropriate ground water.** Pursuant to 85-2-317(1), the department of natural resources and conservation may issue an interim permit for a period ending September 30, 1989, to appropriate ground water in excess of 3,000 acre-feet per year to the Deadman Basin water users association according to application number 61478-g40C for the purpose of conducting and evaluating a project to pump ground water from abandoned mine workings along the lower

Musselshell River. The application is subject to the remaining provisions of Title 85, chapter 2, part 3.

**Section 2. Coordination instruction.** If House Bill No. 642, including the section of that bill repealing 85-2-317, is passed and approved, this act is void.

**Section 3. Effective date.** This act is effective July 1, 1987.

Approved April 9, 1987.

## CHAPTER NO. 415

[SB 152]

AN ACT REQUIRING THAT THE TIME FOR FILING A COMPLAINT WITH THE COMMISSION FOR HUMAN RIGHTS BE INCREASED IF THE COMPLAINANT HAS ATTEMPTED TO RESOLVE THE DISPUTE THROUGH A GRIEVANCE PROCEDURE; AMENDING SECTIONS 49-2-501 AND 49-3-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 49-2-501, MCA, is amended to read:

**"49-2-501. Filing complaints.** (1) A complaint may be filed by or on behalf of any person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint must be in the form of a written, verified complaint stating the name and address of the person, educational institution, financial institution, or governmental entity or agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.

(2) (a) *Except as provided in subsection (2)(b), a complaint under this chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.*

(b) *If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.*

(c) Any complaint not filed within the times set forth herein may not be considered by the commission."

Section 2. Section 49-3-304, MCA, is amended to read:

**"49-3-304. Filing complaints.** (1) *Except as provided in subsection (2), a complaint under this chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.*

(2) *If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.*

(3) *A complaint not filed within the times set forth in this section may not be considered by the commission."*

Section 3. **Extension of authority.** Any existing authority of the human rights commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date — applicability.** (1) This act is effective on passage and approval.

(2) This act applies to claims accruing after the effective date of this act.

Approved April 9, 1987.

## CHAPTER NO. 416

[SB 175]

AN ACT REQUIRING THAT MONEY APPROPRIATED IN EXCESS OF THE AMOUNT NEEDED TO FUND DISTRICT COURT EXPENSES IN CRIMINAL CASES BE USED FOR DISTRICT COURT GRANTS; AMENDING SECTIONS 3-5-901, 7-6-2352, AND 61-3-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 3-5-901, MCA, is amended to read:

**"3-5-901. State assumption of certain district court expenses.** (1) Effective July 1, 1985, the state shall, to the extent that money is appropriated, fund the following district court expenses in criminal cases only:

(a) salaries of court reporters;



- (b) transcripts of proceedings;
- (c) witness fees and necessary expenses;
- (d) juror fees;
- (e) indigent defense; and
- (f) psychiatric examinations.

(2) The department of commerce, in consultation with the district judges for each judicial district, shall include within the department's biennial budget request to the legislature a request for funding the expenses listed in subsection (1).

(3) (a) If money appropriated for the expenses listed in subsection (1):

(i) *exceeds the amount necessary to fully fund those expenses, the excess amount must be used for district court grants as provided in 7-6-2352; or*

(ii) *is insufficient to fully fund those expenses, the county is responsible for payment of the balance.*

(b) *If no money is appropriated, the county is responsible for payment of all expenses."*

Section 2. Section 7-6-2352, MCA, is amended to read:

**"7-6-2352. State grants to district courts — rules.** (1) The department of commerce shall make grants, to the extent funds are *available after expenses provided for in 3-5-901 are funded*, to the governing body of a county for the district courts for assistance, as provided in this section.

(2) The governing body of a county may apply to the department of commerce for a grant by filing a written request on forms provided by the department by July 20 for the previous fiscal year unless the department grants a time extension upon request of the county. In its request for a grant, a county must certify that:

(a) all expenditures from the district court fund have been lawfully made;

(b) no transfers from the district court fund have been or will be made to any other fund; and

(c) no expenditures have been made from the district court fund that are not specifically authorized by 7-6-2511 and 7-6-2351.

(3) To the extent funds are available, the department of commerce shall award a grant if the county's district court expenditures for the previous fiscal year exceeded the sum of:

(a) the product of the maximum mill levy authorized by law for district court purposes, whether or not assessed, multiplied by the previous year's taxable valuation of the county; and

(b) all revenues, except district court grants, required by law to be deposited in the district court fund for the previous fiscal year.

(4) Eligible court expenditures for grant purposes include all costs of the county associated with the operation and maintenance of the district court, from whatever fund paid, except costs for building and capital items and library maintenance, replacement, and acquisition.

(5) The department of commerce shall notify each eligible county as soon as possible of its intention to award a grant to that county and the amount of the award.

(6) The grant received by the county shall be placed in the district court fund.

(7) After all grants are awarded, the department of commerce shall audit each approved grant request. The department shall charge each county receiving a grant an audit fee in the same amount as the costs incurred in conducting the audit.

(8) If the audit of a grant recipient discloses that the recipient received a grant in excess of the amount for which it was eligible, the recipient shall repay the excess to the department of commerce. The department shall redistribute any repaid excess amounts to the other counties that received grants from the appropriation from which the overpayment was made, on the same basis as the original awards. No county is eligible for a district court grant if it owes the department a refund of a prior year's overpayment.

(9) The department of commerce shall prescribe rules and forms necessary to effectively administer this section. The department may require a county to provide any information considered necessary for the administration of the program."

Section 3. Section 61-3-509, MCA, is amended to read:

**"61-3-509. (Temporary) Disposition of taxes and fees in lieu of tax.** (1) Except as provided in subsections (2) and (3), the county treasurer shall credit all taxes on motor vehicles, light vehicle license fees provided for in 61-3-532, and fees in lieu of tax on motorcycles, quadricycles, motor homes, and travel trailers collected to a motor vehicle suspense fund, and at some time between March 1 and March 10 of each year and every 60 days thereafter, the county treasurer shall distribute the money in the motor vehicle suspense fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(2) The county treasurer shall credit the fee for district courts from each light vehicle license fee to a separate suspense account and shall forward the amount in the account to the state treasurer at the time the county treasurer distributes the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the general fund to be used for purposes of state funding of the district court expenses *as provided in 3-5-901.*

(3) The county treasurer shall credit each block grant fee to a separate suspense fund. At the time he distributes the motor vehicle suspense fund, the treasurer shall distribute the suspense fund provided for in this subsection to the state treasurer for deposit in the local government block grant

account provided for in 7-6-302. The funds distributed pursuant to this subsection must be used for the local government block grant program as provided in 7-6-304.

**61-3-509. (Effective July 1, 1987) Disposition of taxes and fees in lieu of tax.** The county treasurer shall credit all taxes on motor vehicles, light vehicle license fees provided for in 61-3-532, and fees in lieu of tax on motorcycles, quadricycles, motor homes, and travel trailers collected to a motor vehicle suspense fund, and at some time between March 1 and March 10 of each year and every 60 days thereafter, the county treasurer shall distribute the money in the motor vehicle suspense fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed."

**Section 4. Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 5. Effective date.** This act is effective on passage and approval.

Approved April 9, 1987.

## CHAPTER NO. 417

[SB 229]

AN ACT PROHIBITING A DISTRICT COURT FROM ORDERING THE PLACEMENT OF OR DELIVERY OF SERVICES TO A DEVELOPMENTALLY DISABLED PERSON IN COMMUNITY-BASED SERVICES; REQUIRING THE COURT TO DISMISS PETITIONS CONCERNING TREATMENT AND HABILITATION FOR CERTAIN DEVELOPMENTALLY DISABLED RESPONDENTS AND TO REFER THE RESPONDENTS TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES; AMENDING SECTIONS 53-20-124, 53-20-125, AND 53-20-128, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Court-ordered placement in community-based services prohibited.** Nothing in this part may be construed as authorizing the placement of and delivery of services to developmentally disabled persons in community-based services by court order except as provided in 53-20-123(4). Placement of persons in community-based services is governed by 53-20-209.

**Section 2.** Section 53-20-124, MCA, is amended to read:

**"53-20-124. Outcome of evaluation and treatment — recommendation for community-based treatment. — hearing.** (1) If, as a

result of the evaluation and treatment ordered by the court, the professional person in charge of the case recommends a course of habilitation and treatment at the community level making use of community- and regional-based services for the developmentally disabled, he shall report his recommendation in writing to the court. The recommendation shall be accompanied by a written report indicating the factual basis for the recommendation and describing any tests or evaluation devices which the professional person has employed in evaluating the respondent. If this course of treatment and habilitation is agreed to by the parents, guardian, person evaluated, responsible person, if any, and counsel for the person evaluated, if any, then this community-based course of treatment shall be commenced as soon as practicable and the petition shall be dismissed.

(2) If any of the parties listed in the preceding subsection object to the community-based course of treatment, they may request the court to conduct a hearing on the matter. If a responsible person has not yet been appointed, the court may appoint a responsible person prior to the hearing. Notice of the time, date, and place of the hearing shall be mailed or delivered to all of the parties listed in the preceding subsection and to the attorney for the parents or guardian, if any. The hearing shall be held before the court without a jury. The rules of civil procedure shall apply. If the court finds that the respondent is developmentally disabled and in need of community-based developmental disabilities services, it shall *dismiss the petition and refer the respondent to the department of social and rehabilitation services to be considered for placement in community-based services according to 53-20-209.*"

Section 3. Section 53-20-125, MCA, is amended to read:

**"53-20-125. Outcome of evaluation and treatment — recommendation for treatment at residential facility — hearing.** (1) If as a result of the evaluation and treatment, either agreed to by the parents, guardian, or the person himself pursuant to 53-20-120 or ordered by the court, the professional person in charge of the case concludes that the person evaluated is seriously developmentally disabled and recommends that treatment and habilitation be had in a residential facility on an extended basis, the professional person shall file his written recommendation and report with the court and request that the court order the admission. The report shall include the factual basis for the recommendation and shall describe any tests or evaluation devices which have been employed in evaluating the patient. If no responsible person has yet been appointed, the court may appoint one at this time. If there is no parent or guardian, the court shall appoint a responsible person. At the request of the respondent, his parents or guardian, or the responsible person, the court shall appoint counsel for the respondent. If the parents (or guardian) are indigent and if they request it, the court shall appoint counsel for the parents or guardian. Notice of the recommendation shall be mailed or delivered to the respondent, his parents or guardian, the responsible person, next of kin, if known, and the attorney for the respondent, if any, and for the parents or guardian, if any.

(2) The respondent, his parents or guardian, the responsible person, or the attorney for any party may request that a hearing be had on the

recommendation. If a hearing is requested, the court shall mail or deliver notice of the date, time, and place of the hearing to each of the parties listed at the beginning of this subsection. The hearing shall be to the court without jury. The rules of civil procedure shall apply.

(3) If the court finds that the respondent is seriously developmentally disabled and that available community-based services are not adequate to protect the life and physical safety of the person and others or to provide appropriate treatment and habilitation, it shall order the respondent admitted to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent is developmentally disabled, in need of developmental disability services, *and eligible for placement in community-based services* and that available community-based services are adequate to protect the life and physical safety of the person and others and to provide appropriate treatment and habilitation, it shall *dismiss the petition and refer the respondent to the department of social and rehabilitation services to be considered for placement in community-based services according to 53-20-209*. If the court finds that the respondent is not developmentally disabled or is not in need of developmental disability services, it shall dismiss the *petition*.

(4) If none of the parties notified of the recommendation request a hearing, the court may issue an order authorizing the person to be admitted to the residential facility for an extended period of treatment and habilitation or the court may initiate its own inquiry as to whether the order should be granted. The court may refuse to authorize admission of a person to a residential facility for an extended period of treatment and habilitation if such admission is not in the best interests of the person."

Section 4. Section 53-20-128, MCA, is amended to read:

**"53-20-128. Extension of admission period — hearing.** (1) If the professional person in charge of the resident determines that the admission to the residential facility should continue beyond the period specified in the court order, he shall, at least 15 days before the end of the period set out in the court order, send written notice of his recommendation and request for renewal of the order to the court which issued the order, the resident, his parents or guardian, the next of kin, if known, the attorney who most recently represented the resident, if any, and the responsible person appointed by the court, if any. The recommendation and request shall be accompanied by a written report which shall describe the habilitation plan which has been undertaken for the resident and the future habilitation plan which is anticipated by the professional person.

(2) If any person so notified requests a hearing, the court shall set a time and place for the hearing and shall mail or deliver notice to all of the persons informed of the recommendation. The hearing shall be conducted in the manner set out in 53-20-125. If the court finds that the residential admission is still justified, it may order continuation of the admission to that residential facility or transfer of the resident to a different residential facility. If the court finds that the resident is still in need of developmental disabilities services but does not require residential treatment or if all parties are willing for the resident to participate in a community-based program of habilitation, it shall *refer the respondent to the department of*

*social and rehabilitation services to be considered for placement in community-based services according to 53-20-209. If the person is placed in community-based services or if the need for developmental disabilities services no longer exists, the court shall dismiss the petition. The court shall not order continuation of admission to a residential facility which does not have an individualized habilitation plan for the resident. In its order, the court shall make findings of fact on which its order is based. The court may on its own initiative inquire concerning the suitability of continuing an admission to a residential facility."*

**Section 5. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 53, chapter 20, part 1, and the provisions of section 1 apply to Title 53, chapter 20, part 1.

**Section 6. Effective date.** This act is effective on passage and approval.

Approved April 9, 1987.

## CHAPTER NO. 418

[SB 373]

AN ACT ESTABLISHING THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; SPECIFYING ALLOCATIONS FROM THE INTEREST INCOME OF THE RESOURCE INDEMNITY TRUST FUND TO THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM AND THE RENEWABLE RESOURCE DEVELOPMENT PROGRAM; AMENDING SECTIONS 15-38-102, 15-38-202, 75-1-1101, 76-14-112, AND 90-2-111, MCA; REPEALING SECTIONS 75-1-1102, 75-1-1111, 75-1-1112, AND 90-2-113, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 10] may be cited as the "Reclamation and Development Grants Program Act".

**Section 2. Policy and purpose.** (1) The policy of the state of Montana expressed in the Reclamation and Development Grants Program Act is to provide a state capability to fund projects that indemnify the people of the state for the effects of mineral development on public resources and that meet other crucial needs serving the public interest and the total environment of the citizens of Montana.

(2) The purposes of the reclamation and development grants program are to:

(a) repair, reclaim, and mitigate environmental damage to public resources from nonrenewable resource extraction; and

(b) develop and ensure the quality of public resources for the benefit of all Montanans.

**Section 3. Definitions.** As used in [sections 1 through 10], the following definitions apply:

(1) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(3) "Financially feasible" means that adequate funds are available to complete the project as approved.

(4) "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(5) "Mineral development" means exploration, extraction, processing, or other activity related to the production of a mineral.

(6) "Mitigation" means the act of rectifying an impact by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating an impact over time by operations that preserve or maintain the environment; or compensating for an impact by replacing or providing substitute resources or habitats.

(7) "Project" means a planned and coordinated action or series of actions addressing an objective consistent with the policy and purpose of the reclamation and development grants program. A project may consist of problem analysis, feasibility or design studies, environmental monitoring, remedial action plans or implementation, technology demonstration, research, construction or acquisition of capital facilities, or other related actions.

(8) "Public benefits" means those benefits that accrue to citizens as a group and enhance the common well-being of the people of Montana.

(9) "Public resources" means the natural resources of the state, including air, water, soil, minerals, vegetation, and fish and wildlife, and the economic, social, and cultural conditions of Montana citizens.

(10) "Reclamation and development grants account" means the reclamation and development grants special revenue account established in [section 4].

(11) "Technically feasible" means that a project or activity can be designed, constructed, operated, or carried out to accomplish its objectives, utilizing accepted engineering and other technical principles and concepts.

**Section 4. Reclamation and development grants account.** (1) There is a reclamation and development grants special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the reclamation and development grants account money allocated from the interest income of the resource indemnity trust fund under the provisions of 15-38-202.

(3) Appropriations may be made from the reclamation and development grants account for the following purposes:

- (a) grants for designated projects; and
- (b) administrative expenses, including the salaries and expenses of personnel, equipment, office space, and other expenses necessarily incurred in the administration of the grants program. These expenses may be funded prior to funding of projects.

**Section 5. State and local grants.** (1) Any department, agency, board, commission, or other division of state government or any city, county, or other political subdivision or tribal government within the state may apply, in accordance with the procedures established by the department, for a grant from the reclamation and development grants account for a project that is consistent with the policy and purpose of the reclamation and development grants program.

(2) The department shall evaluate applications under the eligibility criteria provided in [section 6] and the evaluation criteria provided in [section 7].

(3) The department shall solicit and consider in its evaluation of applications the views of interested persons and public agencies.

(4) Based on its evaluation of eligible applications, the department shall recommend to the governor projects to receive grants from the reclamation and development grants account.

(5) The governor shall submit all proposals, with his recommended priorities, to the legislature by the first day of any regular legislative session. The legislature may approve by appropriation or other appropriate means grants for those projects it finds consistent with the policies and purposes of the reclamation and development grants program. The department shall administer and oversee the grants to approved projects and monitor the projects.

**Section 6. Eligibility requirements.** (1) Except as provided under subsection (2), to be eligible for funding under the reclamation and development grants program, the proposed project must provide benefits in one or more of the following categories:

(a) reclamation of land, water, or other resources adversely affected by mineral development;

(b) mitigation of damage to public resources caused by mineral development;

(c) research, demonstration, or technical assistance to promote the wise use of Montana minerals, including efforts to make processing more environmentally compatible;

[(d) investigation and remediation of sites where hazardous wastes or regulated substances threaten public health or the environment;] and

(e) research to assess existing or potential environmental damage resulting from mineral development.



(2) If sufficient eligible and qualified applications satisfying the mineral development objectives provided for in subsection (1) are not received or if there is a crucial state need, the department may evaluate and the governor may recommend that the legislature approve funding for projects that:

(a) enhance Montana's economy through the development of natural resources; or

(b) develop, promote, protect, or further Montana's total environment and public interest, including the general health, safety, welfare, and public resources of Montana citizens and communities.

(3) To be eligible for funding under the reclamation and development grants program, a project must:

(a) be technically and financially feasible;

(b) be the best cost-effective alternative to address a problem or attain an objective;

(c) comply with statutory and regulatory standards protecting environmental quality; and

(d) be from an applicant able and willing to enter into a contract with the department for the implementation of the proposed project or activity.

(4) A project is not eligible for funding under the reclamation and development grants program to the extent that the project is eligible for and can reasonably be expected to receive funding from other state or federal reclamation programs or any other program or act that provides funding to accomplish remedial action for environmental damage or if the project is permitted under Title 82, chapter 4 or 11.

(5) A proposed project is not eligible for funding under the reclamation and development grants program if there is a liable party who would be relieved of financial or legal responsibility and who can reasonably be expected to be held responsible.

**Section 7. Evaluation criteria.** The department shall consider the following criteria in evaluating eligible applications and in selecting projects to be recommended to the governor for funding:

(1) the degree to which the project will provide benefits in its eligibility category or categories;

(2) the degree to which the project will provide public benefits;

(3) the degree to which the project will promote, enhance, or advance the policies and purposes of the reclamation and development grants program;

(4) the degree to which the project will provide for the conservation of natural resources;

(5) the degree of need and urgency for the project;

(6) the extent to which the project sponsor or local entity is contributing to the costs of the project or is generating additional nonstate funds;

(7) the degree to which jobs are created for persons who need job training, receive public assistance, or are chronically unemployed; and

(8) any other criteria the department considers necessary to carry out the policies and purposes of the reclamation and development grants program.

**Section 8. Conditions of grants.** Disbursement of grant funds under [sections 1 through 10] is subject to the following conditions which must be met by project sponsors:

(1) A scope of work and budget for the project must be approved by the department. Reduction in the scope of work or budget may not affect priority activities or improvements.

(2) Other funds required for project completion must have been committed and the commitment must be documented.

(3) An agreement between the department and the grant applicant must be executed in a timely manner, taking into consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(4) Any other specific requirements must be accomplished as considered necessary by the department to accomplish the purpose of the grant as evidenced from the application to the department or the proposal to the legislature.

(5) State funding for a project under [sections 1 through 10] is not intended to relieve a liable party from financial or legal responsibility.

**Section 9. Adoption of rules.** The board may adopt rules to:

(1) prescribe the form and content of applications for grants;

(2) describe the terms and conditions of making grants;

(3) prescribe a monitoring program to evaluate the effectiveness of funded projects; and

(4) develop any other procedures necessary to accomplish the objectives of the reclamation and development grants program.

**Section 10. Penalty.** No member, officer, attorney, or other employee of the board or the department may directly or indirectly be the beneficiary of or receive any fee, commission, gift, or other consideration in connection with any transaction or business under the reclamation and development grants program other than the salary, fee, or other compensation that he may receive as a member, officer, attorney, or employee. A person convicted of violating any provision of this section shall be punished by a fine not to exceed \$2,000 plus the value of any consideration illegally received or by imprisonment for a term not to exceed 2 years, or both. Any fines collected under this section must be deposited in the reclamation and development grants account.

**Section 11.** Section 15-38-102, MCA, is amended to read:

**"15-38-102. Legislative policy.** *It is the policy of the state of Montana to indemnify its citizens for the loss of long-term value resulting from the depletion of its mineral resource base and for environmental damage caused by mineral development. This policy of indemnification is achieved by establishing a permanent resource indemnity trust from the proceeds of a tax levied on mineral extraction and by allocating spendable trust revenues:*

*(1) to protect and restore the environment from damages resulting from mineral development; and*

*(2) to support a variety of development programs that benefit the economy of the state and the lives of Montana citizens."*

Section 12. Section 15-38-202, MCA, is amended to read:

**"15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All moneys paid into the resource indemnity trust fund shall be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund shall annually be added thereto until it has reached the sum of \$10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches \$100 million. Thereafter, all net earnings and all receipts shall be appropriated by the legislature and expended, provided that the balance in the fund may never be less than \$100 million.

*(2) At the beginning of each biennium, an amount not to exceed \$175,000 is allocated from the interest income of the resource indemnity trust fund to the environmental contingency account pursuant to the conditions of 75-1-1101. The remainder of the interest income is allocated as follows:*

*(a) Beginning in fiscal year 1982, provided the amount in the resource indemnity trust fund is greater than \$10 million, 30% of the interest income of the resource indemnity trust fund must be allocated to the water development state special revenue account created by 85-1-604.*

*(b) Beginning in fiscal year 1986, 6% of the interest income of the resource indemnity trust fund must be allocated to the department of health and environmental sciences to be used to implement the Montana Hazardous Waste Act and the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 in accordance with Title 75, chapter 10, part 6. The allocation in this subsection (2)(b) must be appropriated for each full biennium as necessary to obtain matching federal funds for the biennium.*

*(c) Beginning in fiscal year 1990, 8% of the interest income from the resource indemnity trust fund must be allocated to the renewable resource development account provided for in Title 90, chapter 2.*

*(d) Beginning in fiscal year 1990, [56%] of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in [section 4].*

*(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds from the resource*

*indemnity trust interest account other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."*

Section 13. Section 75-1-1101, MCA, is amended to read:

**"75-1-1101. Environmental contingency account objectives.** (1) There is created an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental contingency account is controlled by the governor.

(2) *At the beginning of each biennium, \$175,000 must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund with the following exceptions:*

(a) *if at the beginning of any biennium the unobligated cash balance in the environmental contingency account equals or exceeds \$750,000, no allocation will be made; and*

(b) *if at the beginning of any biennium the unobligated cash balance in the environmental contingency account is less than \$750,000, then an amount less than or equal to the difference between the unobligated cash balance and \$750,000, but not to exceed \$175,000, must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund.*

(3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental contingency account upon the authorization of the governor to meet unanticipated public needs consistent with the following objectives:

(a) to support water development projects in communities that face an emergency or imminent need for such services or to prevent the physical failure of a water project;

(b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including:

(i) natural disasters adequately covered by other funding sources; or

(ii) fire;

(c) to respond to an emergency or imminent threat to persons, property, or the environment caused by mineral development; and

(d) to fund the environmental quality protection fund provided for in 75-10-704 or to take other necessary actions, including the construction of facilities, to respond to actual or potential threats to persons, property, or the environment caused by hazardous wastes or other hazardous materials.

(4) Interest from funds in the environmental contingency account accrues to the resource indemnity trust interest account.

(5) The governor shall submit to the legislature at the beginning of each regular session a complete financial report on the environmental contingency account, including a description of all expenditures made since the preceding report."

Section 14. Section 76-14-112, MCA, is amended to read:

**"76-14-112. Rangeland improvement loan special revenue account.** (1) There is created a rangeland improvement loan special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be allocated to the rangeland improvement loan earmarked account *\$185,000 for the biennium ending June 30, 1989, from the renewable resource development account created in 90-2-125*, any principal and accrued interest received in repayment of a loan made under the rangeland improvement loan program, and any fees or charges collected by the department pursuant to 76-14-116 for the servicing of loans, including arrangements for obtaining security interests."

Section 15. Section 90-2-111, MCA, is amended to read:

**"90-2-111. Grants to state and local government.** (1) The department of natural resources and conservation may recommend to the governor that grants from the renewable resource development account provided for by this part be made to any department, agency, board, commission, or other division of state government *or to any political subdivision of state government*.

(2) The department shall solicit and consider in its evaluation of proposed projects the views of interested and affected departments, boards, agencies, and other subdivisions of state and federal government and of other interested and affected persons.

(3) The governor shall submit those grant proposals having his approval to the legislature by the 20th day of any legislative session. Those grant proposals approved by the legislature shall be administered by the department.

(4) The grants provided for by this section may be made for the purchase, lease, or construction of projects for the conservation, management, utilization, development, or preservation of the land, *vegetation*, fish, wildlife, recreational, and other renewable resources in the state; for the purpose of feasibility and design studies for such projects; for development of plans for the rehabilitation, expansion, or modification of existing projects; and for such other and further similar purposes as the legislature may approve.

(5) *In recommending grants under this section, the department and the governor shall consider the special requirements and benefits of proposals that provide for the long-term compilation and management of information on the natural resources of Montana. These proposals contribute to the efficient management of renewable resources, benefit a variety of public and private users, and require a continuing commitment of resources to maintain currency and utility. In consequence of these values and conditions,*

*projects providing for the long-term compilation and management of natural resource information may be considered for funding in consecutive funding cycles and may not be penalized for having received funds previously from the renewable resource development program.*

(6) The department may adopt rules as required to govern the terms and conditions for making grants pursuant to this section."

**Section 16. Repealer.** (1) Sections 75-1-1102, 75-1-1111, and 75-1-1112, MCA, are repealed.

(2) Section 90-2-113, MCA, is repealed.

**Section 17. Extension of authority.** Any existing authority of the department of natural resources and conservation or the board of natural resources and conservation and the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 18. Coordination instruction.** If House Bill No. 777, including the section of that bill amending 15-38-202, is passed and approved:

(1) the bracketed material in section 12(2)(d) of this act allocating funds to the reclamation and development grants account must read "50%"; and

(2) the bracketed material in section 6 is void.

**Section 19. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 20. Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

**Section 21. Effective dates.** (1) This act, except for section 16(1), is effective July 1, 1987.

(2) Section 16(1) is effective July 1, 1989.

Approved April 9, 1987.

## CHAPTER NO. 419

[HB 47]

AN ACT INCREASING THE PENALTIES FOR MOVING A MOBILE HOME WITH UNPAID PROPERTY TAXES; ALLOWING DISTRIBUTION OF DELINQUENT TAXES, SPECIAL ASSESSMENTS, PENALTIES, AND INTEREST TO LOCAL GOVERNMENTS; AND AMENDING SECTIONS 15-24-202 AND 15-24-204, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-24-202, MCA, is amended to read:

**"15-24-202. Payment of tax — interest and penalty — display of tax-paid sticker.** (1) The owner of a mobile home or housetrailer

which is not taxed as an improvement, as improvements are defined in 15-1-101, shall pay the personal property tax in two payments, except as provided in 15-24-206. The first payment is due within 30 days from the date of the notice of taxes due. The second payment is due no later than September 30 of the year in which the property is assessed. Taxes assessed against a mobile home after the second payment date must be prorated to reflect the remaining portion of the tax year. The prorated taxes must be added to the following year's tax roll and, except as provided in 15-24-206, are due with and must be collected with the first payment due in that year.

(2) Tax, other than the prorated tax described in subsection (1), due on a mobile home or housetrailer not taxed as an improvement that is not paid on or before September 30 of the year that the property is assessed is delinquent and is subject to the same interest and penalty as delinquent property taxes under 15-16-102. Interest begins to accrue as of September 30 of the year the property is assessed.

(3) The department of revenue shall issue tax-paid stickers to the county treasurers. The treasurers shall issue the stickers to the owners of mobile homes and housetrailer if the taxes and any interest and penalty owed are paid in full. An owner shall then display the sticker, which must be visible from the exterior of the mobile home or housetrailer. No mobile home movement *declaration of destination* provided for in 15-24-206 may be issued unless the taxes have been paid in full to the county treasurer.

(4) *The tax-paid sticker and receipt are not required for mobile homes which are classified as improvements to land, but payment of the assessed property taxes and display of a mobile home movement declaration of destination are required before moving the mobile home.*

(5) *On the movement of a mobile home or housetrailer in violation of this part, the county treasurer for the county where the mobile home or housetrailer first comes to rest shall issue a written notice to the owner, showing the amount of delinquent taxes, special assessments, penalties, and interest due. In addition to the penalties provided in 15-16-102, 20% or \$50, whichever is greater, must be added to the delinquent taxes as penalty for violation of this part. On receipt of the delinquent taxes, special assessments, penalties, and interest, the county treasurer shall forward all delinquent taxes, special assessments, penalties, and interest collected under 15-16-102 to the county treasurer for the county of origin. The county of destination shall retain the penalty."*

Section 2. Section 15-24-204, MCA, is amended to read:

**"15-24-204. Failure to display or produce declaration, sticker, or receipt — penalty.** (1) Whoever makes a false or fraudulent declaration of destination or, when required, fails to execute a declaration of destination or fails to *display or produce* a declaration of destination or tax-paid receipt, if a tax-paid receipt is required, is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail for not more than 6 months or by a fine of not more than \$500, or both.

(2) Whoever fails to display a property-tax-paid sticker or to produce a property-tax-paid receipt from 15 days after the due date for personal

property taxes of 1 year to the due date for personal property taxes of the next year, when the display of a tax-paid receipt is required, commits a misdemeanor punishable by a fine of not less than \$10 or more than \$50 or confinement in the county jail for not more than 30 days or both such fine and imprisonment."

**Section 3. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Authority to proceed with rulemaking.** The department of revenue may initiate rulemaking proceedings under section 3 on or after passage and approval of this act, but no rules under section 3 may be made effective prior to the effective date of sections 1 and 2.

**Section 5. Effective dates.** (1) Sections 3 through 5 are effective on passage and approval.

(2) The remaining sections are effective July 1, 1987.

Approved April 9, 1987.

## CHAPTER NO. 420

[HB 385]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO PERMIT REREGISTRATION OF LIGHT VEHICLES BY MAIL; REQUIRING THE DEPARTMENT TO GIVE NOTICE BY MAIL TO A LIGHT VEHICLE OWNER OF THE NEED TO REREGISTER HIS VEHICLE; AND AMENDING SECTION 61-3-535, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-3-535, MCA, is amended to read:

**"61-3-535. Light vehicle reregistration by mail — reregistration notice by mail.** (1) The department shall permit the reregistration of light vehicles with the county treasurer by mail at the option of the owner of the vehicle. The option to reregister by mail need only be made available for vehicles registered at the close of the expiring registration period in the name of the applicant for reregistration.

(2) The form to be returned to the county treasurer by the applicant, with the appropriate fees, is to contain a statement, to be subscribed to by the applicant, stating compliance with the financial liability requirements of 61-6-301.

(3) *The procedure implemented by the department to permit reregistration by mail shall provide for a written reminder notice by mail to a light vehicle owner of the requirement to reregister his vehicle with the county treasurer.*



(4) The department *shall* adopt rules to implement the mail reregistration procedure."

**Section 2. Extension of authority.** Any existing authority of the department of justice to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 9, 1987.

## CHAPTER NO. 421

[HB 457]

AN ACT REQUIRING PAYMENT OF LICENSE FEES OR TAXES FOR THE CURRENT YEAR AND THE IMMEDIATELY PREVIOUS YEAR, UNLESS ALREADY PAID, PRIOR TO REGISTRATION OF MOTOR VEHICLES, BOATS, AND SNOWMOBILES; AMENDING SECTIONS 23-2-515, 23-2-616, AND 61-3-303, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Payment of current and back taxes and fees.** (1) The personal property taxes assessed against a boat for the year in which application for decals is made and the immediately previous year must be paid before license decals may be issued pursuant to 23-2-515.

(2) The fee in lieu of tax imposed on a snowmobile for the year in which application for registration is made and the immediately previous year must be paid before a snowmobile may be registered pursuant to 23-2-616.

(3) Except for mobile homes as defined in 15-1-101, the new motor vehicle sales tax and the personal property tax or fee in lieu of tax imposed or assessed against a motor vehicle for the current year and the immediately previous year must be paid before a motor vehicle may be registered or reregistered pursuant to 61-3-303.

(4) The provisions of subsections 1 through 3 do not require payment of the immediately previous year's taxes or fees if such taxes or fees have already been paid.

**Section 2.** Section 23-2-515, MCA, is amended to read:

**"23-2-515. License decals to be displayed.** (1) Every Montana boat numbered in accordance with the provisions of 23-2-512 and 23-2-513 shall be required to display license decals. For this purpose the county treasurer, upon receipt of a certificate of tax of personal property showing payment of tax on the motorboat *as required by [section 1]*, shall issue a pair of decals prepared and furnished by the department of justice with all new certificates of number and renewals thereof.

(2) The decals shall be of a style and design prescribed by the department of justice and shall be a color differing from the preceding year. The

license decal will be serially numbered and have the expiration date of December 31 of the appropriate year printed thereon.

(3) License decals shall be displayed only in the following manner: one valid license decal on each side of the forward half, 3 inches aft of the identifying numbers."

Section 3. Section 23-2-616, MCA, is amended to read:

**"23-2-616. Registration and decals — application and issuance — use of certain fees.** (1) No snowmobile may be operated on public lands by any person in Montana unless it has been registered and there is displayed in a conspicuous place on both sides of the cowl a decal as visual proof that the fee in lieu of property tax has been paid on it for the current year and the immediately previous year as required by [section 1].

(2) Application for registration shall be made to the county treasurer upon forms to be furnished by the department of justice for this purpose, which may be obtained at the county treasurer's office in the county where the owner resides. The application shall contain the following information:

- (a) name and address of the owner;
- (b) certificate of ownership number;
- (c) make of the snowmobile;
- (d) model name of the snowmobile;
- (e) year of manufacture;
- (f) a statement evidencing payment of the fee in lieu of property tax as required by [section 1]; and
- (g) such other information as the department of justice may require.

(3) The application shall be accompanied by a decal fee of \$2, a registration fee of 50 cents, and, if the snowmobile has previously been registered, by the registration certificate for the most recent year in which the snowmobile was registered. The treasurer shall sign the application and issue a registration receipt which shall contain information considered necessary by the department of justice and a listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the signed application to the department of justice and shall issue to the applicant a decal in the style and design prescribed by the department of justice and of a different color than the preceding year, numbered in sequence.

(5) The county treasurer may not accept any application under this section until the applicant has paid the decal and registration fees and the fee in lieu of property tax on the snowmobile for the current year and the immediately previous year as required by [section 1].

(6) All money collected from payment of the decal fees and all interest accruing from use of this money shall be forwarded to the state treasurer

and placed in the state special revenue fund to the credit of the department, with \$1 designated for use in enforcing the purposes of this part and \$1 designated for use in the development, maintenance, and operation of snowmobile facilities. All money collected from payment of the registration fee shall be forwarded to the state treasurer and deposited in the motor vehicle recording account of the state special revenue fund.

(7) The county treasurer shall credit all fees in lieu of tax collected on snowmobiles to the county motor vehicle suspense fund provided for in 61-3-509."

Section 4. Section 61-3-303, MCA, is amended to read:

**"61-3-303. Application for registration.** (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as herein otherwise expressly provided, file or cause to be filed in the office of the county treasurer where the motor vehicle is owned or taxable an application for registration or reregistration upon a blank form to be prepared and furnished by the department. The application shall contain:

(a) name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) name and address of the holder of any security interest in the motor vehicle;

(c) description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, type of body, and if truck, the rated capacity;

(d) in case of reregistration, the license number for the preceding year; and

(e) such other information as the department may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321; and

(b) unless it has been previously paid:

(i) the personal property taxes assessed against the vehicle for the current year of registration and the immediately previous year; or

(ii) the new motor vehicle sales tax against the vehicle and/or the fee *in lieu of property tax* for the current year of registration and the immediately previous year as required by [section 1].

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application. The county treasurer may not assess or collect taxes or fees for a period other than:

(a) the current year; and

(b) the immediately previous year, if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

(4) The county treasurer may make full and complete investigation of the tax status of the vehicle. Any applicant for registration or reregistration must submit proof from the tax or other appropriate records of the proper county at the request of the county treasurer."

**Section 5. Extension of authority.** Any existing authority of the department of revenue, department of fish, wildlife, and parks, or department of justice to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 6. Applicability.** This act applies to motor vehicle and snowmobile registration, applications for decals for boats, and the payment of taxes or fees connected with the registration or application after January 1, 1988.

Approved April 9, 1987.

## CHAPTER NO. 422

[HB 465]

AN ACT TO ALLOW GOLDEN EAGLES TO BE CAPTURED FOR THE SPORT OF FALCONRY; AND AMENDING SECTION 87-5-205, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-5-205, MCA, is amended to read:

**"87-5-205. Restrictions on species allowed for falconry.** (1) The peregrine falcon (*Falco peregrinus*), bald eagle (*Haliaeetus leucocephalus*), and osprey (*Pandion haliaeetus*) may not be captured in this state for the sport of falconry.

(2) Species of raptors which are native to North America may be brought into Montana for the purpose of falconry unless that action is specifically prohibited by this part, the laws of other states, or the rules of the federal government. Those raptors may be possessed, subject to this part. A person bringing a raptor into this state must be able to show proof of the area of origin."

**Section 2. Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 9, 1987.

**CHAPTER NO. 423**

[HB 482]

AN ACT PROVIDING THAT A JUSTICE COURT MAY BE DESIGNATED AS A CITY COURT; PROVIDING FOR FUNDING OF SUCH A CITY COURT; PROVIDING FOR AGREEMENT BY THE JUSTICE COURT OF SUCH DESIGNATION; AMENDING SECTION 3-11-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 3-11-205, MCA, is amended to read:

**“3-11-205. Justice court as city court.** (1) In a town or third-class city, the council may designate a justice court of the county in which the town or city is situated to act as city court and may by ordinance fix the funding for such court and enter into an agreement with the county for proportionate payment of salaries and training expenses. The justice court shall, upon its agreement to the designation and approval by the board of county commissioners, act in that capacity and shall be the city court in all cases arising out of violations of statutes or ordinances. If the justice of the peace must travel from his place of residence to hold court, he shall be paid his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, by the town or city in which the court is held.

(2) The offices of city judge and justice of the peace may be combined if a justice of the peace is authorized in a city pursuant to 3-10-101.”

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 9, 1987.

**CHAPTER NO. 424**

[HB 590]

AN ACT TO EXTEND THE CRIME OF POSSESSION OF A DEADLY WEAPON BY A PRISONER TO PRISONERS IN COUNTY, CITY, OR REGIONAL JAILS; AND AMENDING SECTION 45-8-318, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-8-318, MCA, is amended to read:

**“45-8-318. Possession of deadly weapon by prisoner.** (1) Every prisoner committed to the Montana state prison or incarcerated in a county jail, city jail, or regional jail who, while at the state prison or a jail, while being conveyed to or from the Montana state prison or a jail, while at a state prison farm or ranch, while being conveyed to or from any such

place, or while under the custody of prison or jail officials, officers, or employees, *purposely or knowingly* possesses or carries upon his person or has under his custody or control without lawful authority a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife, razor not including a safety razor, or other deadly weapon is guilty of a felony.

(2) He shall be punished by imprisonment in the state prison for a term not less than 5 years or more than 15 years, such term of imprisonment to commence from the time he would otherwise have been released from jail or prison, or shall be punished by a fine of not more than \$50,000, or by both such fine and imprisonment."

Approved April 9, 1987.

## CHAPTER NO. 425

[HB 598]

AN ACT TO PROVIDE THAT RESISTANCE BY THE VICTIM IS NOT REQUIRED TO SHOW THAT AN ACT THAT IS AN ELEMENT OF A SEXUAL OFFENSE WAS WITHOUT CONSENT OF THE VICTIM; AND AMENDING SECTION 45-5-511, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-5-511, MCA, is amended to read:

**"45-5-511. Provisions generally applicable to sexual crimes.** (1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.

(2) Whenever the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as husband and wife regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart whether under a decree of judicial separation or otherwise. Where the definition of an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse in a sexual act which he or she causes another person, not within the exclusion, to perform.

(3) In a prosecution under the preceding sections on sexual crimes (45-5-502 through 45-5-504) in which the victim's lack of consent is based solely upon his incapacity to consent because he was mentally incapacitated, it is a defense to such prosecution that the victim was a voluntary social companion of the defendant and the intoxicating substance was voluntarily and knowingly taken.

(4) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this part except:

- (a) evidence of the victim's past sexual conduct with the offender;
  - (b) evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.
- (5) If the defendant proposes for any purpose to offer evidence described in subsection (4)(a) or (4)(b), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (4).
- (6) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.
- (7) *Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent.*

Approved April 9, 1987.

## CHAPTER NO. 426

[HB 614]

AN ACT REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES PROVIDE A QUARTERLY REPORT TO THE DEVELOPMENTAL DISABILITIES PLANNING AND ADVISORY COUNCIL; AND AMENDING SECTION 53-20-203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-20-203, MCA, is amended to read:

**"53-20-203. Responsibilities of department.** The department shall:

- (1) take cognizance of matters affecting the developmentally disabled citizens of the state;
- (2) initiate a preventive developmental disabilities program which shall include but not be limited to the implementation of developmental disabilities care, treatment, prevention, and research as can best be accomplished by community-centered services. Every means shall be utilized to initiate and operate the service program in cooperation with local agencies under the provisions of 53-20-205 and 53-20-207.
- (3) collect and disseminate information relating to developmental disabilities;
- (4) prepare, with the assistance of the planning and advisory council, an annual comprehensive plan for the initiation and maintenance of developmental disabilities services in the state. The services shall include but not be limited to community comprehensive developmental disabilities services as referred to in 53-20-202.

(5) provide by rule for the evaluation of persons who apply for services or persons admitted into a program at a developmental disability facility;

(6) provide state personnel to assist regional councils provided for in 53-20-207;

(7) receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions to initiate and maintain developmental disabilities services within the state; and

(8) require that habilitation plans be developed, implemented, and continuously maintained for all developmentally disabled persons who are served through a community-based program funded by the state."

Approved April 9, 1987.

## CHAPTER NO. 427

[HB 617]

AN ACT TO ADJUST THE PORTION OF THE TAXABLE PERCENTAGE RATE, ELIGIBLE FOR REDUCTION, APPLICABLE TO A RESIDENCE OCCUPIED BY A LOW-INCOME OWNER; AMENDING SECTIONS 15-6-134 AND 15-6-142, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-6-134, MCA, is amended to read:

**"15-6-134. Class four property — description — taxable percentage.** (1) Class four property includes:

(a) all land except that specifically included in another class;

(b) all improvements except those specifically included in another class;

(c) the first \$80,000 or less of the market value of any improvement on real property and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 10 months a year as the primary residential dwelling of any person whose total income from all sources including otherwise tax-exempt income of all types is not more than \$10,000 for a single person or \$12,000 for a married couple;

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least 9 holes and not less than 3,000 lineal yards.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402 or 15-24-1501, property described in subsections (1)(a) and (1)(b) is taxed at 3.86% of its market value.



(b) Property described in subsection (1)(c) is taxed at 3.86% of its market value multiplied by a percentage figure based on income and determined from the following table:

| Income<br>Single Person | Income<br>Married Couple | Percentage<br>Multiplier |
|-------------------------|--------------------------|--------------------------|
| \$0 - \$1,000           | \$0 - \$1,200            | 0%                       |
| 1,001 - 2,000           | 1,201 - 2,400            | 10%                      |
| 2,001 - 3,000           | 2,401 - 3,600            | 20%                      |
| 3,001 - 4,000           | 3,601 - 4,800            | 30%                      |
| 4,001 - 5,000           | 4,801 - 6,000            | 40%                      |
| 5,001 - 6,000           | 6,001 - 7,200            | 50%                      |
| 6,001 - 7,000           | 7,201 - 8,400            | 60%                      |
| 7,001 - 8,000           | 8,401 - 9,600            | 70%                      |
| 8,001 - 9,000           | 9,601 - 10,800           | 80%                      |
| 9,001 - 10,000          | 10,801 - 12,000          | 90%                      |

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a).

(3) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate until a revaluation has been made as provided in 15-7-111.

(4) Within the meaning of comparable property as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property, and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

Section 2. Section 15-6-142, MCA, is amended to read:

**"15-6-142. Class twelve property — description — taxable percentage.** (1) Class twelve property includes:

- (a) a trailer or mobile home used as a residence except when:
  - (i) held by a distributor or dealer of trailers or mobile homes as his stock in trade; or
  - (ii) specifically included in another class;
- (b) the first \$80,000 or less of the market value of a trailer or mobile home used as a residence and actually occupied for at least 10 months a year as the primary residential dwelling of any person whose total income from all sources including otherwise tax-exempt income of all types is not more than \$10,000 for a single person or \$12,000 for a married couple.

(2) Class twelve property is taxed as follows:

- (a) Property described in subsection (1)(a) that is not of the type described in subsection (1)(b) is taxed at 3.86% of its market value.
- (b) Property described in subsection (1)(b) is taxed at 3.86% of its market value multiplied by a percentage figure based on income and determined from the table established in subsection (2)(b) of 15-6-134."

**Section 3. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Effective date — applicability.** This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1986.

Approved April 9, 1987.

## CHAPTER NO. 428

[HB 619]

AN ACT TO ALLOW SCHOOL DISTRICT TRUSTEES GREATER DISCRETION IN DIRECTING WHERE DISTRICT FUNDS MAY BE INVESTED; AND AMENDING SECTION 20-9-213, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-9-213, MCA, is amended to read:

**"20-9-213. Duties of trustees.** The trustees of each district shall have the sole power and authority to transact all fiscal business and execute all contracts in the name of such district. No person other than the trustees acting as a governing board shall have the authority to expend moneys of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school moneys for each fund maintained by the district in accordance with rules prescribed by the superintendent of public instruction. The record of such accounting shall be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district moneys and cause warrants to be issued for the payment of lawful obligations;

(3) have the authority to issue warrants on any budgeted fund in anticipation of budgeted revenues, except that such expenditures shall not exceed the amount budgeted for such fund;

(4) invest any moneys of the district, whenever in the judgment of the trustees such investment would be advantageous to the district, by directing the county treasurer to invest any money of the district in direct obligations of the United States government, payable within 180 days from the time of investment, or in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC, FSLIC, or NCUA located in the state. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds shall be credited to the debt service fund or the building fund, at the discretion

of the board of trustees. The placement of the investment by the county treasurer shall not be subject to ratable distribution laws and shall be done in accordance with the directive from the board of trustees. A district may invest moneys under the state unified investment program established in Title 17, chapter 6.

(5) report annually to the county superintendent, not later than August 1, the financial activities of each fund maintained by the district during the last completed school fiscal year on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts shall be submitted to the county superintendent of each county in which part of the joint district is situated.

(6) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(7) cause the accounting records of the district to be audited annually as required by law; and

(8) perform, in the manner permitted by law, such other fiscal duties that are in the best interests of the district."

Approved April 9, 1987.

## CHAPTER NO. 429

[HB 647]

### AN ACT CLARIFYING APPLICATION OF WEEKLY MEDICATION REVIEW IN RESIDENTIAL MENTAL HEALTH FACILITIES; AND AMENDING SECTION 53-21-145, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-21-145, MCA, is amended to read:

**"53-21-145. Right to be free from unnecessary or excessive medication.** Patients have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written order of a physician. The attending physician shall be responsible for all medication given or administered to a patient. The use of medication shall not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication shall be kept in his medical records. *The department of health and environmental sciences shall adopt rules governing attending physician review of the drug regimen of each patient under his care in a mental health facility, except that the drug regimen of inpatients in hospitals shall be reviewed no less than weekly.* Except in the case of outpatients, all prescriptions shall be written with a termination date, which shall not exceed 30 days. Medication shall not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with the patient's treatment program."

**Section 2. Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 9, 1987.

## CHAPTER NO. 430

[HB 690]

**AN ACT AUTHORIZING THE MANUFACTURE, SALE, POSSESSION, AND DISTRIBUTION OF CALCIUM-EAP, HARNOSAL, AND PHOSETAMIN; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Purpose.** The purpose of this act is to provide for the continuation of medication initiated by a physician for multiple sclerosis. This medication includes the substances described in [this act] and has been found to be effective in alleviating the symptoms of multiple sclerosis.

**Section 2. Definitions.** In [this act], the following definitions apply:

(1) "Calcium-EAP" means a calcium salt of the monoester (2-ethylamine) of phosphoric acid.

(2) "Harnosal" means a compound of sulfamethizole and sulfaethidole. A 500-milligram tablet contains 350 milligrams of sulfamethizole and 150 milligrams of sulfaethidole.

(3) "Phosetamin" means a compound of potassium salt of the monoester (2-ethylamine) of phosphoric acid, magnesium salt of the monoester (2-ethylamine) of phosphoric acid, and calcium salt of the monoester (2-ethylamine) of phosphoric acid. A 350-milligram tablet contains 145.8 milligrams of the potassium salt, 145.8 milligrams of the magnesium salt, and 58.4 milligrams of the calcium salt.

**Section 3. Authorization of medication.** The manufacture, sale, possession, and distribution of calcium-EAP, harnosal, and phosetamin to provide for the continuation of medication initiated by a physician for multiple sclerosis are lawful within this state.

**Section 4. Health care facility may not interfere.** A health care facility may not interfere with the physician-patient relationship by restricting or forbidding the use of calcium-EAP, harnosal, or phosetamin when prescribed or administered by a physician.

**Section 5. Health care facility immunity.** No health care facility or employee thereof may be held liable for the administration of calcium-EAP, harnosal, or phosetamin to any person.

**Section 6. Physician not subject to disciplinary action.** A physician may not be disciplined by the board of medical examiners for prescribing or administering calcium-EAP, harnosal, or phosetamin to a patient

under his care in the treatment of any malignancy, disease, illness, or physical condition.

**Section 7. Medication not endorsed — permitted as dietary supplement.** [This act]:

(1) is not an endorsement of calcium-EAP, harnosal, or phosetamin for the treatment of any malignancy, disease, illness, or physical condition; and

(2) does not prohibit use of calcium-EAP, harnosal, or phosetamin as a dietary supplement.

**Section 8. Medication not required.** [This act] does not require:

(1) a physician to prescribe calcium-EAP, harnosal, or phosetamin for any patient; or

(2) a physician, pharmacist, pharmacy, manufacturer, or distributor to manufacture, sell, or distribute calcium-EAP, harnosal, or phosetamin.

**Section 9. Effective date.** This act is effective on passage and approval.

Approved April 9, 1987.

## CHAPTER NO. 431

[HB 708]

AN ACT COMBINING LINCOLN'S BIRTHDAY AND WASHINGTON'S BIRTHDAY AS ONE LEGAL HOLIDAY; ESTABLISHING HERITAGE DAY AS A LEGAL HOLIDAY; DESIGNATING AN OFFICIAL DAY OF OBSERVANCE COMMEMORATING MARTIN LUTHER KING JR.; AMENDING SECTION 1-1-216, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 1-1-216, MCA, is amended to read:

**"1-1-216. Legal holidays and business days.** (1) The following are legal holidays in the state of Montana:

- (a) Each Sunday;
- (b) New Year's Day, January 1;
- (c) *Lincoln's and Washington's Birthdays*, the third Monday in February;
- (d) Memorial Day, the last Monday in May;
- (e) Independence Day, July 4;
- (f) Labor Day, the first Monday in September;
- (g) Columbus Day, the second Monday in October;

- (h) Veterans' Day, November 11;
- (i) Thanksgiving Day, the fourth Thursday in November;
- (j) Christmas Day, December 25;
- (k) State general election day;

(l) *Heritage Day, to be observed annually on a date determined by the governing body of each political subdivision for the purposes of that political subdivision and by the governor for the executive, legislative, and judicial branches of state government, including the Montana university system.*

(2) If any of the above-enumerated holidays (except Sunday) fall upon a Sunday, the Monday following is a holiday. All other days are business days."

**Section 2. Official day of observance commemorating King.** The third Monday in January is an official day of observance in Montana to commemorate Martin Luther King Jr. On this day, all Montanans are urged to reflect on the contributions of this man to American society.

**Section 3. Effective date.** This act is effective January 1, 1988.

Approved April 9, 1987.

## CHAPTER NO. 432

[HB 720]

### THE MONTANA CLOSE CORPORATION ACT; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** This chapter shall be known and may be cited as the "Montana Close Corporation Act".

**Section 2. Application of Montana Business Corporation Act and Montana Professional Corporation Act.** (1) The Montana Business Corporation Act applies to statutory close corporations to the extent not inconsistent with the provisions of this chapter.

(2) This chapter applies to a professional corporation organized under the Montana Professional Corporation Act whose articles of incorporation contain the statement required by [section 3] except insofar as the Montana Professional Corporation Act contains inconsistent provisions.

(3) This chapter does not repeal or modify any statute or rule of law that applies to a corporation that is organized under the Montana Business Corporation Act or the Montana Professional Corporation Act and that does not elect to become a statutory close corporation under [section 3].

**Section 3. Definition and election of statutory close corporation status.** (1) A statutory close corporation is a corporation whose articles of

incorporation contain a statement that the corporation is a statutory close corporation.

(2) A corporation having 25 or fewer shareholders may become a statutory close corporation by amending its articles of incorporation to include the statement required by subsection (1). The amendment must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the amendment is adopted, a shareholder who voted against the amendment is entitled to assert dissenters' rights under 35-1-810 and 35-1-812.

**Section 4. Notice of statutory close corporation status on issued shares.** (1) The following statement must appear conspicuously on each share certificate issued by a statutory close corporation:

The rights of shareholders in a statutory close corporation may differ materially from the rights of shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders' agreements, and other documents, any of which may restrict transfers and affect voting and other rights, may be obtained by a shareholder on written request to the corporation.

(2) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the shareholders a written notice containing the information required by subsection (1).

(3) The notice required by this section satisfies all requirements of this chapter and of 35-1-617 that notice of share transfer restrictions be given.

(4) A person claiming an interest in shares of a statutory close corporation that has complied with the notice requirement of this section is bound by the documents referred to in the notice. A person claiming an interest in shares of a statutory close corporation that has not complied with the notice requirement of this section is bound by any documents of which he or a person through whom he claims has knowledge or notice.

(5) A corporation shall provide to any shareholder upon his written request and without charge copies of provisions that restrict transfer or affect voting or other rights of shareholders appearing in articles of incorporation, bylaws, or shareholders' or voting trust agreements filed with the corporation.

**Section 5. Share transfer prohibition.** (1) An interest in shares of a statutory close corporation may not be voluntarily or involuntarily transferred, by operation of law or otherwise, except to the extent permitted by the articles of incorporation or under [section 6].

(2) Except to the extent the articles of incorporation provide otherwise, this section does not apply to a transfer:

(a) to the corporation or to any other holder of the same class or series of shares;

(b) to members of the shareholder's immediate family or to a trust, all of whose beneficiaries are members of the shareholder's immediate family,

which immediate family consists of his spouse, parents, lineal descendants including adopted children and stepchildren and the spouse of any lineal descendant, and brothers and sisters;

(c) that has been approved in writing by all of the holders of the corporation's shares having general voting rights;

(d) to an executor or administrator upon the death of a shareholder or to a trustee or receiver as the result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;

(e) by merger or share exchange under Title 35, chapter 1, part 8, or an exchange of existing shares for other shares of a different class or series in the corporation;

(f) by a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor; and

(g) made after termination of the corporation's status as a statutory close corporation.

**Section 6. Share transfer after first refusal by corporation.** (1) A person desiring to transfer shares of a statutory close corporation subject to the transfer prohibition of [section 5] must first offer them to the corporation by obtaining an offer to purchase the shares for cash from a third person who is eligible to purchase the shares under subsection (2). The offer by the third person must be in writing and state the offeror's name and address, the number and class or series of shares offered, the offering price per share, and the other terms of the offer.

(2) A third person is eligible to purchase the shares if:

(a) he is eligible to become a qualified shareholder under any federal or state tax statute the corporation has adopted and he agrees in writing not to terminate his qualification without the approval of the remaining shareholders; and

(b) his purchase of the shares will not impose a personal holding company tax or similar federal or state penalty tax on the corporation.

(3) The person desiring to transfer shares shall deliver the offer to the corporation and by doing so offers to sell the shares to the corporation on the terms of the offer. Within 20 days after the corporation receives the offer, the corporation shall call a special shareholders' meeting, to be held not more than 40 days after the call, to decide whether the corporation should purchase all, but not less than all, of the offered shares. The offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the offer.

(4) The corporation must deliver to the offering shareholder written notice of acceptance within 75 days after receiving the offer or the offer is rejected. If the corporation makes a counteroffer, the shareholder must deliver to the corporation written notice of acceptance within 15 days after receiving the counteroffer or the counteroffer is rejected. If the corporation accepts the original offer or the shareholder accepts the corporation's



counteroffer, the shareholder shall deliver to the corporation duly endorsed certificates for the shares, or instruct the corporation in writing to transfer the shares if uncertificated, within 20 days after the effective date of the notice of acceptance. The corporation may specifically enforce the shareholder's delivery or instruction obligation under this subsection.

(5) A corporation accepting an offer to purchase shares under this section may allocate some or all of the shares to one or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase approve the allocation. However, if the corporation has more than one class or series of shares, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(6) If an offer to purchase shares under this section is rejected, the offering shareholder, for a period of 120 days after the corporation received his offer, is entitled to transfer to the third-person offeror all but not less than all of the offered shares in accordance with the terms of his offer to the corporation.

**Section 7. Attempted share transfer in breach of prohibition.** (1) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer binding on the transferee is ineffective.

(2) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer that is not binding on the transferee, either because the notice required by [section 4] was not given or because the prohibition is held unenforceable by a court, gives the corporation an option to purchase the shares from the transferee for the same price and on the same terms that he purchased them. To exercise its option, the corporation must give the transferee written notice within 30 days after they are presented for registration in the transferee's name. The corporation may specifically enforce the transferee's sale obligation upon exercise of its purchase option.

**Section 8. Compulsory purchase of shares after death of shareholder.** (1) This section and [sections 9 through 11] apply to a statutory close corporation only if so provided in its articles of incorporation. If these sections apply, the executor or administrator of the estate of a deceased shareholder may require the corporation to purchase or cause to be purchased all but not less than all of the decedent's shares or to be dissolved.

(2) The provisions of [sections 9 through 11] may be modified only if the modification is set forth or referred to in the articles of incorporation.

(3) An amendment to the articles of incorporation to provide for application of [sections 9 through 11], or to modify or delete the provisions of these sections, must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the corporation has no shareholders when the amendment is proposed, it must be approved by at least two-thirds of the subscribers for shares, if any, or if none, by all of the incorporators.

(4) A shareholder who votes against an amendment to modify or delete the provisions of [sections 9 through 11] is entitled to dissenters' rights under 35-1-810 and 35-1-812 if the amendment upon adoption terminates or substantially alters his existing rights under these sections to have his shares purchased.

(5) A shareholder may waive his and his estate's rights under [sections 9 through 11] by a signed writing.

(6) [Sections 9 through 11] do not prohibit any other agreement providing for the purchase of shares upon a shareholder's death, nor do they prevent a shareholder from enforcing any remedy he has independently of [sections 9 through 11].

**Section 9. Exercise of compulsory purchase right.** (1) A person entitled and desiring to exercise the compulsory purchase right described in [section 8] shall deliver a written notice to the corporation, within 120 days after the death of the shareholder, describing the number and class or series of shares beneficially owned by the decedent and requesting that the corporation offer to purchase the shares.

(2) Within 20 days after the effective date of the notice, the corporation shall call a special shareholders' meeting, to be held not more than 40 days after the call, to decide whether the corporation should offer to purchase the shares. A purchase offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the notice.

(3) The corporation shall deliver a purchase offer to the person requesting it within 75 days after the effective date of the request notice. A purchase offer must be accompanied by the corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the effective date of the request notice, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any. The person must accept the purchase offer in writing within 15 days after receiving it or the offer is rejected.

(4) A corporation agreeing to purchase shares under this section may allocate some or all of the shares to one or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase offer approve the allocation. However, if the corporation has more than one class or series of shares, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(5) If price and other terms of a compulsory purchase of shares are fixed or are to be determined by the articles of incorporation, bylaws, or a written agreement, the price and terms so fixed or determined govern the compulsory purchase unless the purchaser defaults, in which event the buyer is entitled to commence a proceeding for dissolution under [section 10].

**Section 10. Court action to compel purchase.** (1) (a) If an offer to purchase shares made under [section 9] is rejected or if no offer is made, the person exercising the compulsory purchase right may commence a proceeding against the corporation to compel the purchase in the district court of the county where the corporation's principal office is located, or if there is no principal office in this state, its registered office.

(b) The corporation at its expense shall notify in writing all of its shareholders, and any other person the court directs, of the commencement of the proceeding.

(c) The jurisdiction of the court in which the proceeding is commenced under this subsection is plenary and exclusive.

(2) (a) The court shall determine the fair value of the shares subject to compulsory purchase in accordance with the standards set forth in [section 24] together with terms for the purchase.

(b) Upon making these determinations, the court shall order the corporation to purchase or cause the purchase of the shares or empower the person exercising the compulsory purchase right to have the corporation dissolved.

(3) After the purchase order is entered, the corporation may petition the court to modify the terms of purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(4) If the corporation or other purchaser does not make a payment required by the court's order within 30 days of its due date, the seller may petition the court to dissolve the corporation and, absent a showing of good cause for not making the payment, the court shall do so.

(5) A person making a payment to prevent or cure a default by the corporation or other purchaser is entitled to recover the payment from the defaulter.

**Section 11. Court costs and other expenses.** (1) The court in a proceeding commenced under [section 10] shall determine the total costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court and of counsel and experts employed by the parties. Except as provided in subsection (2), the court shall assess these costs equally against the corporation and the party exercising the compulsory purchase right.

(2) The court may assess all or a portion of the total costs of the proceeding:

(a) against the person exercising the compulsory purchase right if the court finds that the fair value of the shares does not substantially exceed the corporation's last purchase offer made before commencement of the proceeding and that the person's failure to accept the offer was arbitrary, vexatious, or otherwise not in good faith; or

(b) against the corporation if the court finds that the fair value of the shares substantially exceeds the corporation's last sale offer made before

commencement of the proceeding and that the offer was arbitrary, vexatious, or otherwise not made in good faith.

**Section 12. Shareholder agreements.** (1) All the shareholders of a statutory close corporation may agree in writing to regulate the exercise of the corporate powers and the management of the business and affairs of the corporation or the relationship among the shareholders of the corporation.

(2) An agreement authorized by this section is effective even though:

(a) it eliminates a board of directors;

(b) it restricts the discretion or powers of the board or authorizes director proxies or weighted voting rights;

(c) its effect is to treat the corporation as a partnership; or

(d) it creates a relationship among the shareholders or between the shareholders and the corporation that would otherwise be appropriate only among partners.

(3) If the corporation has a board of directors, an agreement authorized by this section restricting the discretion or powers of the board relieves directors of liability imposed by law and imposes that liability on each person in whom the board's discretion or power is vested to the extent that the discretion or powers of the board of directors are governed by the agreement.

(4) A provision eliminating a board of directors in an agreement authorized by this section is not effective unless the articles of incorporation contain a statement to that effect as required by [section 13].

(5) A provision entitling one or more shareholders to dissolve the corporation under [section 21] is effective only if a statement of this right is contained in the articles of incorporation.

(6) To amend an agreement authorized by this section, all the shareholders shall approve the amendment in writing unless the agreement provides otherwise.

(7) Subscribers for shares may act as shareholders with respect to an agreement authorized by this section if shares are not issued when the agreement was made.

(8) This section does not prohibit any other agreement between or among shareholders in a statutory close corporation.

**Section 13. Elimination of board of directors.** (1) A statutory close corporation may operate without a board of directors if its articles of incorporation contain a statement to that effect.

(2) An amendment to articles of incorporation eliminating a board of directors must be approved by all the shareholders of the corporation whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if there are no subscribers, by all the incorporators.

(3) While a corporation is operating without a board of directors as authorized by subsection (1):

(a) all corporate powers must be exercised by or under the authority of and the business and affairs of the corporation managed under the direction of the shareholders;

(b) unless the articles of incorporation provide otherwise:

(i) action requiring director approval or both director and shareholder approval is authorized if approved by the shareholders; and

(ii) action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the majority or greater percentage of the votes of shareholders entitled to vote on the action;

(c) a shareholder is not liable for his act or omission, even though a director would be, unless the shareholder was entitled to vote on the action;

(d) a requirement by a state or the United States that a document delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation without a board of directors and that the action was approved by the shareholders; and

(e) the shareholders may by resolution appoint one or more shareholders to sign documents as "designated directors".

(4) An amendment to articles of incorporation deleting the statement eliminating a board of directors must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment must also specify the number, names, and addresses of the corporation's directors or describe who will perform the duties of a board under 35-1-401 or 35-1-515.

**Section 14. Bylaws.** (1) A statutory close corporation need not adopt bylaws if provisions required by law to be contained in bylaws are contained in either the articles of incorporation or a shareholder agreement authorized by [section 12].

(2) If a corporation does not have bylaws when its statutory close corporation status terminates under [section 19], the corporation shall immediately adopt bylaws under 35-1-214.

**Section 15. Annual meeting.** (1) The annual meeting date for a statutory close corporation is the first business day after May 31 unless its articles of incorporation, bylaws, or a shareholder agreement authorized by [section 12] fixes a different date.

(2) A statutory close corporation need not hold an annual meeting unless one or more shareholders deliver written notice to the corporation requesting a meeting at least 30 days before the meeting date determined under subsection (1).

**Section 16. Execution of documents in more than one capacity.** Notwithstanding any law to the contrary, an individual who holds more

than one office in a statutory close corporation may execute, acknowledge, or verify in more than one capacity any document required to be executed, acknowledged, or verified by the holders of two or more offices.

**Section 17. Limited liability.** The failure of a statutory close corporation to observe the usual corporate formalities or requirements relating to the exercise of its corporate powers or management of its business and affairs is not a ground for imposing personal liability on the shareholders for liabilities of the corporation.

**Section 18. Merger — share exchange — sale of assets.** (1) A plan of merger or share exchange:

(a) that if effected would terminate statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan; and

(b) that if effected would create the surviving corporation as a statutory close corporation must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the surviving corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan.

(2) A sale, lease, exchange, or other disposition of all or substantially all of the property of a statutory close corporation, with or without the good will, if not made in the usual and regular course of business, must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the transaction.

**Section 19. Termination of statutory close corporation status.** (1) A statutory close corporation may terminate its statutory close corporation status by amending its articles of incorporation to delete the statement that it is a statutory close corporation. If the statutory close corporation has elected to operate without a board of directors under [section 13], the amendment must either comply with 35-1-401 or 35-1-515 or delete the statement dispensing with the board of directors from its articles of incorporation.

(2) An amendment terminating statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on amendments.

(3) If an amendment to terminate statutory close corporation status is adopted, each shareholder who voted against the amendment is entitled to assert dissenters' rights under 35-1-810 and 35-1-812.

**Section 20. Effect of termination of statutory close corporation status.** (1) A corporation that terminates its status as a statutory close corporation is thereafter subject to all provisions of the Montana Business Corporation Act or, if incorporated under the Montana Professional Corporation Act, to all provisions of that act.

(2) Termination of statutory close corporation status does not affect any right of a shareholder or of the corporation under an agreement or the articles of incorporation unless this chapter, the Montana Business Corporation Act, or another law of this state invalidates the right.

**Section 21. Shareholder option to dissolve corporation.** (1) The articles of incorporation of a statutory close corporation may authorize one or more shareholders, or the holders of a specified number or percentage of shares of any class or series, to dissolve the corporation at will or upon the occurrence of a specified event or contingency. The shareholder or shareholders exercising this authority shall give written notice of the intent to dissolve to all the other shareholders. Thirty-one days after the effective date of the notice, the corporation shall begin to wind up and liquidate its business and affairs and file articles of dissolution under 35-1-911 and 35-1-912.

(2) Unless the articles of incorporation provide otherwise, an amendment to the articles of incorporation to add, change, or delete the authority to dissolve described in subsection (1) must be approved by the holders of all the outstanding shares whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if there are no subscribers, by all the incorporators.

**Section 22. Court action to protect shareholders.** (1) Subject to satisfying the conditions of subsections (3) and (4), a shareholder of a statutory close corporation may petition the district court for any of the relief described in [sections 23 through 25] if:

(a) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in his capacity as shareholder, director, or officer of the corporation;

(b) the directors or those in control of the corporation are deadlocked in the management of the corporation's affairs, the shareholders are unable to break the deadlock, and the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

(c) there exists one or more grounds for judicial dissolution of the corporation under 35-1-921.

(2) A shareholder shall commence a proceeding under subsection (1) in the district court of the county where the corporation's principal office is located, or if there is no principal office in this state, its registered office. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, he may not commence a proceeding under this section with respect to the matters until he has exhausted the nonjudicial remedy.

(4) If a shareholder has dissenters' rights under this chapter or 35-1-810 and 35-1-812 with respect to proposed corporate actions, he must commence a proceeding under this section before he is required to give notice of his intent to demand payment under 35-1-812 or to demand payment under 35-1-810, or the proceeding is barred.

(5) Except as provided in subsections (3) and (4), a shareholder's right to commence a proceeding under this section and the remedies available under [sections 23 through 25] are in addition to any other right or remedy he may have.

**Section 23. Ordinary relief.** (1) If the court finds that one or more of the grounds for relief described in [section 22(1)] exist, it may order one or more of the following types of relief:

(a) the performance, prohibition, alteration, or setting aside of any action of the corporation or of its shareholders, directors, or officers or of any other party to the proceeding;

(b) the cancellation or alteration of any provision in the corporation's articles of incorporation or bylaws;

(c) the removal from office of any director or officer;

(d) the appointment of any individual as a director or officer;

(e) an accounting with respect to any matter in dispute;

(f) the appointment of a custodian to manage the business and affairs of the corporation;

(g) the appointment of a provisional director who has all the rights, powers, and duties of a duly elected director to serve for the term and under the conditions prescribed by the court;

(h) the payment of dividends;

(i) the award of damages to any aggrieved party.

(2) If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or otherwise not in good faith, it may award one or more other parties their reasonable expenses, including counsel fees and the expenses of appraisers or other experts, incurred in the proceeding.

**Section 24. Extraordinary relief — share purchase.** (1) If the court finds that the ordinary relief described in [section 23(1)] is or would be inadequate or inappropriate, it may order the corporation dissolved under [section 25] unless the corporation or one or more of its shareholders purchases all the shares of the shareholder for their fair value and on terms determined under subsection (2).

(2) If the court orders a share purchase, it shall:

(a) determine the fair value of the shares, considering among other relevant evidence:

(i) the going concern value of the corporation;



(ii) any agreement among some or all of the shareholders fixing the price or specifying a formula for determining share value for any purpose;

(iii) the recommendations of appraisers, if any, appointed by the court; and

(iv) any legal constraints on the corporation's ability to purchase the shares;

(b) specify the terms of the purchase, including if appropriate:

(i) terms for installment payments;

(ii) subordination of the purchase obligation to the rights of the corporation's other creditors;

(iii) security for a deferred purchase price; and

(iv) a covenant not to compete or other restriction on the seller;

(c) require the seller to deliver all his shares to the purchaser upon receipt of the purchase price or the first installment of the purchase price;

(d) provide that after the seller delivers his shares he has no further claim against the corporation, its directors, officers, or shareholders, other than a claim to any unpaid balance of the purchase price and a claim under any agreement with the corporation or the remaining shareholders that is not terminated by the court; and

(e) provide that if the purchase is not completed in accordance with the specified terms, the corporation is to be dissolved under [section 25].

(3) After the purchase order is entered, any party may petition the court to modify the terms of the purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(4) If the corporation is dissolved because the share purchase was not completed in accordance with the court's order, the selling shareholder has the same rights and priorities in the corporation's assets as if the sale had not been ordered.

**Section 25. Extraordinary relief — dissolution.** (1) The court may dissolve the corporation if it finds:

(a) one or more grounds for judicial dissolution under 35-1-921; or

(b) all other relief ordered by the court under [section 23 or section 24] has failed to resolve the matters in dispute.

(2) In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to dissolve solely because the corporation has accumulated earnings or current operating profits.

**Section 26. Codification instruction.** Sections 1 through 25 are intended to be codified as an integral part of Title 35, and the provisions of Title 35 apply to sections 1 through 25.

Section 27. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 28. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 29. **Applicability.** This act applies to all corporations electing statutory close corporation status under this act on and after the effective date of this act.

Approved April 9, 1987.

## CHAPTER NO. 433

[HB 730]

### AN ACT TO REQUIRE A CERTIFICATE OF OWNERSHIP FOR MOTORBOATS AND CERTAIN SAILBOATS; AMENDING SECTION 23-2-502, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Certificate of ownership.** (1) Except as provided in subsection (9), no motorboat or sailboat 12 feet in length or longer may be operated upon the waters of the state unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a motorboat or sailboat 12 feet in length or longer shall apply for a certificate of ownership and a certificate of number with the county treasurer of the county in which the owner resides, upon forms furnished by the department of justice. The forms must require the following information:

- (a) name of the owner;
- (b) residence of the owner, by town or county;
- (c) business or home address of the owner;
- (d) name and address of any lienholder;
- (e) amount due under any contract or lien;
- (f) name of the manufacturer;
- (g) model number or name;
- (h) identification number;
- (i) name and address of the dealer or other person from whom acquired, if known; and

(j) such other information as the department of justice may require.

(3) The application is to be accompanied by documentation of ownership, such as an invoice, bill of sale, foreign title, official certificate of boat number, tax receipt, certification from the department of revenue that the motorboat or sailboat 12 feet in length or longer is listed with the applicant's taxable property, or a certificate of ownership of a trailer purchased with the motorboat or sailboat. An applicant who fails to provide such proof of ownership shall provide a certified statement describing how the motorboat or sailboat 12 feet in length or longer was acquired, from whom acquired if known, and other information requested by the department of justice.

(4) If a certificate of ownership has previously been issued under the provisions of this part, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to motorboats or sailboats 12 feet in length or longer that are purchased as new and unused machines or that were operated when the provisions of this part were not in force and effect.

(5) Any motorboat or sailboat 12 feet in length or longer that does not have a manufacturer's or other identifying number thereon must be assigned an identification number by the department of fish, wildlife, and parks. A fee of \$1 must be paid to the department for an assignment of number.

(6) Upon completion of the application, the county treasurer shall issue to the applicant two copies of the certificate of number application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application for a certificate of ownership to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office, and shall furnish the applicant a certificate of ownership containing that information in the application considered necessary by the department and a permanent boat number. The certificate of ownership need not be renewed annually and is valid as long as the person holding it owns the vessel.

(7) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(8) Upon application for a certificate of ownership, a fee of \$6 must be paid to the county treasurer, \$4 of which must be forwarded by the county treasurer to the department of justice and deposited in the motor vehicle recording account of the state special revenue fund.

(9) A person who, on [the effective date of this act], is the owner of a motorboat or sailboat 12 feet in length or longer with a valid certificate of number issued by the state is not required to file an application for a certificate of ownership for the motorboat or sailboat 12 feet in length or longer unless he transfers a part of his interest in the motorboat or sailboat 12 feet in length or longer or he renews the certificate of number for the motorboat or sailboat 12 feet in length or longer.

**Section 2. Lost or mutilated certificate.** (1) If a certificate of ownership is lost, mutilated, or becomes illegible, the person to whom it was

issued shall immediately make application for and obtain a duplicate, upon payment of a fee of \$6.

(2) The duplicate certificate of ownership must be plainly marked "duplicate" across its face and be mailed or delivered to the applicant.

**Section 3. Transfer of interest.** (1) Except as provided in subsection (3), upon a transfer of a certificate of ownership to a motorboat or sailboat 12 feet in length or longer registered as required under the provisions of this part, the person whose title or interest is to be transferred shall sign the certificate of ownership issued for the motorboat or sailboat 12 feet in length or longer in the appropriate space provided on the reverse side of the certificate, and such signature must be acknowledged before a notary public.

(2) Within 20 calendar days thereafter, the transferee shall make application for transfer of the certificate of ownership so endorsed with the county treasurer of the county in which the transferee resides and also make application for registration of the motorboat or sailboat 12 feet in length or longer. The county treasurer shall forward the application to the department of justice, which shall file the certificate upon receipt. No certificate of ownership may be issued by the department until any outstanding certificate is surrendered to the department or its loss established to the department's reasonable satisfaction. The county treasurer shall collect a fee of \$6 for each application for transfer of ownership, of which \$4 must be forwarded to the department of justice for deposit in the motor vehicle recording account of the state special revenue fund.

(3) A purchaser of a new or used motorboat or sailboat 12 feet in length or longer from a licensed dealer has a grace period of 20 calendar days from the date of purchase to register the motorboat or sailboat 12 feet in length or longer, make application for a certificate of ownership, and obtain a decal [indicating that the fee in lieu of property tax has been paid on the vessel for the current year]. It is not a violation of this part or any other law for the purchaser to operate a newly acquired motorboat or sailboat 12 feet in length or longer without a certificate of ownership, certificate of registration, and decal during the 20-day grace period. During this period the sticker provided for in subsection (4) must remain affixed to the motorboat or sailboat 12 feet in length or longer.

(4) Prior to the delivery of the motorboat or sailboat 12 feet in length or longer to the purchaser, the dealer shall issue and affix to a motorboat or sailboat 12 feet in length or longer constructed after October 31, 1972, a sticker as prescribed by the department of justice. The sticker must contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the motorboat or sailboat 12 feet in length or longer, including its serial number. The dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the department of justice.

(5) The provisions of subsection (2) do not apply in the event of the transfer of a motorboat or sailboat 12 feet in length or longer to a duly licensed dealer intending to resell the motorboat or sailboat 12 feet in length or longer and who operates it only for demonstration purposes, but

every such dealer, upon transferring such interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of this part. The department of justice, upon receipt of the certificate of ownership and application for a new certificate containing notice of a security interest, if any, shall issue a new certificate of ownership, together with a statement of any conditional sales contract, mortgage, or other lien.

Section 4. Section 23-2-502, MCA, is amended to read:

**"23-2-502. Definitions.** As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Certificate of number" means the certificate issued annually by the county treasurer to the owner of a motorboat or by the department of justice to dealers or manufacturers, assigning such motorboat an identifying number and containing such information as required.

(2) "Certificate of ownership" means a certificate issued by the department of justice identifying the owner of a motorboat or sailboat 12 feet in length or longer.

(3) "Dealer" means any person who engages in whole or in part in the business of buying, selling, or exchanging new and unused vessels or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "Documented vessel" means a vessel which has and is required to have a valid marine document as a vessel of the United States.

(6) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat.

(7) "License decals" means the serially numbered license stickers issued annually by the county treasurer and displayed as required by law.

(8) "Lienholder" means a person holding a security interest.

(9) "Manufacturer" means any person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

(10) "Motorboat" means any vessel propelled by any machinery, motor, or engine of any description, whether or not such machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines but does not include a vessel which has a valid marine document issued by the U.S. coast guard of the United States government or any federal agency successor thereto.

(11) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(12) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(13) "Owner" means a person, other than a lien holder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(14) "Passenger" means every person carried on board a vessel other than:

(a) the owner or his representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(d) any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.

(15) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(16) "*Security interest*" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

(17) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

(18) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(19) "Waters of this state" means any waters within the territorial limits of this state."

**Section 5. Extension of authority.** Any existing authority of the department of justice to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 6. Codification instruction.** Sections 1 through 3 are intended to be codified as an integral part of Title 23, chapter 2, part 5, and the provisions of Title 23, chapter 2, part 5, apply to sections 1 through 3.

Section 7. **Coordination instruction.** If House Bill No. 658, providing a fee in lieu of property tax for motorboats is not passed and approved, the bracketed language in section 3(3) is void.

Section 8. **Effective date.** This act is effective July 1, 1988.

Approved April 9, 1987.

## CHAPTER NO. 434

[HB 737]

AN ACT TO ALLOW THE PROFESSIONAL PERSON IN CHARGE OF A PATIENT AT THE MONTANA STATE HOSPITAL TO FILE A PETITION FOR AN EXTENSION OF INVOLUNTARY COMMITMENT IN THE DISTRICT COURT OF THE COUNTY IN WHICH THE PATIENT IS DETAINED; AND AMENDING SECTION 53-21-128, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-21-128, MCA, is amended to read:

**"53-21-128. Petition for extension of commitment period.**

(1) (a) Not less than 2 calendar weeks prior to the end of the 3-month period of detention provided for in 53-21-127(2), the professional person in charge of the patient at the place of detention may petition the *district court in the county where the patient is detained* for extension of the detention period, *unless otherwise ordered by the original committing court*. The petition shall be accompanied by a written report and evaluation of the patient's mental and physical condition. The report shall describe any tests and evaluation devices which have been employed in evaluating the patient, the course of treatment which has been undertaken for the patient, and the future course of treatment anticipated by the professional person.

(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, his next of kin, if reasonably available, the friend of respondent appointed by the court, and the patient's counsel. If any person so notified requests a hearing prior to the termination of the previous detention authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

(c) Procedure on the petition for extension when a hearing has been requested shall be the same in all respects as the procedure on the petition for the original 3-month commitment except the patient is not entitled to trial by jury. The hearing shall be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise

ordered by the court. Court costs and witness fees, if any, shall be paid by the county that paid the same costs in the initial commitment proceedings.

(d) If upon the hearing the court finds the patient not seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed. If the court finds that the patient continues to suffer from serious mental illness, the court shall order commitment, custody in relatives, outpatient therapy, or other order as set forth in 53-21-127(2) except that no order may affect his custody for more than 6 months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall not order continuation of an alternative which does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative shall include a specific finding that a comprehensive, individualized plan of treatment exists.

(2) Further extensions may be obtained under the same procedure described in subsection (1) of this section except that the patient's custody may not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1) of this section, including a statement of the findings required by subsection (1)."

**Section 2. Extension of authority.** Any existing authority of the department of institutions to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 9, 1987.

## CHAPTER NO. 435

[HB 760]

AN ACT AUTHORIZING THE ISSUANCE AND SALE OF CERCLA GENERAL OBLIGATION BONDS AND APPROPRIATING THE PROCEEDS THEREOF TO THE HAZARDOUS WASTE/CERCLA SPECIAL REVENUE ACCOUNT FOR STATE PARTICIPATION IN REMEDIAL ACTION UNDER SECTION 104 OF THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980, AS AMENDED (CERCLA) FOR STATE COSTS FOR MAINTENANCE OF SITES AT WHICH REMEDIAL ACTION UNDER CERCLA HAS BEEN COMPLETED, AND FOR OBTAINING MATCHING FEDERAL FUNDS FOR UNDERGROUND STORAGE TANK CORRECTIVE ACTION; PROVIDING FOR AN AGREEMENT BETWEEN THE BOARD OF EXAMINERS AND THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Authorization for sale of CERCLA bonds.** The board of examiners is authorized to issue and sell CERCLA general obligation bonds in an amount not exceeding \$10 million upon the request of the department of health and environmental sciences, as provided for in section 4 of



House Bill No. 777. Proceeds of the bonds or notes are appropriated to the hazardous waste/CERCLA special revenue account provided for in section 2 of House Bill No. 777 to fund state participation in remedial action under section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), state costs for maintenance of sites at which remedial action under CERCLA has been completed, the state share required to obtain matching federal funds for underground storage tank corrective action, and costs of issuance of the bonds or notes.

**Section 2. Agreement with department of health and environmental sciences.** For the proceeds of bonds or notes authorized and appropriated by this act, the board of examiners and the department of health and environmental sciences may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes from which the appropriation was made and to accumulate and maintain reserves as may be required under such bonds. The agreement must further provide that income from the investment of bond proceeds and the reserves not required for the purposes presented in section 1 must be credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year the bonds are outstanding, if required. Payments by the department must be made from funds available therefor.

**Section 3. Benefit of state.** The agreement made pursuant to section 2 is solely for the benefit of the state of Montana and is not enforceable by bondholders or other third-party beneficiaries.

**Section 4. Department of health and environmental sciences — bond payment.** The department of health and environmental sciences shall transfer to the department of administration, after issuance of bonds and prior to the payment date, sufficient funds to retire general obligation bonds authorized by the 50th legislature and issued by the board of examiners. This payment obligation is for the benefit of the state and is not enforceable by bondholders.

**Section 5. Requirements for approval of state debt — severability.** Because section 1 authorizes the creation of a state debt, a vote of two-thirds of the members of each house of the legislature is required for enactment of section 1. If section 1 is not approved by the required vote, this act is void.

**Section 6. Coordination.** If House Bill No. 777 is not passed and approved, this act is void.

**Section 7. Effective date.** This act is effective July 1, 1987.

Approved April 9, 1987.

**CHAPTER NO. 436**

[HB 819]

AN ACT TO ALLOW THE SUPERINTENDENT OF PUBLIC INSTRUCTION THE DISCRETION TO EMPLOY CERTAIN SUPERVISORS AND PROFESSIONAL STAFF WITHIN THE OFFICE OF PUBLIC INSTRUCTION; AND AMENDING SECTION 20-3-103, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-3-103, MCA, is amended to read:

**"20-3-103. Deputy superintendent — staff.** (1) The state superintendent of public instruction shall appoint a deputy who, in the absence of the principal or in the case of vacancy in his office, shall perform all the duties of office until such disability be removed or vacancy be filled. Such deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of his duties.

(2) The superintendent of public instruction shall have the power to employ, organize, and administer a staff of personnel to assist him in the administration of the duties and services of the office. In organizing his staff, the superintendent of public instruction *may* employ:

(a) a supervisor of physical education who is a graduate of an accredited institution of higher education with a master's degree in physical education;

(b) a professional staff for the state supervision and administration of vocational education; and

(c) a special education supervisor who is a graduate of an accredited institution of higher education with a master's degree in a field of special education for the mentally retarded or physically handicapped and who has not less than 2 years' experience in special education."

Approved April 9, 1987.

**CHAPTER NO. 437**

[SB 49]

AN ACT ABOLISHING CIVIL LIABILITY ACTIONS AGAINST OFFICERS, DIRECTORS, AND VOLUNTEERS OF NONPROFIT CORPORATIONS IN CERTAIN CASES; AMENDING SECTION 27-1-701, MCA; AND PROVIDING AN APPLICABILITY PROVISION AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Right of action abolished.** (1) No officer, director, or volunteer of a nonprofit corporation is individually liable for any action or omission made in the course and scope of his official capacity on behalf of

the nonprofit corporation. This section does not apply to liability for willful or wanton misconduct. The immunity granted by this section does not apply to the liability of a nonprofit corporation.

(2) For purposes of this section, "nonprofit corporation" means:

(a) an organization exempt from taxation under section 501(c) of the Internal Revenue Code of 1954; or

(b) a corporation or organization which is eligible for or has been granted by the department of revenue tax exempt status under the provisions of 15-31-102.

Section 2. Section 27-1-701, MCA, is amended to read:

**"27-1-701. Liability for negligence as well as willful acts.** *Except as otherwise provided by law, everyone is responsible not only for the results of his willful acts but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person except so far as the latter has willfully or by want of ordinary care brought the injury upon himself.*"

Section 3. **Effective date — applicability.** This act is effective on passage and approval and applies to claims accruing after the effective date of this act.

Approved April 9, 1987.

## CHAPTER NO. 438

[SB 102]

AN ACT SPECIFYING HOW VOLUME AND FLOW RATE ARE TO BE USED IN A FINAL DECREE CONCERNING ADJUDICATED WATER RIGHTS; AMENDING SECTION 85-2-234, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-2-234, MCA, is amended to read:

**"85-2-234. Final decree.** (1) The water judge shall, on the basis of the preliminary decree and on the basis of any hearing that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the water judge shall enter it as the final decree.

(2) The terms of a compact negotiated and ratified under 85-2-702 must be included in the final decree without alteration unless an objection is sustained pursuant to 85-2-233; provided that the court may not alter or amend any of the terms of a compact except with the prior written consent of the parties in accordance with applicable law.

(3) The final decree shall establish the existing rights and priorities within the water judge's jurisdiction of persons required by 85-2-221 to file a claim for an existing right, of persons required to file a declaration of existing rights in the Powder River Basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims.

(4) The final decree shall state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are based.

(5) For each person who is found to have an existing right arising under the laws of the state of Montana, the final decree shall state:

- (a) the name and post-office address of the owner of the right;
- (b) the amount of water included in the right, *as follows*:
  - (i) *by flow rate for direct flow rights, such as irrigation rights;*
  - (ii) *by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not susceptible to measurement by flow rate; or*
  - (iii) *by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right;*
- (c) the date of priority of the right;
- (d) the purpose for which the water included in the right is used;
- (e) the place of use and a description of the land, if any, to which the right is appurtenant;
- (f) the source of the water included in the right;
- (g) the place and means of diversion;
- (h) the inclusive dates during which the water is used each year;
- (i) any other information necessary to fully define the nature and extent of the right.

(6) For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the final decree shall state:

- (a) the name and mailing address of the holder of the right;
- (b) the source or sources of water included in the right;
- (c) the quantity of water included in the right;
- (d) the date of priority of the right;
- (e) the purpose for which the water included in the right is currently used, if at all;
- (f) the place of use and a description of the land, if any, to which the right is appurtenant;
- (g) the place and means of diversion, if any; and

(h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under 85-2-702."

**Section 2. Applicability.** This act applies retroactively, within the meaning of 1-2-109, to all decrees issued by a water judge under Title 85, chapter 2, part 2, after April 30, 1982.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved April 9, 1987.

## CHAPTER NO. 439

[SB 111]

AN ACT REQUIRING USE OF SEATBELTS BY OCCUPANTS OF A MOTOR VEHICLE; PROVIDING A PENALTY EFFECTIVE JANUARY 1, 1988; PROVIDING FOR CONTINUING EDUCATION CONCERNING THE BENEFITS OF WEARING SEATBELTS; AND PROVIDING THAT EVIDENCE IS NOT ADMISSIBLE IN CIVIL LITIGATION.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 6] may be cited as the "Montana Seatbelt Use Act".

**Section 2. Definitions.** As used in [sections 1 through 6], the following definitions apply:

- (1) "Department" means the department of justice.
- (2) "Highway" means the entire width between the boundary lines of each publicly maintained way when any part thereof is open to public use for vehicular travel.
- (3) "Motor vehicle" means a vehicle propelled by its own power and designed primarily to transport persons or property upon the highways of the state.
- (4) "Occupants" means the driver and passengers in a motor vehicle.
- (5) "Seatbelt" means a system using a lap belt, a shoulder belt, or other belt or combination of belts installed in a motor vehicle to restrain occupants, which system conforms to federal motor vehicle safety standards.

**Section 3. Seatbelt use required — exceptions.** (1) No driver may operate a motor vehicle upon a highway of the state of Montana unless each occupant of a designated seating position is wearing a properly adjusted and fastened seatbelt.

- (2) The provisions of this section do not apply to:

(a) an occupant of a motor vehicle who possesses a written statement from a licensed physician that he is unable to wear a seatbelt for medical reasons;

(b) an occupant of a motor vehicle in which all seatbelts are being used by other occupants;

(c) an operator of a motorcycle as defined in 61-1-105 or a motor-driven cycle as defined in 61-1-106;

(d) an occupant of a vehicle licensed as special mobile equipment as defined in 61-1-104;

(e) children subject to the provisions of 61-9-420; or

(f) an occupant who makes frequent stops with a motor vehicle in his official job duties and who may be exempted by the department.

(3) The department may adopt rules to implement (2)(f).

(4) The department or its agent may not require a driver who may be in violation of [section 3] to stop except upon reasonable cause to believe that he has violated another traffic regulation or that his vehicle is unsafe or not equipped as required by law.

**Section 4. Penalty — no record permitted.** (1) A driver who violates [section 3] will be fined \$20, but the violation is not a misdemeanor pursuant to 45-2-101, 46-18-236, 61-8-104, or 61-8-711. A violation of [section 3] may not be counted as a moving violation for purposes of suspending a driver's license under 61-11-203(2)(l). Bond for this offense is \$20, and no jail sentence may be imposed.

(2) No violation of [section 3] may be recorded or charged against the driver's record of a person violating [section 3], and no insurance company shall hold a violation of [section 3] against the insured, and there may be no increase in premiums due to a violation of [section 3].

**Section 5. Education program.** The highway traffic safety division of the department shall continue its program for public information and education concerning the benefits of wearing seatbelts and include within such program the requirements of [section 3] and the penalty specified in [section 4].

**Section 6. Evidence not admissible.** Evidence of compliance or failure to comply with [section 3] is not admissible in any civil action for personal injury or property damage resulting from the use or operation of a motor vehicle, and failure to comply with [section 3] does not constitute negligence.

**Section 7. Codification instruction.** Sections 1 through 6 are intended to be codified as an integral chapter of Title 61.

**Section 8. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this

act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. **Effective date.** Section 4 is effective January 1, 1988.

Approved April 9, 1987.

## CHAPTER NO. 440

[SB 139]

AN ACT DEFINING THE RESPONSIBILITY AND LIABILITY OF SNOWMOBILE AREA OPERATORS AND THE RESPONSIBILITY AND RISK BORNE BY SNOWMOBILERS; AMENDING SECTIONS 27-1-701 AND 70-16-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Purpose.** The legislature recognizes that there are inherent risks in the sport of snowmobiling that are essentially impossible for a snowmobile area operator to eliminate but that should be known by a reasonable and prudent snowmobiler. The purpose of [this act] is to define those areas of responsibility and the acts for which a snowmobile area operator is liable for death or injury to any person or property and those risks for which a snowmobiler expressly assumes or must be considered to have voluntarily assumed the risk of death or injury and for which there can be no recovery.

Section 2. **Definitions.** As used in [this act], the following definitions apply:

- (1) "Snowmobile" means a vehicle defined in 23-2-601(10).
- (2) "Snowmobile area" means those areas designated as snowmobile trails or areas open to the operation of snowmobiles.
- (3) "Snowmobile area operators" means those persons responsible for the maintenance of snowmobile trails and open areas or those persons providing rental snowmobile equipment. Operators may include but are not limited to the United States forest service, the Montana department of fish, wildlife, and parks, the Montana snowmobile association, individual snowmobile clubs, landowners or their tenants, persons who offer snowmobile equipment for rent, and private trail grooming contractors.

- (4) "Snowmobiler" means any person operating or riding a snowmobile.

Section 3. **Snowmobile area operators — duties — restriction on liability.** (1) The person responsible for the maintenance of or operation of a snowmobile area shall mark all trail maintenance vehicles and furnish the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the snowmobile area.

(2) A snowmobile area operator is liable for death or injury to a snowmobiler or other person or property only for an act or omission that constitutes gross negligence.

(3) Except as provided in this section, a snowmobile area operator has no duty to eliminate, alter, control, or lessen the risk inherent in the sport of snowmobiling. A snowmobile area operator who attempts to eliminate, alter, control, or lessen the risk inherent in the sport of snowmobiling is liable only for an act or omission that constitutes gross negligence.

**Section 4. Snowmobiler's assumption of responsibility — duties.**

(1) A snowmobiler assumes the risk and all legal responsibility for death or injury to himself or other persons or property that results from the risks inherent in the sport of snowmobiling. The assumption of risk includes but is not limited to death or injury caused by the following: variations in terrain, surface or subsurface snow or ice conditions, cornices, avalanches, poor visibility, bare spots, rocks, trees, other forms of forest growth or debris, and plainly marked trail maintenance equipment.

(2) A snowmobiler is responsible for:

(a) knowing the range of his own ability to snowmobile any slope, trail, or area and for snowmobiling within the limits of his ability considering the conditions;

(b) maintaining control of his speed and course at all times while snowmobiling;

(c) heeding all posted warnings; and

(d) refraining from acting in a manner that may cause or contribute to the injury of anyone.

(3) The provisions of this section do not affect a products liability cause of action based upon the design or manufacture of snowmobile equipment or products or safety equipment used incidental to the operation of a snowmobile.

**Section 5. Maintenance of rental snowmobiles.** A person who engages in the business of renting snowmobiles to another shall:

(1) maintain rental snowmobiles in a safe condition; and

(2) offer each renter instructions in the mechanical operation of the rental snowmobile.

**Section 6. Effect of comparative negligence.** Notwithstanding any comparative negligence law in this state, a person is barred from recovery from a snowmobile area operator for death or injury to person or property resulting from any risk inherent in the sport of snowmobiling as described in [section 4].

**Section 7.** Section 27-1-701, MCA, is amended to read:

**"27-1-701. Liability for negligence as well as willful acts.** *Except as otherwise provided by law, everyone* is responsible not only for the results of his willful acts but also for an injury occasioned to another by



his want of ordinary care or skill in the management of his property or person except so far as the latter has willfully or by want of ordinary care brought the injury upon himself."

Section 8. Section 70-16-302, MCA, is amended to read:

**"70-16-302. Restriction on liability to permittee.** (1) A landowner or tenant who permits, by act or implication, any person to enter upon any property in the possession or under the control of such landowner or tenant for any recreational purpose without accepting a valuable consideration therefor does not by granting such permission extend any assurance that such property is safe for any purpose or confer upon such a person the status of invitee or licensee to whom any duty of care is owed, and such landowner or tenant shall not be liable to such person for any injury to person or property resulting from any act or omission of such landowner or tenant unless such act or omission constitutes willful or wanton misconduct.

(2) *The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1) on the landowner's property, and when not also acting as a snowmobile area operator on the property, does not extend any assurance that such property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless such act or omission constitutes willful or wanton misconduct.*"

Section 9. **Two-thirds vote required.** Since this act limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house for passage.

Section 10. **Effective date.** This act is effective on passage and approval.

Approved April 9, 1987.

## CHAPTER NO. 441

[SB 160]

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO STATUTES OF LIMITATION ON THE COMMENCEMENT OF A CIVIL ACTION; AND AMENDING SECTIONS 27-2-102, 27-2-301, 27-2-401, 27-2-402, 27-2-408, AND 27-2-409, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 27-2-102, MCA, is amended to read:

**"27-2-102. When action commenced.** (1) For the purposes of statutes relating to the time within which an action must be commenced:

(a) *a claim or cause of action accrues when all elements of the claim or cause exist or have occurred, the right to maintain an action on the claim or cause is complete, and a court or other agency is authorized to accept jurisdiction of the action;*

(b) *an action is commenced when the complaint is filed.*

(2) *Unless otherwise provided by statute, the period of limitation begins when the claim or cause of action accrues. Lack of knowledge of the claim or cause of action, or of its accrual, by the party to whom it has accrued, does not postpone the beginning of the period of limitation.*

(3) *The period of limitation does not begin on any claim or cause of action for an injury to person or property until the facts constituting the claim have been discovered or, in the exercise of due diligence, should have been discovered by the injured party if:*

(a) *the facts constituting the claim are by their nature concealed or self-concealing; or*

(b) *before, during, or after the act causing the injury, the defendant has taken action which prevents the injured party from discovering the injury or its cause.*

(4) *Subsection (3) does not apply to actions involving the limitations contained in 27-2-205."*

Section 2. Section 27-2-301, MCA, is amended to read:

**"27-2-301. When demand necessary to perfect right to action.** Where a right exists but a demand is necessary to entitle a person to maintain an action, the time within which the action must be commenced must be computed from the time when the demand is *made*, except where the right grows out of the receipt or detention of money or property by an agent, trustee, attorney, or other person acting in a fiduciary capacity, the time must be computed from the time when the person having the right to make the demand has actual knowledge of the facts upon which that right depends."

Section 3. Section 27-2-401, MCA, is amended to read:

**"27-2-401. When person entitled to bring action is under a disability.** (1) If a person entitled to bring an action mentioned in part 2, except 27-2-211(3), is, at the time the cause of action accrues, either a minor, seriously mentally ill, or imprisoned on a criminal charge or under a sentence for a term less than for life, the time of such disability is not a part of the time limited for commencing the action. However, the time so limited cannot be extended more than 5 years by any such disability except minority.

(2) If an action is barred by 27-2-304, any of the heirs, devisees, or creditors who at the time of the transaction upon which the action might have been founded was under one of the disabilities mentioned in subsection (1) may, within 5 years after the cessation of such disability, maintain an action to recover damages. In such action he may recover such sum or the value of such property as he would have received upon the final distribution of the estate if an action had been seasonably commenced by the *personal representative*.

(3) No person may avail himself of a disability unless it existed when his right of action or entry accrued.

(4) When two or more disabilities coexist at the time the right of action or entry accrues, the limitation does not attach until *all* are removed."

Section 4. Section 27-2-402, MCA, is amended to read:

**"27-2-402. When defendant is out of state.** *When the cause of action accrues against a person who is out of the state and cannot be served with process, the action may be commenced within the term herein limited after his return to the state; and if after the cause of action accrues he departs from the state and cannot be served with process, the time of his absence is not part of the time limited for the commencement of the action."*

Section 5. Section 27-2-408, MCA, is amended to read:

**"27-2-408. Assertion of counterclaim.** *(1) A defendant is entitled to assert against a plaintiff, by pleading or amendment, any counterclaim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against him.*

*(2) The time period between the commencement and termination of an action is not part of the time limit for the commencement of an action by a defendant to recover for a counterclaim or to interpose it in that action or another action by the same plaintiff or a successor arising out of the same transaction or occurrence."*

Section 6. Section 27-2-409, MCA, is amended to read:

**"27-2-409. Acknowledgment of debt or part payment.** *An acknowledgment or the part payment of a debt is sufficient evidence to cause the relevant statute of limitations to begin running anew.*

*(1) An acknowledgment must be contained in some writing signed by the party to be charged thereby.*

*(2) Part payment is any payment of principal or interest."*

Approved April 9, 1987.

## CHAPTER NO. 442

[SB 181]

**AN ACT REQUIRING SUSPENSION OF A DRIVER'S LICENSE FOR FAILURE TO APPEAR IN COURT OR FAILURE TO PAY A FINE, COSTS, OR RESTITUTION AFTER CONVICTION OF CERTAIN OFFENSES; AND REQUIRING PAYMENT OF A REINSTATEMENT FEE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Mandatory suspension for failure to appear or pay fine.** The department shall suspend the license or driving privilege of an operator or chauffeur immediately upon receipt of a certified copy of a docket page or other sufficient evidence from the court that the operator or chauffeur:

(1) is guilty of a violation of 61-5-302 through 61-5-306, 61-5-309, chapter 12, part 6, or chapters 3, 7, 8, 9, or 10 of this title or is guilty of a criminal offense and was driving or was in actual physical control of a motor vehicle when the offense occurred; and

(2) (a) failed to post the set bond amount or appear as ordered by the court or appear upon issued summons; or

(b) failed to forfeit the posted bond amount or, when assessed a fine, costs, or restitution of \$100 or more, failed to pay such fine, costs, or restitution; and

(3) received notice, evidenced by a signed receipt for a certified letter or by a statement signed before the court of the provisions of this section, including the reinstatement fee.

**Section 2. Provisional licenses prohibited — reinstatement fee.**

(1) No provisional, restricted, or probationary license may be issued upon a suspension under [section 1].

(2) A person whose license is suspended under [section 1] shall pay a reinstatement fee of \$25 to the court for deposit in the state general fund.

**Section 3. Reinstatement of license.** Upon receipt of notification from the court that the operator or chauffeur has appeared, posted the bond, or paid the fine, costs, or restitution amounts and the reinstatement fee, the department shall immediately reinstate the license, unless the operator or chauffeur otherwise is not entitled to reinstatement.

**Section 4. Extension of authority.** Any existing authority of the department of justice to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 5. Codification instruction.** Sections 1 through 3 are intended to be codified as an integral part of Title 61, chapter 5, part 2, and the provisions of Title 61, chapter 5, part 2, apply to sections 1 through 3.

Approved April 9, 1987.

## CHAPTER NO. 443

[SB 212]

AN ACT TO PROVIDE FOR A CLASSIFIED COMMERCIAL VEHICLE OPERATOR'S LICENSING PROGRAM; REVISING THE MOTOR VEHICLE LAWS TO REMOVE REFERENCES TO CHAUFFEURS; AMENDING SECTIONS 20-10-103, 61-5-102, 61-5-104 THROUGH 61-5-108, 61-5-110 THROUGH 61-5-116, 61-5-121, 61-5-201, 61-5-203 THROUGH 61-5-212, 61-5-301, 61-5-302, 61-5-305, 61-5-306, 61-7-105, 61-7-107, 61-11-101, AND 72-17-204, MCA; REPEALING SECTION 61-1-312, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Commercial motor vehicle defined — exceptions.** (1) "Commercial motor vehicle" means a motor vehicle used to transport passengers or property if the vehicle:

- (a) has a gross vehicle weight of 26,001 pounds or more;
  - (b) is designed to transport more than 15 passengers, including the driver; or
  - (c) is used to transport hazardous material.
- (2) Vehicles operated within the state of Montana which are registered as paying the 16% gross weight fee are not commercial motor vehicles under this act.

**Section 2. Commercial vehicle operator's endorsement.** "Commercial vehicle operator's endorsement" means an endorsement to a Montana driver's license that authorizes the licensee to operate a class of commercial motor vehicle. However, if the applicant's vehicle does not otherwise require a commercial vehicle operator's endorsement, a hazardous material endorsement may be substituted for the commercial vehicle operator's endorsement.

**Section 3. Driver's license.** "Driver's license" means any license or permit to operate a motor vehicle issued under, or granted by, the laws of this state including:

- (1) any temporary license or instruction permit;
- (2) the privilege of any person to drive a motor vehicle whether or not such person holds a valid license;
- (3) any nonresident's driving privilege;
- (4) a motorcycle endorsement; and
- (5) a commercial vehicle operator's endorsement.

**Section 4. Hazardous material.** "Hazardous material" means a substance or material, defined or listed as a hazardous material in Title 49, Code of Federal Regulations, in a quantity and form that may pose an unreasonable risk to health and safety or property when transported.

**Section 5.** Section 61-5-102, MCA, is amended to read:

**"61-5-102. Drivers to be licensed.** (1) No person, except those expressly exempted under 61-5-104, shall drive any motor vehicle upon a highway in this state unless such person has a valid Montana *driver's* license. No person shall receive a *Montana driver's* license unless and until he surrenders to the department all valid *driver's* licenses in his possession issued to him by any other jurisdiction. All surrendered licenses shall be returned by the department to the issuing department together with information that the licensee is now licensed in this state. No person shall be permitted to have more than one valid *driver's* license at any time.

(2) Whenever a city or town requires a *licensed driver* to obtain a local driving license or permit, such a license or permit shall not be issued unless *the* applicant presents a state driver's license valid under the provisions of this chapter.

(3) A person operating a bicycle defined in 61-1-123(2) shall have in his possession at all times when operating the bicycle a valid Montana driver's license."

Section 6. Section 61-5-104, MCA, is amended to read:

**"61-5-104. Exemptions.** (1) The following persons are exempt from license hereunder:

(a) any person who is a member of the armed forces of the United States while operating a motor vehicle owned by or leased to the United States government and being operated on official business;

(b) any person who is a member of the armed forces of the United States on active duty in Montana who holds a valid license issued by another state and the spouse of such a person who holds a valid license issued by another state and who is not employed in Montana except as a member of the armed forces; if a spouse of a member of the armed forces becomes gainfully employed in Montana, such spouse must be licensed as required by 61-5-102 within 90 days of becoming so employed;

(c) any person on active duty in the armed forces of the United States who has in his immediate possession a valid license issued in a foreign country by the armed forces of the United States, for a period of 45 days from the date of his return to the United States;

(d) any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway.

(2) A nonresident who is at least 15 years of age and who has in his immediate possession a valid operator's license issued to him in his home state or country may operate a motor vehicle in this state only as an operator.

(3) A nonresident who is at least 18 years of age and who has in his immediate possession a valid *commercial operator's* license issued to him in his home state or country may operate a motor vehicle or *commercial motor vehicle* in this state subject to the age limits applicable to *commercial vehicle operators* in this state.

(4) Any nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than 90 days in any calendar year, if the motor vehicle so operated is duly registered in the home state or country of such nonresident.

(5) A driver's license issued hereunder to any person who enters the United States armed forces, if valid and in force and effect at the time such person enters the service, shall continue in full force and effect so long as such service shall continue unless such license is sooner suspended, revoked, or canceled for a cause as provided by law, and for not to exceed 30 days following the date on which holder of such driver's license is honorably separated from such service. During said 30-day period, such license shall be valid only when in the immediate possession of the licensee while driving and the licensee has his discharge, separation, leave, or furlough papers in his immediate possession."

Section 7. Section 61-5-105, MCA, is amended to read:

**"61-5-105. Who may not be licensed.** The department shall not issue any license hereunder to any person:

(1) who is under the age of 16 years, with these exceptions:

(a) The department may issue a *driver's* license to a person who is 15 years of age if he has passed a driver's education course approved by the department and the superintendent of public instruction.

(b) The department may issue a restricted license to any person who is at least 13 years of age;

(2) whose license has been suspended during the suspension, or to any person whose license has been revoked, except as provided in 61-5-208;

(3) who is an habitual drunkard, or is addicted to the use of narcotic drugs;

(4) who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law;

(5) who is required by this chapter to take an examination, unless the person shall have successfully passed such examination;

(6) who is required under the provisions of the motor vehicle financial responsibility laws of this state to deposit proof of financial responsibility and who has not deposited such proof;

(7) who is suffering from any form of epileptic type seizures or similar disorders characterized by lapse of consciousness or control, either temporary or prolonged, which is or may become chronic; provided that the department may in its discretion issue a license to a person suffering from epileptic type seizures or similar disorder characterized by lapse of consciousness or control, if otherwise qualified to be licensed to drive a motor vehicle, when the afflicted person can show through a written report from his attending physician that he has not experienced an epileptic type seizure or similar disorder characterized by lapse of consciousness or control for a sufficient period and that the condition is stabilized as attested to by said physician."

Section 8. Section 61-5-106, MCA, is amended to read:

**"61-5-106. Instruction and traffic education permits and temporary licenses.** (1) Any person satisfying the age requirements specified in 61-5-105(1) may apply to the department for an instruction permit. The department may in its discretion, after the applicant has successfully passed all parts of the examination other than the driving test, issue to the applicant an instruction permit which shall entitle the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the public highways for a period of 6 months when accompanied by a licensed *driver* who is occupying a seat beside the driver. In addition, the department may issue such an instruction permit to any person who is at least 14 ½ years of age and who has successfully completed or is successfully participating in a traffic education course approved by the department and the superintendent of public instruction. Any instruction permit so

issued shall be restricted to the operation of a motor vehicle only when accompanied by an approved instructor or licensed parent or guardian and may be further restricted to specific times and/or areas.

(2) The department upon receiving proper application may in its discretion issue a traffic education permit effective for a school year or more restricted period to an applicant who is enrolled in a traffic education program approved by the department even though the applicant has not reached the legal age to be eligible for a *driver's* license. Such permit shall entitle the permittee when he has such a permit in his immediate possession to operate only on a designated highway or within a designated area a motor vehicle only when an approved instructor is occupying a seat beside the permittee or a motorcycle or quadricycle only when under the immediate and proximate supervision of an approved instructor.

(3) The department may in its discretion issue a temporary driver's permit to an applicant for a *driver's* license permitting him to operate a motor vehicle while the department is completing its investigation and determination of all facts relative to such applicant's right to receive a *driver's* license. Such permit must be in his immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused.

(4) *The department may in its discretion issue a temporary commercial vehicle operator's endorsement to an applicant for such an endorsement permitting him to operate a commercial motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's right to receive a commercial vehicle operator's endorsement. Such endorsement must be in his immediate possession while operating a commercial motor vehicle and is invalid when the applicant's endorsement has been issued or for good cause has been refused."*

Section 9. Section 61-5-107, MCA, is amended to read:

**"61-5-107. Application for license, instruction permit, commercial vehicle operator's endorsement, or motorcycle endorsement.** (1) Every application for an instruction permit, *driver's* license, *commercial vehicle operator's endorsement*, or motorcycle endorsement shall be made upon a form furnished by the department. A motorcycle endorsement is required for the operation of a quadricycle. Every application shall be accompanied by the proper fee, and payment of such fee shall entitle the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application.

(2) Every such application shall state the full name, date of birth, sex, and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has *previously* been licensed as a *driver or commercial vehicle operator*, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation, or refusal.

(3) Whenever application is received from an applicant previously licensed by any other jurisdiction, the department shall request a copy of



such applicant's driving record from such previous licensing jurisdiction. When received, such driving records shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance."

Section 10. Section 61-5-108, MCA, is amended to read:

**"61-5-108. Application of minors.** (1) The application of any person under the age of 18 years for an instruction permit or *driver's license* shall be signed and verified before a person authorized to administer oaths by both the father and mother of the applicant, if both are living and have custody of him, or by the surviving parent, or in the event neither parent is living or has custody, then by the person or guardian having such custody or by an employer of such minor, or in the event there is no guardian or employer then by some other responsible person who is willing to assume the obligation imposed under this chapter upon a person signing the application of a minor.

(2) Any negligence or willful misconduct of a minor under the age of 18 years when driving a motor vehicle upon a highway shall be imputed to a person who has signed the application of such minor for a permit or license, which person shall be jointly and severally liable with such minor for any damages caused by such negligence or willful misconduct, except as otherwise provided in subsection (3) of this section.

(3) In the event a minor deposits or there is deposited upon his behalf proof of financial responsibility in respect to the operation of a motor vehicle owned by him, or if not the owner of a motor vehicle, then with respect to the operation of any motor vehicle, in form and in amounts as required under the motor vehicle financial responsibility laws of this state, then the department may accept the application of such minor when signed by one parent or the guardian of such minor, and while such proof is maintained such parent or guardian shall not be subject to the liability imposed under subsection (2) of this section."

Section 11. Section 61-5-110, MCA, is amended to read:

**"61-5-110. Examination of applicants.** (1) The department shall examine every applicant for a *driver's license*, *commercial vehicle operator's endorsement*, or motorcycle endorsement, except as otherwise provided in this section. Such examination shall include a test of the applicant's eyesight, his ability to read and understand highway signs regulating, warning, and directing traffic, his knowledge of the traffic laws of this state, and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle, quadricycle, or motorcycle. *The examination for the commercial vehicle operator's endorsement may include additional items.*

(2) *Within 90 days of receipt of an application for a commercial vehicle operator's endorsement, the department shall give an examination for endorsement to the applicant in the county where the applicant resides."*

Section 12. Section 61-5-111, MCA, is amended to read:

**"61-5-111. Renewals, expirations, and fees for licenses, permits, and endorsements.** (1) The department shall have authority to

appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing such sales. In those areas where the department provides driver licensing services 3 days or more a week the department is responsible for sale of receipts and may not appoint an agent. The department, upon receipt of payment of the fees specified in this section, shall issue to every applicant qualifying therefor a *driver's* license as applied for. *The license* shall contain a full-face photograph of the licensee in the size and form as prescribed by the department, except as provided in subsection (4); a distinguishing number issued to the licensee; the full name, date of birth, residence address, and a brief description of the licensee; and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee.

(2) The department shall, when any person applies for renewal of a *driver's* license, test the applicant's eyesight and may also in the department's discretion have the applicant demonstrate his physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle. A person shall be considered to have applied for renewal of a Montana *driver's* license if the application is made within 3 months of the expiration of his license.

(3) Licenses shall expire on the anniversary of the date of birth of the licensee 4 years or less after the date of issue.

(4) A license issued to a person under the age of 19 years must contain a photograph of the licensee's profile.

(5) Whenever the department issues an original license to a person under the age of 18 years, the license shall be designated and clearly marked as a "provisional license". Any license so designated and marked may be suspended by the department for a period of not more than 12 months, when its records disclose that the licensee, subsequent to the issuance of such license, has been guilty of careless or negligent driving. Upon renewal the department may, for any reasonable cause as shown by its records, designate the renewal of the license as provisional; otherwise, a license in usual form shall be issued subject to other provisions of the laws of Montana.

(6) It shall be unlawful for any person to have in his possession or under his control more than one Montana *driver's* license at any one time. A license is not valid for the operation of a motorcycle or quadricycle until the holder thereof has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement". *A license is not valid for the operation of a commercial vehicle until the holder thereof has completed the requirements of 61-5-110 and the license has been clearly marked with the words "commercial vehicle operator's endorsement".*

(7) Fees for driver's licenses shall be as follows:

- (a) driver's license — \$3 per year or fraction thereof;
- (b) motorcycle endorsement — 50 cents per year or fraction thereof;

(c) *commercial vehicle operator's endorsement:*

(i) *interstate — \$3 per year or fraction thereof;*

(ii) *intrastate — \$1.50 per year or fraction thereof.*

(8) *A license designated as chauffeur as of January 1, 1988, is valid as a commercial vehicle operator's endorsement until the expiration of the license.*

(9) *On or after January 1, 1988, if the holder of a chauffeur's license wishes to convert his chauffeur's license to a commercial vehicle operator's endorsement, he may do so by paying the appropriate fee covering the remainder of the life of his license and complying with the requirements established by the department.*

(10) *After January 1, 1988, the holder of a valid chauffeur's license who is renewing and wishes to obtain a commercial vehicle operator's endorsement may do so upon paying the appropriate fees and complying with the requirements established by the department.*

(11) *After January 1, 1988, the holder of a valid operator's, chauffeur's, or driver's license may obtain a hazardous material endorsement by successfully completing a written examination."*

Section 13. Section 61-5-112, MCA, is amended to read:

**"61-5-112. Classification of commercial vehicle operator's endorsements — special restrictions.** The department upon issuing a license *with a commercial vehicle operator's endorsement* shall indicate thereon the class of license so issued and shall appropriately examine each applicant according to the class of *endorsement* applied for and may impose such rules for the *classification, examination, and use* thereof as it considers necessary for the safety and welfare of the traveling public."

Section 14. Section 61-5-113, MCA, is amended to read:

**"61-5-113. Restricted licenses.** (1) The department upon issuing a *driver's* license shall have authority whenever good cause appears to impose restrictions suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(2) The department may either issue a special restricted license or may set forth such restrictions upon the usual license form.

(3) The department may upon receiving satisfactory evidence of any violation of the restrictions of such license *or endorsement* suspend or revoke the same but the licensee shall be entitled to a hearing as upon suspension or revocation under this chapter.

(4) It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him."

Section 15. Section 61-5-114, MCA, is amended to read:

**"61-5-114. Duplicate licenses.** In the event that an instruction permit or *driver's* license issued under the provisions of this chapter is lost or destroyed, the person to whom the same was issued may upon the payment of a fee of \$5 obtain a duplicate or substitute thereof, upon furnishing proof satisfactory to the department that such permit or license has been lost or destroyed."

Section 16. Section 61-5-115, MCA, is amended to read:

**"61-5-115. Notice of change of address or name.** Whenever any person after applying for or receiving a *driver's* license shall move from the address named in such application or in the license issued to him or when the name of a licensee is changed by marriage or otherwise such person shall within 10 days thereafter notify the department in writing of his old and new addresses or of such former and new names and of the number of any license then held by him."

Section 17. Section 61-5-116, MCA, is amended to read:

**"61-5-116. License to be carried and exhibited on demand.** Every licensee shall have his *driver's* license in his immediate possession at all times when operating a motor vehicle and shall display the same upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrolman, or a field deputy or inspector of the department. However, no person charged with violating this section shall be convicted if he produces in court or the office of the arresting officer a *driver's* license theretofore issued to him and valid at the time of his arrest."

Section 18. Section 61-5-121, MCA, is amended to read:

**"61-5-121. Disposition of fees.** (1) The disposition of the fees from *driver's* licenses provided for in 61-5-111(7)(a), motorcycle endorsements provided for in 61-5-111(7)(b), *commercial vehicle operator's endorsements provided for in 61-5-111(7)(c)*, and duplicate *driver's* licenses provided for in 61-5-114 is as follows:

(a) The amount of 33 ⅓% of each *driver's* license fee and of each duplicate *driver's* license fee must be deposited into the Montana highway patrolmen's retirement pension trust fund.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 3 ⅓% of each *driver's* license fee and of each duplicate *driver's* license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing licenses or duplicate licenses.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 5% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing motorcycle endorsements.

(d) The amount of 23 1/3% of each driver's license fee and of each duplicate driver's license fee and the amount of 35% of each motorcycle endorsement fee must be deposited into the state traffic education account.

(e) The amount of 40% of each driver's license fee and of each duplicate driver's license fee and the amount of 60% of each motorcycle endorsement fee must be deposited into the state general fund.

(f) *The entire amount of each commercial vehicle operator's endorsement fee must be deposited into the motor vehicle recording account established in 61-3-108.*

(2) (a) If fees from driver's licenses, *commercial vehicle operator's endorsements*, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, he shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. He shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the Montana highway patrolmen's retirement pension trust fund, the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(d), (1)(e), and (1)(f).

(b) If fees from driver's licenses, *commercial vehicle operator's endorsements*, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the Montana highway patrolmen's retirement pension trust fund, the state special revenue fund, the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), (1)(d), (1)(e), and (1)(f)."

Section 19. Section 61-5-201, MCA, is amended to read:

**"61-5-201. Authority of department to cancel license and endorsement.** (1) The department is hereby authorized to cancel a driver's license and *commercial vehicle operator's endorsement*, or just the *commercial vehicle operator's endorsement*, upon determining that the licensee was not entitled to the issuance or that since the issuance said licensee has become ineligible (such ineligibility shall be determined pursuant to the provisions of 61-5-105) or that said licensee failed to give the required or correct information in his application or committed any fraud in making such application.

(2) Upon such cancellation, the licensee must surrender the license so canceled to the department."

Section 20. Section 61-5-203, MCA, is amended to read:

**"61-5-203. Suspending privileges of nonresidents.** The privilege of driving a motor vehicle on the highways of this state given to a nonresident shall be subject to suspension or revocation by the department in like manner and for like causes as a *driver's license and commercial vehicle operator's endorsement, or just an endorsement* issued hereunder may be suspended or revoked."

Section 21. Section 61-5-204, MCA, is amended to read:

**"61-5-204. Suspending resident's license upon conviction in another state.** The department is authorized to suspend or revoke the *driver's license and commercial vehicle operator's endorsement, or just the commercial vehicle operator's endorsement* of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this state, would be grounds for the suspension or revocation of the *driver's license or commercial vehicle operator's endorsement.*"

Section 22. Section 61-5-205, MCA, is amended to read:

**"61-5-205. Mandatory revocation of license upon proper authority.** The department upon proper authority shall revoke the *driver's license, including the commercial vehicle operator's endorsement, or the operating privilege* of any *driver* upon receiving a record of the *driver's* conviction or forfeiture of bail not vacated of any of the following offenses, when such conviction or forfeiture has become final:

- (1) negligent homicide resulting from the operation of a motor vehicle;
- (2) driving a motor vehicle while under the influence of alcohol or narcotic drug, or willfully or knowingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle, or a combination thereof except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more;
- (3) any felony in the commission of which a motor vehicle is used;
- (4) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;
- (5) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;
- (6) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months."

Section 23. Section 61-5-206, MCA, is amended to read:

**"61-5-206. Authority of department to suspend license or driving privilege or issue probationary license.** (1) The department is hereby authorized to suspend the *driver's license, including the commercial*

*vehicle operator's endorsement*, or driving privilege of a *driver* without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

(a) has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;

(b) has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(c) is an habitually reckless or negligent driver of a motor vehicle;

(d) is incompetent to drive a motor vehicle;

(e) has permitted an unlawful or fraudulent use of such license as specified in 61-5-302;

(f) has committed an offense in another state which if committed in this state would be grounds for suspension or revocation; or

(g) has falsified his date of birth on his application for a driver's license.

(2) However, the department may, in its discretion and in lieu of such suspension of license or driving privilege, issue a probationary license to a *driver*, without preliminary hearing, upon a showing by its records or other sufficient evidence that the licensee's driving record is such as would authorize suspension as provided in subsection (1) hereof. Upon issuance of a probationary license the licensee shall be subject to the restrictions set forth thereon. The licensee's driving privilege may be suspended upon conviction or forfeiture of bail not vacated of any traffic violation during the period of such probation. The licensee shall surrender to the department all driver licenses theretofore issued to him before such probationary license shall be issued. His refusal or neglect to surrender such licenses upon demand shall be ground for suspending all such licenses. Probationary licenses may be issued for a period not to exceed 12 months.

(3) Upon suspending the license of any person or upon placing such person on probation, as hereinbefore in this section authorized, the department shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed 20 days after receipt of such request in the county wherein the licensee resides unless the department and the licensee agree that such hearing may be held in some other county. Upon such hearing the department through its duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the department shall either rescind its order of suspension or probation, or, good cause appearing therefor, may affirm, reduce, or extend the period of probation or suspension of such license."

Section 24. Section 61-5-207, MCA, is amended to read:

**"61-5-207. Reexamination — when required.** The department having good cause to believe that a licensed *driver* is incompetent or otherwise not qualified to be licensed *or to have a commercial vehicle operator's endorsement*, may upon written notice of at least 5 days to the licensee require him to submit to an examination. Upon the conclusion of such examination the department shall take action as may be appropriate and may suspend or revoke the license *and commercial vehicle operator's endorsement, or just the commercial vehicle operator's endorsement* of such person or permit him to retain such license, or may issue a license subject to restrictions as permitted under 61-5-113. Refusal or neglect of the licensee to submit to such examination shall be ground for suspension or revocation of his license."

Section 25. Section 61-5-208, MCA, is amended to read:

**"61-5-208. Period of suspension or revocation.** (1) The department may not suspend or revoke a driver's license, *commercial vehicle operator's endorsement*, or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as permitted under 61-5-207, 61-5-212, 61-6-123, and 61-11-211.

(2) Any person whose license, *commercial vehicle operator's endorsement*, or privilege to drive a motor vehicle on the public highways has been suspended or revoked is not entitled to have such license, *endorsement*, or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of such revocation or suspension, the person may make application for a new license *or endorsement* as provided by law but the department may not then issue a new license *or endorsement* unless and until it is satisfied, after investigation of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in this state. When any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or a narcotic drug or knowingly or willingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle, or a combination thereof, or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of such conviction or forfeiture of bail or collateral not vacated, suspend the license, *including any commercial vehicle operator's endorsement*, or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license, *including any commercial vehicle operator's endorsement*, or driving privilege of the person for a period of 1 year.

(3) The period for all revocations made mandatory by 61-5-205 shall be 1 year except as provided in subsection (2) of this section.

(4) The period of revocation for any person convicted of any offense which makes mandatory the revocation of the *driver's* license commences from date of conviction or forfeiture of bail."



Section 26. Section 61-5-209, MCA, is amended to read:

**"61-5-209. Surrender and return of license or endorsement.** The department upon suspending or revoking a license or *commercial vehicle operator's endorsement* shall require that such license shall be surrendered to and be retained by the department except that at the end of the period of suspension such license so surrendered shall be returned to the licensee."

Section 27. Section 61-5-210, MCA, is amended to read:

**"61-5-210. No operation under foreign license during suspension or revocation in this state.** Any resident or nonresident whose license or right or privilege to operate a motor vehicle or *commercial motor vehicle* in this state has been suspended or revoked as provided in this chapter shall not operate a motor vehicle or *commercial motor vehicle* in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during such suspension or after such revocation until a new license or *commercial vehicle operator's endorsement* is obtained when and as permitted under this chapter."

Section 28. Section 61-5-211, MCA, is amended to read:

**"61-5-211. Right of appeal to court.** Any person denied a *driver's license, commercial motor vehicle operator's endorsement*, or whose license or *endorsement* has been canceled, suspended, or revoked by the department except where such cancellation or revocation is mandatory under the provisions of this chapter shall have the right to file a petition within 30 days thereafter for a hearing in the matter in the district court in the county wherein such person shall reside. Such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon 30 days' written notice to the department, and thereupon to take testimony and examine into the facts of the case and to determine whether the petitioner is entitled to a license or *commercial vehicle operator's endorsement* or is subject to suspension, cancellation, or revocation of the license or *endorsement* under the provisions of this chapter."

Section 29. Section 61-5-212, MCA, is amended to read:

**"61-5-212. Driving while license suspended or revoked — penalty.** (1) Any person who drives a motor vehicle or *commercial motor vehicle* on any public highway of this state at a time when his privilege so to do is suspended or revoked shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than 2 days or more than 6 months and there may be imposed in addition thereto a fine of not more than \$500.

(2) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the license or *commercial vehicle operator's endorsement* of such person was suspended or revoked shall extend the period of such suspension or revocation for an additional like period."

Section 30. Section 61-5-301, MCA, is amended to read:

**"61-5-301. Indication on driver's license of intent to make anatomical gift.** (1) The department of justice shall provide on each *driver's* license a space for indicating when the licensee has executed a document under 72-17-204 of intent to make a gift of all or part of his body under the Uniform Anatomical Gift Act.

(2) The department shall provide each applicant, at the time of application, printed information calling the applicant's attention to the provisions of this section, and each applicant must be given an opportunity to indicate in the space provided under subsection (1) his intent to make an anatomical gift.

(3) The department shall issue to every applicant who indicates such an intent a statement which, when signed by the licensee in the manner prescribed in 72-17-204, constitutes a document of anatomical gift. This statement must be printed on a sticker that the donor may attach permanently to the back of his driver's license.

(4) The department shall also furnish the licensee a means of revoking the document of gift upon the license."

Section 31. Section 61-5-302, MCA, is amended to read:

**"61-5-302. Unlawful use of license.** It is a misdemeanor for any person to:

(1) display or cause or permit to be displayed or have in his possession any canceled, revoked, suspended, fictitious, or altered *driver's* license;

(2) lend his *driver's* license to any other person or knowingly permit its use by another;

(3) display or represent as one's own any *driver's* license not issued to him;

(4) fail or refuse to surrender to the department upon its lawful demand any *driver's* license which has been suspended, revoked, or canceled;

(5) use a false or fictitious name in any application for a *driver's* license or *commercial vehicle operator's endorsement* or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application; or

(6) permit any unlawful use of a *driver's* license issued to him."

Section 32. Section 61-5-305, MCA, is amended to read:

**"61-5-305. Employing driver without endorsement.** No person shall employ as a *commercial vehicle operator* any person not then licensed and endorsed as provided by this chapter."

Section 33. Section 61-5-306, MCA, is amended to read:

**"61-5-306. Renting motor vehicle to another.** (1) No person shall rent a motor vehicle to any other person unless the latter person is then duly licensed hereunder or, in the case of a nonresident, then duly licensed under the laws of the state or country of his residence except a nonresident whose home state or country does not require that an operator be licensed.

(2) No person shall rent a motor vehicle to another until he has inspected the *driver's* license of the person to whom the vehicle is to be rented and compared and verified the signature thereon with the signature of such person written in his presence.

(3) *No person may rent a motor vehicle which is defined as a commercial motor vehicle under this title to another until he has inspected the driver's license of that person and determined that the person has a commercial vehicle operator's endorsement.*

(4) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, *and the number and expiration date of the license of said latter person. The record shall be open to inspection by any police officer or officer or employee of the department."*

Section 34. Section 61-7-105, MCA, is amended to read:

**"61-7-105. Duty to give information and render aid.** The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address, and the registration number of the vehicle he is driving and shall upon request and if available exhibit his *driver's* license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person."

Section 35. Section 61-7-107, MCA, is amended to read:

**"61-7-107. Duty upon striking fixtures or other property upon a highway.** The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his *driver's* license and shall make report of such accident when and as required in 61-7-109."

Section 36. Section 61-11-101, MCA, is amended to read:

**"61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses.** (1) Whenever any person is convicted of any offense for which chapter 5 makes mandatory the suspension or revocation of the *driver's* license of the person by the department, the court in which such conviction is had shall require the surrender to it of all *driver's* licenses then held by the person so convicted. The court shall thereupon, within 5 days, forward the license to the department and at the same time forward a record of such conviction to the department, providing that if such person does not possess a driver's license the court shall so indicate in its report to the department.

(2) Every court having jurisdiction over offenses committed under any act of this state or municipal ordinance regulating the operation of motor vehicles on highways shall forward, within 5 days, to the department a record of the conviction or forfeiture of bail, not vacated, of any person in the court for a violation of any such laws, other than regulations governing standing or parking, and may recommend the suspension of the *driver's* license of the person so convicted. The court may also recommend that the department issue a restricted probationary license in lieu of the suspension required in 61-5-208(2) on the condition that the individual attend a driver improvement school or an alcohol treatment program if one is available. The department shall issue a restricted probationary license unless the person otherwise is not entitled to a Montana *driver's* license. Upon issuance of a probationary license, the licensee is subject to the restrictions set forth thereon and may not operate a vehicle in violation of those restrictions.

(3) Any court or other agency of this state, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report any such action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department."

Section 37. Section 20-10-103, MCA, is amended to read:

**"20-10-103. School bus driver qualifications.** Any driver of a school bus shall be qualified to drive such school bus by compliance with the following requirements:

- (1) he is not less than 18 years of age;
- (2) he is of good moral character;
- (3) he is the holder of a *driver's* license *with a commercial vehicle operator's endorsement*;
- (4) he has filed with the district a satisfactory medical examination report, on a blank provided by the superintendent of public instruction, signed by any physician licensed in the United States or, if acceptable to an insurance carrier, any licensed physician;
- (5) he has completed a standard first aid course and holds a valid standard first aid certificate from an authorized instructor. The issuance of such certificate shall be governed by rules established by the superintendent of public instruction, provided that such rules may suspend this requirement for a reasonable period of time where there has been an inadequate opportunity for securing the first aid course and certificate.
- (6) he has complied with any other qualifications established by the board of public education; and
- (7) he has filed with the county superintendent a certificate from the trustees of the district for which the school bus is to be driven certifying compliance with the several driver qualifications enumerated in this section."

Section 38. Section 72-17-204, MCA, is amended to read:

**"72-17-204. Manner of executing gift — effectiveness.** (1) A gift of all or part of the body under 72-17-201(1) may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(2) (a) A gift of all or part of the body under 72-17-201(1) may also be made by document other than a will. The gift becomes effective upon the death of the donor.

(b) The document may be a card designed to be carried on the person and must be signed by the donor in the presence of two witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) The document may be a statement attached to the reverse side of the person's Montana motor vehicle *driver's* license. The statement must be signed by the owner of the *driver's* license in the presence of two witnesses who must sign the statement in the presence of the donor.

(3) Any gift by a person designated in 72-17-201(2) shall be made by a document signed by him or made by his telegraphic, recorded telephonic, or other recorded message."

Section 39. **Repealer.** Section 61-1-312, MCA, is repealed.

Section 40. **Rulemaking authority.** The department of justice may adopt rules to implement [sections 1 through 38].

Section 41. **Codification instruction.** Sections 1 through 4 are intended to be codified as an integral part of Title 61, chapter 1, part 1, and the provisions of Title 61, chapter 1, part 1, apply to sections 1 through 4.

Section 42. **Effective date.** This act is effective January 1, 1988.

Approved April 9, 1987.

## CHAPTER NO. 444

[SB 213]

AN ACT REGULATING THE OFFERING AND SALE OF  
TIMESHARES; PROVIDING FOR REGISTRATION OF OFFERINGS  
AND LICENSURE OF SALESPERSONS; PROVIDING REMEDIES  
AND PENALTIES FOR VIOLATIONS; AND PROVIDING EFFEC-  
TIVE DATES AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [This act] may be cited as the "Montana Timeshare Act".

Section 2. **Definitions.** As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Advertisement" means a written, printed, audio, or visual communication that is published in whole or in part to sell, offer to sell, or solicit an offer for a timeshare.

(2) "Affiliate" means a person who controls, is controlled by, or is under the control of a developer.

(3) "Association" or "owners' association" means the association of owners created by the timeshare instruments for purposes of managing and maintaining the project for the benefit of all timeshare owners.

(4) "Board" means the board of realty regulation provided for in 2-15-1867.

(5) "Developer" means:

(a) a person creating timeshares or engaged in the business of selling his own timeshares;

(b) a person who controls, is controlled by, or is in common control with the person engaged in creating or selling timeshares; or

(c) any successor or assignee of a person referred to in subsections (5)(a) or (5)(b).

(6) "Managing entity" means a person hired by the timeshare association or developer to manage the timeshare plan or the timeshare property.

(7) "Offer" or "offering" means an inducement, solicitation, or attempt to encourage a person to acquire a timeshare. An offer is made in this state if the offer originates in this state or if the principal timeshare property is located in this state.

(8) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.

(9) "Prize and gift promotional offer" means advertising material stating that a prospective purchaser may receive goods or services other than the timeshare plan itself, either free or at a discount, including but not limited to the use of a prize, gift, award, premium, or lodging or vacation certificate.

(10) "Project" means the real property or real estate, that must contain more than one unit, in which timeshares are created by a single instrument or set of instruments.

(11) "Promoter" means any person who initiates the inducement, solicitation, or encouragement of another person, by any means, of the review or acquisition of a timeshare interval.

(12) "Purchaser" means a person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare, other than as security for an obligation.

(13) "Real estate" means real estate as defined in 37-51-102.

(14) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a timeshare for value.

(15) "Timeshare broker" means a natural person who supervises a timeshare sales operation and one or more timeshare salespersons.

(16) "Timeshare expenses" means expenditures, fees, charges, or liabilities:

(a) incurred with respect to the timeshares by or on behalf of all timeshare owners in one timeshare property; and

(b) imposed on the timeshare by the entity governing a project of which the timeshare is a part, together with any allocations to reserve. The term does not include purchase money payable for timeshares.

(17) "Timeshare instrument" means one or more documents, by whatever name denominated, creating or regulating timeshares.

(18) "Timeshare interval" or "timeshare interest" means the right, however evidenced or documented, to use and occupy one or more timeshare units on a periodic basis according to an arrangement allocating such use and occupancy rights between similar users.

(19) "Timeshare owner" means a person, other than a developer, who is an owner or co-owner of a timeshare. If title to a timeshare is held in trust, timeshare owner means the beneficiary of the trust.

(20) "Timeshare salesperson" means a person who for a salary, commission, or compensation of any kind is associated, either directly or indirectly, regularly or occasionally, with a timeshare broker to sell, purchase, or negotiate for sale, purchase, lease, or exchange of the timeshare interests in real estate and who, on behalf of a developer, sells or offers to sell a timeshare to a purchaser.

(21) "Timeshare unit" or "unit" means the real property or portion thereof in which the timeshare exists and that is designated for separate use including campgrounds, campsites, and outdoor recreation sites with spaces designed or promoted for the purpose of locating a trailer, tent, tent trailer, camper, or similar device for land-based portable housing.

**Section 3. Registration of timeshare offering required.** A timeshare offering may not be advertised, offered, or sold in this state unless it is registered as provided in [this act].

**Section 4. Application for registration.** An application for registration of a timeshare offering must be in a form developed by the board in conjunction with input from the timeshare industry. The application must be signed by the applicant and accompanied by the registration fee. Except as provided in [section 6], the application must contain:

(1) financial statements showing the financial condition of the developer and any affiliate, including:

(a) a balance sheet dated within 4 months before the filing of the application for registration; and

(b) statements of income, shareholder's equity, and material changes in financial position as of the end of the prior fiscal year and for any period

between the end of the prior fiscal year and the date of the last balance sheet;

(2) a projected budget for the timeshare project for 2 years after the offering being made, including but not limited to source of revenues and expenses of construction, development, management, maintenance, advertisement, operating reserves, interest, and any other necessary reserves;

(3) a description of the background of the developer for the previous 10 years, including information about the business experience of the developer and any relevant criminal convictions, civil law suits, or administrative actions related to any offering during that period;

(4) a statement disclosing any fees in excess of the stated price per unit to be charged to the purchasers, a description of their purpose, and the method of calculation;

(5) a statement disclosing when and where the developer or an affiliate has previously sold timeshares;

(6) a statement of any liens, defects, or encumbrances on or affecting the title to the timeshare units;

(7) copies of all timeshare instruments;

(8) a copy of the disclosure document provided for in [section 14], signed by the applicant;

(9) an irrevocable consent to service of process signed by the applicant; and

(10) any other information that the board may by rule require in the protection of the public interest or necessary to describe the risks involved.

**Section 5. Registration period — renewal.** (1) A timeshare offering registration is effective for 1 year from the date of approval of the registration application.

(2) Registration of a timeshare offering may be renewed for an additional 1-year period by filing a renewal application with the board no later than 30 days before the expiration of the registration period and paying the prescribed fee. A renewal application must contain any information the board requires to indicate any substantial changes in the information contained in the original application.

(3) If a materially adverse change in the condition of the developer or an affiliate occurs during any year, an amendment to the documents filed under [section 4] must be filed, along with the prescribed fee.

**Section 6. Alternative filing documents.** (1) In lieu of the documents required to be filed with an application under [section 4], the board may accept:

(a) a disclosure document filed with an agency of the United States or any other state; or

(b) a disclosure document compiled in accordance with a rule of an agency of the United States or any other state.



(2) The board shall prescribe by rule those documents acceptable under subsection (1).

**Section 7. Exemption from registration.** The registration requirements of [this act] do not apply to:

(1) an offer, sale, or transfer of not more than two timeshare interests by a timeshare owner in a 12-month period;

(2) a gratuitous transfer of a timeshare;

(3) a sale under court order;

(4) a sale by any government or a governmental agency;

(5) a sale by forfeiture, foreclosure, or deed in lieu of foreclosure; or

(6) a sale of a project or all timeshare units therein to any one purchaser.

**Section 8. Approval or disapproval of application or registration.**

(1) Registration of a timeshare offering is effective upon written notice of approval of the application by the board or upon the passage of 30 calendar days after filing of a completed application if not approved or denied prior to that time.

(2) The board may issue an order, subject to [section 25], denying, suspending, or revoking any application or registration if the board finds that the order is in the public interest and that:

(a) the application or registration is incomplete or contains a statement that is false or misleading with respect to any material fact;

(b) any provision of [this act] or any rule or order lawfully issued under [this act] has been violated;

(c) the activities of the developer include or would include activities that are illegal; or

(d) the timeshare offering has worked or would tend to work a fraud on purchasers.

(3) The board shall promptly notify the applicant or registrant of any order denying, suspending, or revoking registration and of the applicant's or registrant's right to request a hearing within 20 days of receipt of notification. If the applicant or registrant does not request a hearing, the order remains in effect until the board modifies or vacates it.

**Section 9. Conditions upon registration.** To protect the public interest, the board may require as a condition of registration that the registrant establish an independent trust, escrow, or similar arrangement that assures a purchaser quiet enjoyment of the timeshare unit.

**Section 10. Waiver of liability.** The fact that an application for registration has been filed or that a timeshare offering has been registered does not constitute a finding by the board that any document filed under [this act] is complete, true, and not misleading. The filing or registration does

not mean that the board has given approval to, recommended, or determined the merits or qualifications of any person, timeshare, or transaction.

**Section 11. Approval of advertising.** (1) No person may publish an advertisement in this state offering a timeshare that is subject to the registration requirements of [section 3] unless a true copy of the advertisement has first been filed in the office of the board at least 7 days before publication or such other period as the board may establish by rule.

(2) Nothing in [this act] applies to any radio or television station or any publisher, printer, or distributor of any newspaper, magazine, billboard, or other advertising medium that accepts advertising in good faith without reasonable knowledge of its violation of any provision of [this act].

**Section 12. Licensure of timeshare brokers and timeshare salespersons.** (1) A person offering timeshare units for his own account or for the account of others must be licensed as a timeshare salesperson or timeshare broker unless the offering is exempt under [section 7]. Licensure may be obtained:

(a) upon completion of an application and personal disclosure statement and passage of an examination prescribed by the board demonstrating knowledge of the timeshare industry and [this act]; and

(b) upon successful completion of a course of education related to the timeshare industry that has been approved by the board. The board shall then issue a certificate of completion to the applicant.

(2) A person licensed as a real estate broker or salesperson under Title 37, chapter 51, may act as a timeshare salesperson or timeshare broker upon successful completion of a course of education related to the timeshare industry that has been approved by the board. The board shall then issue a certificate of completion to the applicant. No license other than that issued pursuant to Title 37, chapter 51, is required.

**Section 13. Denial, suspension, or revocation of license or application.** The board may by an order, subject to [section 25], deny, suspend, or revoke a timeshare salesperson's or timeshare broker's license or application for license if the board finds that the order is in the public interest and that the applicant or licensee:

(1) has filed an application for licensure and personal disclosure statement as a timeshare salesperson or timeshare broker that is incomplete in any material respect or contains any statement that is, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) has violated or failed to comply with any provision of [this act], rules adopted under [this act], or Title 37, chapter 51;

(3) has been convicted of a felony involving theft, fraud, or any consumer protection statute or a felony involving moral turpitude and related to the occupation of timeshare salesperson or timeshare broker;

(4) is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving an aspect of the timeshare business;

(5) has engaged in dishonest or unethical practices in the timeshare business; or

(6) has not complied with any condition imposed by the board or is not qualified on the basis of knowledge of the timeshare industry or [this act].

**Section 14. Disclosure document.** A person who offers or sells a timeshare shall provide the prospective purchaser with a written disclosure document before the prospective purchaser signs an agreement for the purchase of a timeshare. The disclosure document must include:

(1) the official name and address of the developer, its parent or affiliates, and the names and addresses of the director and officers of each;

(2) the location of the timeshare property;

(3) a general description of the timeshare property and the timeshare units;

(4) a list of all units offered by the promoter in the same project, including:

(a) the types, current prices, and number of units;

(b) the types and durations of the timeshares;

(c) the maximum number of units that may become part of the timeshare property;

(d) a statement of the maximum number of timeshares that may be created or a statement that there is no maximum;

(5) a description of the types of financing offered by the promoter;

(6) a statement of ownership of all properties included in the timeshare offering, including any liens or encumbrances affecting the property;

(7) copies of any agreements or leases to be signed by purchasers at closing and a copy of the timeshare instrument;

(8) the identity of the managing entity and the name, address, and telephone number of the person or persons in charge, and the manner, if any, whereby the developer may change the managing entity;

(9) a true copy of the current or projected budget of the owners' association along with a description of the nature and purpose of all charges, dues, maintenance fees, and other expenses that may be assessed, including the formula for payment of charges if all timeshares are not sold and a statement of who pays additional costs;

(10) a statement in boldface type on the cover page of the disclosure document that, within 3 days after receipt of a disclosure document or the signing of the timeshare purchase agreement, whichever is later, a purchaser may cancel any agreement for the purchase of a timeshare from a developer or salesperson and that the cancellation must be in writing and be delivered either in person or by certified mail to the developer or the developer's agent;

(11) any restrictions on transfers of a timeshare or portion thereof;

(12) a description of any insurance coverage provided for the benefit of timeshare owners by the managing entity or the timeshare owners' association;

(13) a full and accurate disclosure of whether the timeshare owners are permitted or required to become members of or participate in any program for the exchange of property rights among themselves or with the timeshare owners of other timeshare units, or both, and a complete description of the program; and

(14) any additional information the board finds necessary to fully inform prospective purchasers, including but not limited to the financial and background information required by [section 4].

**Section 15. Disclosure to purchaser — cancellation of agreement.** The developer or any person offering a timeshare shall provide a prospective purchaser with a copy of the disclosure document described in [section. 14] before the execution of any agreement for the purchase of a timeshare. A purchaser may, within 3 days following receipt of a disclosure document or signing of a timeshare purchase agreement, whichever is later, cancel the agreement and receive a refund of any consideration paid by providing written notice of the cancellation to the promoter or promoter's agent either by certified mail or personal delivery. If the purchaser does not receive the disclosure document, the agreement is voidable by the purchaser until the purchaser receives the document and for 3 days thereafter. The provisions of this section may not be waived.

**Section 16. Transfer of developer's interest.** A developer may not sell, lease, assign, or otherwise transfer his interest in a project unless the transferee agrees in writing to honor the purchaser's right to use and occupy the timeshare unit, to honor the purchaser's right to cancel, and to comply with [this act]. Each purchaser whose contract may be affected must be given written notice of a transfer immediately after the transfer is made.

**Section 17. Good faith requirement — prohibited provisions. (1)** The parties to a timeshare agreement shall deal with each other in good faith.

(2) A developer may not require a purchaser to agree to a release, assignment, novation, waiver, or any other provision that relieves a person from a duty imposed by [this act].

(3) Any provision in a timeshare instrument that designates jurisdiction or venue in a forum outside this state or the state or other jurisdiction where the project is located is void with respect to any cause of action that is enforceable in this state.

**Section 18. Illegal practices. (1)** It is unlawful for any person in connection with the offer, sale, or lease of a timeshare interest in this state to:

(a) make any false or misleading statement of a material fact or to omit a material fact;

(b) employ any device, scheme, or artifice to defraud;

(c) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;

(d) file or cause to be filed with the board any document that contains false or misleading information; or

(e) violate any provision of [this act] or rule adopted under [this act] or any applicable provision of Title 37, chapter 51.

(2) A violation of this section is a misdemeanor punishable as provided in 46-18-212.

**Section 19. Civil liability.** Any person who offers, sells, or materially aids in the offer or sale of a timeshare in violation of [this act] is liable to the person buying the timeshare, who may sue to recover the consideration paid for the timeshare, together with interest at the current legal rate from date of payment and costs, upon the tender of the timeshare or for damages if the person no longer owns the timeshare.

**Section 20. Prize and gift promotional offers — filing.** (1) A separate filing for each prize and gift promotional offer to be used in the sale of timeshare intervals must be made with the board at least 14 days prior to the use of such offer by the developer. No advertising material related to a prize and gift promotional offer may be distributed unless it is first filed with the board. If the board determines that any prize or gift has been misrepresented by the developer and if upon notification thereof the developer fails to correct such misrepresentation, the board may revoke or suspend the application or registration of the developer.

(2) Each filing of a prize and gift promotional offer with the board must include, when applicable:

(a) a copy of all advertising material to be used in connection with the prize and gift promotional offer;

(b) the name, address, and telephone number, including area code, of the supplier or manufacturer from whom each prize, gift, or other item is obtained;

(c) the manufacturer's model number or other description of such item;

(d) the information on which the developer relies in determining the verifiable retail value;

(e) the name, address, and telephone number, including area code, of the promotional entity responsible for overseeing and operating the prize and gift promotional offer; and

(f) the name and address of the registered agent in the state of the promotional entity for service of process purposes.

(3) Each developer shall file with the board by March 1 of each year the name, address, and telephone number, including area code, of each person who actually received a prize, gift, or other item that had a verifiable retail value or manufacturer's suggested retail price in excess of \$150.

**Section 21. Prize and gift promotional offer advertising content.** All advertising material to be distributed in connection with a prize and gift promotional offer must contain:

(1) a description of the prize, gift, or other item that the prospective purchaser will actually receive, including the manufacturer's retail price or, if none is available, the verifiable retail value;

(2) all rules, terms, requirements, and preconditions that must be fulfilled or met before a prospective purchaser may claim any prize, gift, or other item involved in the prize and gift promotional plan, including whether the prospective purchaser is required to attend a sales presentation in order to receive the prize, gift, or other item;

(3) the date the offer expires;

(4) a statement of the number of items that will be awarded if the number of prizes, gifts, or other items to be awarded is limited; and

(5) the method by which prizes, gifts, or other items are to be awarded.

**Section 22. Awarding of gifts and prizes.** (1) Any prize, gift, or other item offered pursuant to a prize and gift promotional offer must be delivered to the prospective purchaser on the day he appears to claim it whether or not he purchases a timeshare interval. If the prize is not available it must be presented or mailed at the developer's expense, postage prepaid within 30 days thereafter.

(2) All prizes, gifts, or other items represented by the developer to be awarded in connection with any prize and gift promotional offer must be awarded by the date referenced in the advertising material used in connection with such offer.

**Section 23. Investigations by board.** (1) The board may:

(a) conduct public or private investigations within or outside the state to:

(i) determine whether any registration should be granted, denied, or revoked;

(ii) determine whether a person has violated or is about to violate a provision of [this act]; or

(iii) aid in the enforcement of [this act] and rules issued under [this act];

(b) administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the board considers relevant to the inquiry; and

(c) publish information concerning a violation of [this act] or rule or order issued under [this act].

(2) If a person fails to comply with a lawful subpoena, refuses to testify under lawful interrogation, or refuses to produce documents and records, the board may apply to the district court of any county for relief. After

satisfactory evidence of willful disobedience, the court may compel obedience by proceedings for contempt.

**Section 24. Cease and desist orders.** The board may by summary order, subject to [section 25], require any person to cease and desist from an act or practice if it appears that the person is violating or is about to violate a provision of [this act] or rule or order issued under [this act].

**Section 25. Hearing procedure — orders.** (1) Upon the entry of an order under [section 8], [section 13], or [section 24], the board shall promptly notify the applicant or registrant that the order has been entered and the reasons therefor and that it will become effective 20 days after receipt of the board's notification unless a hearing is requested under this section, in which case it will become effective on the date the board issues its final order. If a hearing is requested in writing by the applicant, the matter will be scheduled for hearing in accordance with subsection (2).

(2) If entry of the order results in denial of an application under [section 8] or [section 13], the hearing must be held within a reasonable time and in accordance with Title 2, chapter 4.

**Section 26. Attorney general to act as attorney for board.** The attorney general shall act as attorney for the board in actions and proceedings brought by or against it under [this act]. Fees and expenses of the attorney general acting in this capacity must be paid out of board money in the state special revenue fund.

**Section 27. Injunctions.** (1) The attorney general, in the name of the state or the board, may bring an action to enjoin a person from violating a provision of [this act]. Upon a proper showing, the district court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus. The court may make any additional order of judgment necessary to restore to a person any interest in money or property, real or personal, that may have been acquired by an act prohibited or declared to be unlawful under [this act]. The prevailing party may recover costs of the action, including a reasonable attorney fee.

(2) The district court issuing an injunction shall retain jurisdiction. A person who violates the terms of an injunction shall pay a civil penalty as set by the court, but not to exceed \$25,000.

(3) The attorney general, in the name of the state or the board, may apply to the district court to appoint a receiver or conservator for any person or the assets of any person who is subject to a cease and desist order, permanent or temporary injunction, restraining order, or writ of mandamus.

**Section 28. Criminal proceedings.** The board may refer evidence concerning violations of [this act] to the attorney general or the proper prosecuting attorney, who may institute appropriate criminal proceedings.

**Section 29. Fees.** (1) The board shall charge and collect fees fixed by this section. All fees collected under [this act] must be deposited into the

state special revenue fund for the use of the board and are not refundable except as provided in [this act].

(2) The initial fee for filing an application for registration for sale of a timeshare is \$500. Any filing containing over 400 intervals must be accompanied by a fee of \$5 for each additional interval.

(3) A fee for amendment of registration for the purpose of adding additional intervals during a registration period is \$200 plus \$5 for each interval in excess of 50 added by such amendment.

(4) The fee for an application for renewal of registration is \$200.

(5) The fee for an initial application for or renewal of a license as a timeshare salesperson is \$15.

(6) The fee for an initial application for or renewal of a license as a timeshare broker is \$35.

(7) The fee for an amendment of registration, other than the addition of units, as required in [section 5(3)], is \$200.

**Section 30. Rulemaking authority.** The board shall adopt rules to carry out the provisions of [this act]. The rules may include but are not limited to:

(1) format of forms for applications and renewal of registration and prescribing any additional information to be supplied;

(2) documents acceptable in lieu of registration documents under [section 6];

(3) conditions that may be placed upon registration under [section 9];

(4) the subject matter of the examination or continuing education requirement for license as a timeshare salesperson or timeshare broker; and

(5) additional information included in a disclosure document.

**Section 31. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 32. Effective dates — applicability.** (1) Except as provided in subsection (2), this act is effective January 1, 1988.

(2) Section 30 and this section are effective on passage and approval, but rules adopted pursuant to section 30 are not effective before January 1, 1988.

Approved April 9, 1987.



**CHAPTER NO. 445**

[SB 320]

**AN ACT TO ESTABLISH A FISH AND WILDLIFE MITIGATION TRUST FUND; TO ESTABLISH THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AS TRUSTEE; AMENDING SECTIONS 17-6-203, 17-6-306, AND 17-6-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Fish and wildlife mitigation trust fund created.** (1) There is established separate and apart from all public money or funds of this state a fund to be known as the fish and wildlife mitigation trust fund. The fund must be administered by the department.

(2) The fund consists of:

(a) money received under written agreements, contracts, or authorizations with the department made for the purpose of fish and wildlife mitigation or enhancement;

(b) any gift, donation, grant, legacy, bequest, or devise made for the purpose of fish and wildlife mitigation or enhancement;

(c) any interest, earnings, or income of the fund; and

(d) any property or easements acquired through the expenditure of money from the fund.

**Section 2. Purposes of the fish and wildlife mitigation trust fund.** Expenditures may be made from the fish and wildlife mitigation trust fund for fish and wildlife mitigation or enhancement purposes pursuant to the written agreement, contract, authorization, or terms of a gift, donation, grant, legacy, bequest, or devise committing money to the fish and wildlife mitigation trust fund. The specific purposes are those designated in the written agreement, contract, authorization, or terms.

**Section 3. Agreements for use of fund — department as trustee.**

(1) The department may enter into agreements with persons or entities committing money to the fish and wildlife mitigation trust concerning the purpose and manner of use of the money from the fish and wildlife mitigation trust fund.

(2) The department is the trustee of the fish and wildlife mitigation trust fund and is responsible for its administration and use.

**Section 4. Expenditure of principal and earnings.** The principal and interest, earnings, or income of the fish and wildlife mitigation trust fund shall be expended or retained according to the written agreement, contract, authorization, or terms of the gift, donation, grant, legacy, bequest, or devise committing money to the fish and wildlife mitigation trust fund.

**Section 5. Investment of fish and wildlife mitigation trust fund.** The fish and wildlife mitigation trust fund must be invested and managed

by the board of investments as part of the unified investment program in a separate investment fund.

Section 6. Section 17-6-203, MCA, is amended to read:

**"17-6-203. Separate investment funds.** Separate investment funds shall be maintained as follows:

(1) the nonexpendable trust funds, including all public school funds and funds of the Montana university system and other state institutions of learning referred to in sections 2 and 10, Article X, of the 1972 Montana constitution. The principal and any part thereof of each and every fund constituting the Montana nonexpendable trust fund type shall be subject to payment at any time when due under the statutory provisions applicable thereto and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular fund arises.

(2) a separate investment fund, which may not be held jointly with other funds, for money pertaining to each retirement or insurance system now or hereafter maintained by the state, including those now maintained under the following statutes:

(a) the highway patrolmen's retirement system described in Title 19, chapter 6;

(b) the public employees' retirement system described in Title 19, chapter 3;

(c) the game wardens' retirement system described in Title 19, chapter 8;

(d) the teachers' retirement system described in Title 19, chapter 4; and

(e) the industrial accident insurance program described in Title 39, chapter 71, part 23;

(3) a pooled investment fund, including all other accounts within the treasury fund structure established by 17-2-102;

(4) *the fish and wildlife mitigation trust fund established by [section 1];*

(5) a fund consisting of gifts, donations, grants, legacies, bequests, devises, and other contributions made or given for a specific purpose or under conditions expressed in the gift, donation, grant, legacy, bequest, devise, or contribution on the part of the state of Montana to be observed. If such gift, donation, grant, legacy, bequest, devise, or contribution permits investment and is not otherwise restricted by its terms, it may be treated jointly with other such gifts, donations, grants, legacies, bequests, devises, or contributions.

(6) a fund consisting of coal severance taxes allocated thereto under section 5, Article IX, of the Montana constitution; the principal of this trust fund shall be permanent; in the event the legislature appropriates any part of the principal of this fund by vote of three-fourths of the members of each house, such liquidation may create a gain or loss in the principal; and

(7) such additional investment funds as may be expressly required by law or may be determined by the board of investments to be necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular source."

Section 7. Section 17-6-306, MCA, is amended to read:

**"17-6-306. Montana in-state investment fund.** The Montana in-state investment fund consists of:

(1) 25% of the revenue deposited after June 30, 1983, into the permanent coal tax trust fund established in 17-6-203(6);

(2) the principal payments on all investments made from the Montana in-state investment fund; and

(3) 15% of the annual income and earnings on the Montana in-state investment fund appropriated to the coal severance tax permanent fund by 17-5-704(2)."

Section 8. Section 17-6-331, MCA, is amended to read:

**"17-6-331. Establishment of a Montana economic development fund.** A Montana economic development fund is created. A portion of the interest income from the permanent coal tax trust fund created in 17-6-203(6) shall be deposited in the fund as determined by the legislature. Monies, if any, appropriated by the legislature from the economic development fund shall be used only for programs consistent with the objectives in 17-6-304."

Section 9. **Codification instruction.** Sections 1 through 5 are intended to be codified as an integral part of Title 87, chapter 1, and the provisions of Title 87, chapter 1, apply to sections 1 through 5.

Section 10. **Effective date.** This act is effective on passage and approval.

Approved April 9, 1987.

## CHAPTER NO. 446

[SB 359]

AN ACT TO AMEND SECTIONS 39-3-402 AND 39-3-408, MCA, TO ALLOW THE STATE MINIMUM WAGE LAW TO APPLY TO EMPLOYEES COVERED BY THE FAIR LABOR STANDARDS ACT AND TO EXCLUDE TIPS FROM THE MINIMUM WAGE PAID TO MONTANA EMPLOYEES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-3-402, MCA, is amended to read:

**"39-3-402. Definitions.** As used in this part the following definitions apply:

- (1) "Commissioner" means the commissioner of labor and industry.
- (2) "Employ" means to suffer or permit to work.
- (3) "Employee" includes any individual employed by an employer.
- (4) "Farm or ranch" shall mean any endeavor primarily engaged in cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, and poultry and fur-bearing animals and wildlife.
- (5) "Farm worker" means any person employed to do any service performed on a farm or ranch.
- (6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed.
- (7) "Wage" means compensation due to an employee by reason of his employment, payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to such allowance as may be permitted by regulations of the commissioner under 39-3-403. The term "wage" includes the reasonable cost to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees; provided, however, that in no case shall such inclusion exceed an amount equal to 40% of the total wage paid by such employer to such employee. *The term wage does not include the value of any tips received by an employee as a gratuity for service."*

Section 2. Section 39-3-408, MCA, is amended to read:

**"39-3-408. Provisions cumulative.** (1) The provisions of this part shall be in addition to other provisions now provided by law for the payment and collection of wages and salaries but shall not apply to employees covered by the Fair Labor Standards Act *except as provided in subsection (2).*

(2) *Sections 39-3-402 and 39-3-404 shall apply to an employee covered by the Fair Labor Standards Act if state law provides a minimum wage that is higher than the minimum wage established under federal law."*

**Section 3. Extension of authority.** Any existing authority of the commissioner of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Effective date.** This act is effective on passage and approval.

Approved April 9, 1987.

**CHAPTER NO. 447**

[SB 361]

**AN ACT REQUIRING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO DEVELOP A PLAN FOR PROVIDING SERVICES TO EMOTIONALLY DISTURBED CHILDREN; DEFINING "EMOTIONALLY DISTURBED CHILD"; AND AMENDING SECTION 53-4-101, MCA."**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Emotionally disturbed children — plan — study committee.** (1) The department shall develop a comprehensive plan for services for emotionally disturbed children to be presented to the 51st legislature and each regular session of the legislature thereafter. The department shall recommend a comprehensive service delivery system for emotionally disturbed children, including a plan for gradual implementation of the comprehensive service delivery system.

(2) The plan must identify:

- (a) the services needed by emotionally disturbed children;
- (b) the number of emotionally disturbed children needing services; and
- (c) the interdepartmental responsibility and coordination needed to provide services to emotionally disturbed children.

(3) The department shall appoint a study committee to make recommendations to the department regarding services for emotionally disturbed children. The members of the committee must be willing to serve without compensation and must include but not be limited to representatives of:

- (a) the department;
- (b) the department of institutions;
- (c) the office of public instruction;
- (d) a youth court; and
- (e) parents of emotionally disturbed children.

**Section 2.** Section 53-4-101, MCA, is amended to read:

**"53-4-101. Definitions.** As used in this part, the following definitions apply:

(1) "Child welfare services" means the establishing, extending, and strengthening of child welfare services (especially in predominantly rural areas) for the protection and care of homeless, dependent, and neglected children and children in danger of becoming delinquent.

(2) "Child welfare worker" means staff personnel who have had education and training in the field of child welfare and who are qualified and

accepted as such in conformity with the standards established by the department.

(3) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(4) (a) *"Emotionally disturbed child" means a child determined by a psychologist, psychiatrist, licensed social worker, or special education child study team (established under rules adopted by the superintendent of public instruction to implement Title 20, chapter 7, part 4) to have:*

*(i) an identifiable mental health problem as identified in a nationally recognized classification system or as defined in 20-7-401(4); and*

*(ii) a substantial impairment, evident for a reasonable length of time, that is characterized by a dysfunction in any of the following areas:*

*(A) relationships;*

*(B) behavior;*

*(C) cognition; or*

*(D) education.*

*(b) The nationally recognized classification system referred to in subsection (4)(a)(i) must be one recognized by rules established by the department.*

(5) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance."

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 53, chapter 4, part 1, and the provisions of Title 53, chapter 4, part 1, apply to section 1.

Approved April 9, 1987.

## CHAPTER NO. 448

[SB 369]

**AN ACT REQUIRING THAT RAILROAD PUBLIC CROSSING SIGNS HAVE REFLECTORIZED MATERIAL ON THE FRONT AND BACK SIDES OF THE CROSSBUCK BLADES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. ReflectORIZED material on crossing signs required.** Within 2 years after [the effective date of this act], a railroad company shall install and maintain reflectORIZED material on the front and back sides of crossbuck blades on all public crossing signs the railroad company is required to construct and maintain under 69-14-602 and 69-14-603.

**Section 2. Extension of authority.** Any existing authority of the public service commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 69, chapter 14, part 6, and the provisions of Title 69, chapter 14, part 6, apply to section 1.

**Section 4. Effective date.** This act is effective on passage and approval.

Approved April 9, 1987.

## CHAPTER NO. 449

[SB 375]

AN ACT GENERALLY REVISING THE LAWS RELATING TO CIVIL ACTIONS FOR THE WRONGFUL DEATH OF ANOTHER; REQUIRING THE JOINDER OF CIVIL ACTIONS FOR INJURIES TO AND DEATH OF A PERSON CAUSED BY THE WRONGFUL CONDUCT OF ANOTHER; PROVIDING THAT SUCH AN ACTION MAY BE BROUGHT ONLY BY THE PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE; PROVIDING THAT DAMAGES MAY BE RECOVERED ONLY ONCE; AMENDING SECTIONS 27-1-323, 27-1-501, 27-1-512, AND 27-1-513, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 27-1-323, MCA, is amended to read:

**"27-1-323. Wrongful death.** In every action under 27-1-513, such damages may be given as under all the circumstances of the case may be just."

**Section 2.** Section 27-1-501, MCA, is amended to read:

**"27-1-501. Survival of cause of action or defense — death or disability or transfer of interest.** (1) An action, cause of action, or defense does not abate because of the death or disability of a party or the transfer of any interest therein, but whenever the cause of action or defense arose in favor of such party prior to his death or disability or transfer of interest therein, it survives and may be maintained by his representatives or successors in interest. If the action has not been begun or defense interposed, the action may be begun or defense interposed in the name of his representatives or successors in interest. If the action has been begun or defense interposed, the action or proceeding may be continued as provided in Rule 25, M.R.Civ.P.

(2) *Actions brought under this section and 27-1-513 must be combined in one legal action and any element of damages may be recovered only once.*"

Section 3. Section 27-1-512, MCA, is amended to read:

**"27-1-512. Action by parent or guardian for injury to child or ward.** Either parent may maintain an action for the injury to a minor child and a guardian for injury to a ward when such injury is caused by the wrongful act or neglect of another. Such action may be maintained against the person causing the injury or, if such person be employed by another person who is responsible for his conduct, also against such other person."

Section 4. Section 27-1-513, MCA, is amended to read:

**"27-1-513. Action for wrongful death.** When *injuries to and the death of one person are* caused by the wrongful act or neglect of another, *the personal representative of the decedent's estate* may maintain an action for damages against the person causing the death or, if such person be employed by another person who is responsible for his conduct, then also against such other person."

Section 5. **Applicability.** This act applies to causes of action arising after July 1, 1987.

Section 6. **Effective date.** This act is effective July 1, 1987.

Approved April 9, 1987.

## CHAPTER NO. 450

[SB 385]

AN ACT TO DEFINE A MEDICAL ASSISTANCE FACILITY; TO INCLUDE MEDICAL ASSISTANCE FACILITY IN DEFINITION OF HEALTH CARE FACILITY; AND AMENDING SECTIONS 50-5-101 AND 53-5-503, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-5-101, MCA, is amended to read:

**"50-5-101. (Temporary) Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected persons" means the applicant, members of the public who are to be served by the proposal, health care facilities located in the geographic area affected by the application, agencies which establish rates for health care facilities, third-party payers who reimburse health care facilities in the area affected by the proposal, and agencies which plan or assist in



planning for such facilities, including any agency qualifying as a health systems agency pursuant to Title XV of the Public Health Service Act.

(4) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) "Batch" means those letters of intent and applications of a specified category and within a specified region of the state, as established by department rule, that are accumulated during a single batching period.

(6) "Batching period" means a period, not exceeding 1 month, established by department rule during which letters of intent for specified categories of new institutional health services and for specified regions of the state may be accumulated pending further processing of all letters of intent within the batch.

(7) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(8) "Capital expenditure" means an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Challenge period" means a period, not exceeding 1 month, established by department rule during which any person may apply for comparative review with an applicant whose letter of intent has been received during the preceding batching period.

(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(12) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Comparative review" means a joint review of two or more certificate of need applications within a given batch which are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(14) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking, or remodeling, replacement, or renovation of an existing health care facility.

(15) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(16) "Federal acts" means federal statutes for the construction of health care facilities.

(17) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(18) "Health care facility" or "facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, *medical assistance facility*, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(19) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

(20) "Health systems agency" means an entity which is organized and operated in the manner described in 42 U.S.C. 300l-2 and which is capable, as determined by the secretary of the United States department of health and human services, of performing each of the functions described in 42 U.S.C. 300l-2.

(21) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(22) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and his family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component.

(23) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(24) "Infirmery" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

- (a) an "infirmery—A" provides outpatient and inpatient care;
- (b) an "infirmery—B" provides outpatient care only.

(25) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

(26) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(27) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more persons or personal care to more than four persons who are not related to the owner or administrator by blood or marriage. The term does not include adult foster care licensed under 53-5-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for physically disabled persons licensed under 53-19-111, boarding or foster homes for children licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of institutions.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or persons with related problems.

(e) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(28) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other health services.

(29) "*Medical assistance facility*" means a facility that:

(a) *provides inpatient care to ill or injured persons prior to their transportation to a hospital or provides inpatient medical care to persons needing that care for a period of no longer than 96 hours;*

*(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.*

(30) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(31) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(32) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(33) "Offer" means the holding out by a health care facility that it can provide specific health services.

(34) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(35) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(36) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(37) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(38) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(39) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(40) "State health plan" means the plan prepared by the department pursuant to 42 U.S.C. 300m-2(a)(2).

**50-5-101. (Effective July 1, 1987) Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(4) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(5) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(6) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(7) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(8) "Federal acts" means federal statutes for the construction of health care facilities.

(9) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(10) "Health care facility" or "facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, *medical assistance facility*, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(11) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

(12) "Health systems agency" means an entity which is organized and operated in the manner described in 42 U.S.C. 300l-2 and which is capable, as determined by the secretary of the United States department of health and human services, of performing each of the functions described in 42 U.S.C. 300l-2.

(13) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(14) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and his family arising out of physical, psychological, spiritual, social, and economic stresses experienced

during the final stages of illness and dying and that includes formal bereavement programs as an essential component.

(15) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(16) "Infirmiry" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

- (a) an "infirmiry—A" provides outpatient and inpatient care;
- (b) an "infirmiry—B" provides outpatient care only.

(17) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

(18) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(19) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more persons or personal care to more than four persons who are not related to the owner or administrator by blood or marriage. The term does not include adult foster care licensed under 53-5-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for physically disabled persons licensed under 53-19-111, boarding or foster homes for children licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of institutions.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or persons with related problems.

(e) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(20) "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured persons prior to their transportation to a hospital or provides inpatient medical care to persons needing that care for a period of no longer than 96 hours;

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

(21) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(22) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(23) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(24) "Offer" means the holding out by a health care facility that it can provide specific health services.

(25) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(26) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(27) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(28) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(29) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(30) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(31) "State health plan" means the plan prepared by the department pursuant to 42 U.S.C. 300m-2(a)(2)."

Section 2. Section 53-5-503, MCA, is amended to read:

**"53-5-503. Definitions.** As used in this part, the following definitions apply:

(1) "Abuse" means the infliction of physical or mental injury or the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) "Exploitation" means the unreasonable use of an older person, his money, or his property to the advantage of another by means of duress, menace, fraud, or undue influence.

(3) "Long-term care facility" means a facility defined in 50-5-101.

(4) "Mental injury" means an identifiable and substantial impairment of an older person's intellectual or psychological functioning or well-being.

(5) "Neglect" means the failure of a guardian, employee of a public or private residential institution, facility, home, or agency, or any other person legally responsible in a residential setting for an older person's welfare to care for an older person by failing to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person.

(6) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 53-5-525(2), the person 60 years of age or older must be unable to protect himself from abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

(7) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function."

**Section 3. Coordination instruction.** If Senate Bill No. 246 and this bill are both passed and approved, the code commissioner shall add the term "medical assistance facility" to the list of facilities defined as "health care facilities" in 50-5-301, as amended by Senate Bill No. 246.

**Section 4. Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 9, 1987.

## CHAPTER NO. 451

[HB 222]

AN ACT ALLOWING CORPORATIONS IN AN AFFILIATED GROUP TO FILE A CONSOLIDATED CORPORATION INCOME TAX RETURN IF ALL CORPORATIONS ARE INCORPORATED IN MONTANA, OWNED BY MONTANA RESIDENTS, AND FILING A CONSOLIDATED FEDERAL RETURN; AMENDING SECTION 15-31-141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-31-141, MCA, is amended to read:

**"15-31-141. Consolidated returns — computation and procedure — prohibition on financial institutions.** (1) Corporations which



are affiliated may not file a consolidated return unless at least 80% of all classes of stock of each corporation involved is owned directly or indirectly by one or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a unitary business and, *except for a unitary business operation described in subsection (2)(b)*, permission to file a consolidated return is given by the department of revenue. For purposes of this section, a "unitary business operation" means one in which:

(a) the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations; or

(b) *all of the corporations in the affiliated group are incorporated and operate exclusively in Montana, are not multistate corporations, and have filed a consolidated federal return for the tax year.*

(3) *The election to file a consolidated return is binding as long as the affiliated group continues to file a federal consolidated return.*

(4) If the conditions of subsections (1) and (2) of this section are met, the department may require corporations to file a consolidated return when the department considers a consolidated return necessary.

(5) Any corporation liable to report under this chapter and owning or controlling, either directly or indirectly, at least 80% of all classes of stock of each corporation involved may be required to make a consolidated report showing the combined net income, such assets of the corporation as are required for the purposes of this chapter, and such other information as the department may require, but excluding intercorporate stockholdings and intercorporate accounts. Any corporation liable to report under this chapter and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, such assets of the corporation as are required for the purposes of this chapter, and such other information as the department may require, but excluding intercorporate stockholdings and intercorporate accounts. In case it shall appear to the department that any arrangement exists in such a manner as to improperly reflect the business done, the segregable assets, or the entire net income earned from business done in this state, the department is authorized and empowered to equitably adjust the tax in such manner as it may determine.

(6) (a) A majority of the corporation license tax collected from financial institutions is paid to local government areas in which each financial institution is located. However, consolidated returns for financial institutions do not reflect the true tax attributable to each local government. In addition, consolidated returns would permit financial institutions to offset income against losses of nonfinancial institutions, thereby distorting the true income of each financial organization.

(b) In accordance with subsection (6)(a), financial institutions are prohibited from filing consolidated returns under this section."

**Section 2. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date — applicability.** (1) This act is effective on passage and approval.

(2) This act applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1986.

Approved April 9, 1987.

## CHAPTER NO. 452

[HB 453]

AN ACT TO AUTHORIZE THE DEPARTMENT OF COMMERCE TO SERVE AS AN OMBUDSMAN FOR THE TOURISM INDUSTRY AND RECREATIONISTS IN MATTERS CONCERNING THE MANAGEMENT OF THE LEVEL OF FLATHEAD LAKE; AMENDING SECTION 90-1-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Flathead Lake is an outstanding natural, scenic resource that attracts large numbers of vacationers, tourists, and recreationists and that supports a tourism industry that is important to Montana's economy; and

WHEREAS, the accessibility of Flathead Lake for recreational purposes is dependent on the level of the lake in relation to marina and other recreational facilities; and

WHEREAS, Flathead Lake is managed for a variety of purposes, including electric power generation, flood control, maintenance of wildlife and fisheries habitat, recreation, and irrigation; and

WHEREAS, management of the level of Flathead Lake is the continuing subject of numerous studies and meetings that include representatives of federal, regional, and state government agencies, the Montana Power Company, and other affected organizations but do not consistently include representatives of the tourism industry and recreationists.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 90-1-104, MCA, is amended to read:

**"90-1-104. Functions of department of commerce — recreational development.** The department of commerce shall:

(1) exercise state responsibility for that part of recreational planning and development which is directly related to private investment in recreational facilities;

(2) assemble and correlate information which may influence the development of recreational enterprises and disseminate it to persons, firms, or corporations interested in constructing or maintaining recreational facilities open to the public; and

(3) *serve as an ombudsman for the tourism industry and recreationists in all matters concerning the management and regulation of the level of Flathead lake.*"

**Section 2. Effective date.** This act is effective on passage and approval.

Approved April 9, 1987.

## CHAPTER NO. 453

[HB 512]

AN ACT IMPOSING A FEE IN LIEU OF TAX ON AIRCRAFT OTHER THAN AIRLINES; EXEMPTING AIRCRAFT OTHER THAN AIRLINES TAXABLE UNDER THE PROVISIONS OF 15-23-401 THROUGH 15-23-403, MCA, FROM PERSONAL PROPERTY TAXATION; PROVIDING FOR COLLECTION AND DISTRIBUTION OF THE FEE IN LIEU OF TAX ON AIRCRAFT; CHANGING THE PENALTY FOR FAILURE TO REGISTER AN AIRCRAFT; AMENDING SECTIONS 15-6-138, 15-8-111, 15-24-304, 17-7-502, 67-3-201, AND 67-3-202, MCA; REPEALING SECTION 15-6-210, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Registration application — payment of fees — deposit of fees.** (1) The owner of an aircraft subject to the fee in lieu of property tax must submit an application for registration or registration renewal to the department on or before March 1 of each year. The application must be accompanied by the fee in lieu of tax prescribed in [section 4].

(2) An aircraft subject to the fee in lieu of tax may not be registered until payment of the fee is made to the department.

(3) All fees paid to the department for registration must be deposited to the account established in [section 3].

**Section 2. Fee in lieu of tax on registered aircraft — decal.** (1) Except as provided in subsection (3), aircraft required to be registered in Montana are subject to a license fee. The registration fee is in lieu of property tax.

(2) The department shall issue a decal to the owner of the aircraft required to be registered at the time of payment of the registration fee in lieu of tax, as provided in 67-3-201. No aircraft subject to a fee in lieu of tax may be operated in this state unless there is displayed on the aircraft

a decal as visual proof that the fee in lieu of tax has been paid for the aircraft and that the aircraft is registered for the current year.

(3) Aircraft that meet the description of property described in 15-6-147 are exempt from the fee imposed by subsection (1). Aircraft subject to the fee in lieu of tax are exempt from all other taxation.

**Section 3. Aircraft registration account — source of funds — allocation.** (1) There is an account in the state special revenue fund to which must be credited all money received from fees paid in lieu of tax on aircraft as required in this part and 15-24-304 and all penalties collected for registration violations as provided in 67-3-202.

(2) Money in the account is allocated as follows:

(a) 90% to the counties in the proportion that each county's collections bear to the total collections statewide; and

(b) 10% to the department for the purpose of administering and enforcing aircraft registration.

(3) The allocations required in subsection (2)(a) must be made twice annually by the department. The first allocation must be made between March 15 and March 30 and the second allocation must be made between July 1 and July 15.

(4) The allocation required in subsection (2)(b) must be made on July 1 of each year.

(5) On receipt of the money allocated as provided in subsection (2)(a), the county treasurer shall distribute the money in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(6) The allocations required in subsection (2) are considered statutory appropriations as described in 17-7-502.

**Section 4. Schedule of fees in lieu of tax for aircraft.** (1) The appropriate fee in lieu of tax imposed on aircraft must be determined from the following schedule:

| YEARS                                                     |        |         |         |         |
|-----------------------------------------------------------|--------|---------|---------|---------|
| 0 - 5                                                     | 6 - 10 | 11 - 20 | 21 - 30 | 31 - 40 |
| Single engine, fixed gear, 200 horsepower and under       |        |         |         |         |
| \$ 300                                                    | \$ 175 | \$100   | \$ 50   | \$ 25   |
| Single engine, fixed gear, over 200 horsepower            |        |         |         |         |
| 500                                                       | 250    | 150     | 75      | 50      |
| Single engine, retractable gear, 200 horsepower and under |        |         |         |         |
| 600                                                       | 300    | 175     | 100     | 75      |
| Single engine, retractable gear, over 200 horsepower      |        |         |         |         |
| 700                                                       | 400    | 200     | 125     | 100     |
| Multi-engine, piston engine                               |        |         |         |         |
| 800                                                       | 500    | 250     | 175     | 150     |

|                                        |       |     |     |     |
|----------------------------------------|-------|-----|-----|-----|
| Helicopter, piston engine              |       |     |     |     |
| 700                                    | 450   | 225 | 150 | 125 |
| Single engine jet helicopter, prop jet |       |     |     |     |
| 1,500                                  | 700   | 450 | 300 | 175 |
| Multi-engine jet helicopter, prop jet  |       |     |     |     |
| 2,000                                  | 1,000 | 600 | 400 | 200 |
| Jet engine, no propeller               |       |     |     |     |
| 3,000                                  | 1,500 | 800 | 500 | 250 |

(2) The fee in lieu of tax imposed on any glider, ultralight, gyrocopter, balloon, homebuilt aircraft, antiques, or any aircraft over 40 years old is \$20.

Section 5. Section 15-6-138, MCA, is amended to read:

**"15-6-138. Class eight property — description — taxable percentage.** (1) Class eight property includes:

- (a) all agricultural implements and equipment;
  - (b) all mining machinery, fixtures, equipment, tools, and supplies except:
    - (i) those included in class five; and
    - (ii) coal and ore haulers;
  - (c) all manufacturing machinery, fixtures, equipment, tools, and supplies except those included in class five;
  - (d) all trailers up to and including 18,000 pounds maximum gross loaded weight, except those subject to a fee in lieu of property tax;
  - (e) all goods and equipment intended for rent or lease, except goods and equipment specifically included and taxed in another class; and
  - (f) all other machinery except that specifically included in another class.
- (2) Class eight property is taxed at 11% of its market value."

Section 6. Section 15-8-111, MCA, is amended to read:

**"15-8-111. Assessment — market value standard — exceptions.** (1) All taxable property must be assessed at 100% of its market value except as provided in subsection (5) of this section and in 15-7-111 through 15-7-114.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) Except as provided in subsection (3), the market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the

value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in 15-6-134 through 15-6-140 and 15-6-145 through 15-6-149, except:

(a) the wholesale value for agricultural implements and machinery is the loan value as shown in the Official Guide, Tractor and Farm Equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri; and

(b) for agricultural implements and machinery not listed in the official guide, the department shall prepare a supplemental manual where the values reflect the same depreciation as those found in the official guide.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property in classes four through eleven and fifteen through nineteen is the percentage of market value established for each class of property in 15-6-134 through 15-6-141 and 15-6-145 through 15-6-149.

(6) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-143, under class thirteen, are assessed at 100% of the combined appraised value of the standing timber and grazing productivity of the land when valued as timberland.

(7) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(8) The taxable value of all property in 15-6-131 and classes two, three, and thirteen is the percentage of assessed value established in 15-6-131(2), 15-6-132, 15-6-133, and 15-6-143 for each class of property. (Subsections

(3)(a) and (3)(b) applicable to tax years beginning after December 31, 1985—sec. 4, Ch. 463, L. 1985. Subsection (6)(d) and references in (8) to class thirteen and 15-6-143 terminate January 1, 1991—sec. 10, Ch. 681, L. 1985.)”

Section 7. Section 15-24-304, MCA, is amended to read:

**“15-24-304. Prorated fee in lieu of tax — aircraft.** (1) A person who acquires an aircraft required to be registered under subsections (2) through (6) of 67-3-201 after March 1 in any year shall register the aircraft within 30 days of acquiring it.

(2) *The fee in lieu of tax must be prorated for aircraft registered for a period less than 1 year in the same manner as personal property taxes are prorated in 15-24-303.*

(3) *A person failing to register an aircraft within 30 days following acquisition of the aircraft or bringing the aircraft into the state for commercial purposes is subject to the penalty provided in 67-3-202.*

(4) *A person owning a migratory aircraft shall register as prescribed in 67-3-201(5) and pay the fee in lieu of tax.”*

Section 8. Section 17-7-502, MCA, is amended to read:

**“17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations:

- (a) 2-9-202;
- (b) 2-17-105;
- (c) 2-18-812;
- (d) 10-3-203;
- (e) 10-3-312;
- (f) 10-3-314;
- (g) 10-4-301;
- (h) 13-37-304;
- (i) 15-31-702;

(j) 15-36-112;  
(k) 15-70-101;  
(l) 16-1-404;  
(m) 16-1-410;  
(n) 16-1-411;  
(o) 17-3-212;  
(p) 17-5-404;  
(q) 17-5-424;  
(r) 17-5-804;  
(s) 19-8-504;  
(t) 19-9-702;  
(u) 19-9-1007;  
(v) 19-10-205;  
(w) 19-10-305;  
(x) 19-10-506;  
(y) 19-11-512;  
(z) 19-11-513;  
(aa) 19-11-606;  
(bb) 19-12-301;  
(cc) 19-13-604;  
(dd) 20-6-406;  
(ee) 20-8-111;  
(ff) 23-5-612;  
(gg) 37-51-501;  
(hh) 53-24-206;  
(ii) [section 3];  
(jj) 75-1-1101;  
(kk) 75-7-305;  
(ll) 80-2-103;  
(mm) 80-2-228;  
(nn) 90-3-301;  
(oo) 90-3-302;  
(pp) 90-15-103; and



(qq) Sec. 13, HB 861, L. 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments."

Section 9. Section 67-3-201, MCA, is amended to read:

**"67-3-201. Aircraft registration and licensing required.** (1) Except as provided in 67-3-102 and in subsection (6) of this section, a person may not operate or cause or authorize to be operated a civil aircraft within this state unless the aircraft has an appropriate effective registration, license, certificate, or permit issued or approved by the United States government which has been registered with the department and the registration with the department is in force.

(2) Aircraft customarily kept in this state *must* be registered *on or before March 1 of each year* with the department, which *must* charge a fee therefor *according to the fee schedule in [section 4]*. The registration *must* be renewed annually on or before March 1 each year.

(3) Section 67-3-202 and subsections (2) through (6) of this section do not apply to:

(a) aircraft owned and operated by the federal government, the state, or any political subdivision thereof;

(b) aircraft owned and held by an aircraft dealer solely for the purpose of resale;

(c) aircraft operated by an airline company and regularly scheduled for the primary purpose of carrying persons or property for hire in interstate or international transportation; or

(d) dismantled or otherwise nonflyable aircraft.

(4) An aircraft *must* be registered *in* a particular county of the state. This county *must* be the county of the owner's principal residence, if the owner is a natural person, or the owner's principal place of doing business in the state, if the owner is not a natural person. However, if the owner declares by affidavit that the aircraft is customarily kept at a landing facility in another county within the state, he may register the aircraft as property within such other county.

(5) Aircraft not registered in the state but entering the state to engage in commercial operations shall be registered prior to commencing operation.

(6) Owners of ultralight aircraft for which no appropriate effective license, certificate, or permit is issued by the United States government

shall pay the fee required in [section 4] and file with the department an appropriate registration recognized and approved by the United States government."

Section 10. Section 67-3-202, MCA, is amended to read:

**"67-3-202. Penalty for registration violations.** (1) When an aircraft required to be registered under the provisions of subsections (2) through (6) of 67-3-201 is not registered on or before March 1 of the current calendar year, a penalty of five times the annual registration fee provided in [section 4] must be added to the registration fee and collected. Registration of an aircraft in the name of the applicant for the year immediately preceding the year for which application for registration is made shall be prima facie evidence that the aircraft has been based in this state during the year for which application for registration is made.

(2) A person who owns or causes or authorizes an aircraft to be operated or who operates an aircraft required to be registered in the state without having displayed upon such aircraft a certificate of registration issued by the department for that aircraft commits a misdemeanor."

Section 11. **Codification instruction.** Sections 1 through 4 are intended to be codified as an integral part of Title 67, chapter 3, part 2, and the provisions of Title 67, chapter 3, apply to sections 1 through 4.

Section 12. **Repealer.** Section 15-6-210, MCA, is repealed.

Section 13. **Applicability.** This act applies to taxable years beginning after December 31, 1987, and to aircraft registered on or after January 1, 1988.

Section 14. **Extension of authority.** Any existing authority of the department of commerce or the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 9, 1987.

## CHAPTER NO. 454

[HB 523]

AN ACT TO PROVIDE FUNDS TO SUPPORT THE STATE VETERANS' CEMETERY AT FORT HARRISON THROUGH AN INCOME TAX RETURN CHECKOFF; STATUTORILY APPROPRIATING THE FUNDS; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN APPLICABILITY DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **State veterans' cemetery account — administration.** (1) There is a state veterans' cemetery account in the state special revenue fund provided for in 17-2-102.

(2) Money collected under [section 2] must be deposited in the account.

(3) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of military affairs to provide funding for the state veterans' cemetery.

**Section 2. Voluntary checkoff for the state veterans' cemetery.**

(1) Each individual taxpayer who is required to file an income tax return under Title 15, chapter 30, may contribute to the funding of the state veterans' cemetery at Fort Harrison by marking an appropriate blank on the state income tax return.

(2) The department shall include on each Montana state individual income tax return form a clear and conspicuous provision by which the taxpayer may indicate a contribution to the state veterans' cemetery. The contribution may be made from the amount refunded to the taxpayer or, if no refund is due, must be in addition to the amount of tax required to be paid. The provision must be in substantially the following form:

Check the appropriate blank if you wish to contribute, in addition to your existing tax liability, \_\_\_\_\_ \$5, \_\_\_\_\_ \$10, \_\_\_\_\_ \$20, or \_\_\_\_\_ (specify an amount) to fund the state veterans' cemetery at Fort Harrison. If a joint return, check the appropriate blank if your spouse wishes to contribute, in addition to your existing tax liability, \_\_\_\_\_ \$5, \_\_\_\_\_ \$10, \_\_\_\_\_ \$20, or \_\_\_\_\_ (specify an amount) for the same purpose.

(3) Money received under this section must be deposited in the state veterans' cemetery account established by [section 1] after the department has deducted an amount necessary to administer this section.

**Section 3. Section 17-7-502, MCA, is amended to read:**

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations:

- (a) 2-9-202;
- (b) 2-17-105;
- (c) 2-18-812;
- (d) 10-3-203;

- (e) 10-3-312;
- (f) 10-3-314;
- (g) 10-4-301;
- (h) 13-37-304;
- (i) *[section 1]*;
- (j) 15-31-702;
- (k) 15-36-112;
- (l) 15-70-101;
- (m) 16-1-404;
- (n) 16-1-410;
- (o) 16-1-411;
- (p) 17-3-212;
- (q) 17-5-404;
- (r) 17-5-424;
- (s) 17-5-804;
- (t) 19-8-504;
- (u) 19-9-702;
- (v) 19-9-1007;
- (w) 19-10-205;
- (x) 19-10-305;
- (y) 19-10-506;
- (z) 19-11-512;
- (aa) 19-11-513;
- (bb) 19-11-606;
- (cc) 19-12-301;
- (dd) 19-13-604;
- (ee) 20-6-406;
- (ff) 20-8-111;
- (gg) 23-5-612;
- (hh) 37-51-501;
- (ii) 53-24-206;
- (jj) 75-1-1101;
- (kk) 75-7-305;

- (ll) 80-2-103;
- (mm) 80-2-228;
- (nn) 90-3-301;
- (oo) 90-3-302;
- (pp) 90-15-103; and
- (qq) Sec. 13, HB 861, L. 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments."

**Section 4. Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to sections 1 and 2.

**Section 5. Applicability.** This act applies to individual income tax returns filed for taxable year 1987.

**Section 6. Termination date.** This act terminates July 1, 1988.

Approved April 9, 1987.

## CHAPTER NO. 455

[HB 794]

AN ACT REPLACING THE PROPERTY TAX EXEMPTION FOR HOSPITALS BY ESTABLISHING A PROPERTY TAX EXEMPTION FOR LICENSED, NONPROFIT HEALTH CARE FACILITIES; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-6-201, MCA, is amended to read:

**"15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

- (a) the property of:
  - (i) the United States, the state, counties, cities, towns, school districts, except, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical

energy, the property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for *nonprofit health care facilities, as defined in 50-5-101, licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3, is not exempt.*

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. Such property is also exempt from the fee in lieu of tax.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(l) motorcycles and quadricycles;

(m) fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit; and

(p) all farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100.

(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) \$20,000 in the case of a single-family residential dwelling;

(b) \$100,000 in the case of a multifamily residential dwelling or a non-residential structure. (Subsection (1)(p) applicable to taxable years beginning after December 31, 1985—sec. 4, Ch. 463, L. 1985.)"

**Section 2. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective on passage and approval.

**Section 4. Applicability.** This act applies to taxable years beginning after December 31, 1987.

Approved April 9, 1987.

**CHAPTER NO. 456**

[HB 825]

AN ACT SUBROGATING THE RIGHT OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO REPAYMENT OF INTERIM GENERAL RELIEF ASSISTANCE PROVIDED TO PERSONS WHO BECOME ELIGIBLE FOR SUPPLEMENTAL SECURITY INCOME BENEFITS; ALLOWING THE DEPARTMENT TO CONTRACT FOR CERTAIN LEGAL SERVICES TO GENERAL RELIEF RECIPIENTS; AMENDING SECTION 53-3-207, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-3-207, MCA, is amended to read:

**"53-3-207. Application for other state and federal programs — interim relief — subrogation of department to receipt of federal payments.** (1) General relief is available to a recipient to the extent such relief is not duplicative of resources or benefits reasonably available to the recipient.

(2) If other federal or state programs of assistance are reasonably available to meet the needs of a household, an applicant must apply for those programs before general relief may be provided. A household may be provided general relief after initial application for other programs of assistance. If denied such other assistance, the applicant must pursue available administrative appeals for those programs to the final administrative appeal level. If the applicant becomes eligible for other assistance covering the same period of time that interim general relief is provided, such interim relief must be repaid to the department or offset from lump sums or retroactive payments from other programs of assistance.

(3) *To the extent necessary for repayment of interim general relief provided to an applicant, the department is subrogated to the right of an attorney to recover from the federal government the costs of providing the applicant legal assistance in obtaining eligibility for supplemental security income under Title XVI of the Social Security Act.*

Section 2. **Legal assistance contracts.** The department of social and rehabilitation services may contract with any agency, organization, or person to provide general relief recipients legal assistance in obtaining supplemental security income benefits from the federal government.

Section 3. **Extension of authority.** Any existing authority of the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 53, chapter 3, part 2, and the provisions of Title 53, chapter 3, part 2, apply to section 2.

Section 5. **Effective date.** This act is effective July 1, 1987.

Approved April 9, 1987.



**CHAPTER NO. 457**

[SB 353]

AN ACT TO REGULATE THE FORMATION AND OPERATION OF HEALTH MAINTENANCE ORGANIZATIONS; AMENDING SECTIONS 17-7-502, 33-1-102, AND 33-1-704, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** This act may be cited as the "Montana Health Maintenance Organization Act".

Section 2. **Definitions.** As used in [sections 1 through 29], unless the context requires otherwise, the following definitions apply:

(1) "Agent" means an individual, partnership, or corporation appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

(2) "Basic health care services" means:

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to [section 8(3)(e)];

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and therapeutic radiologic services; and

(h) preventive health services, including:

(i) immunizations;

(ii) well-child care from birth;

(iii) periodic health evaluations for adults;

(iv) voluntary family planning services;

(v) infertility services; and

(vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction.

(3) "Commissioner" means the commissioner of insurance of the state of Montana.

(4) "Department of health" means the department of health and environmental sciences provided for in 2-15-2101.

(5) "Director" means the director of the department of health and environmental sciences provided for in 2-15-2102.

(6) "Enrollee" means a person:

- (a) who enrolls in or contracts with a health maintenance organization;
- (b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or
- (c) on whose behalf the health maintenance organization contracts to receive health care services.

(7) "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

(8) "Health care services" means:

- (a) the services included in furnishing medical or dental care to a person;
- (b) the services included in hospitalizing a person;
- (c) the services incident to furnishing medical or dental care or hospitalization; or
- (d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

(9) "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

(10) "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers.

(11) "Person" means:

- (a) an individual;
- (b) a group of individuals;
- (c) an insurer, as defined in 33-1-201;
- (d) a health service corporation, as defined in 33-30-101;
- (e) a corporation, partnership, facility, association, or trust; or
- (f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

(12) "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

(13) "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or nurse specialist as specifically listed in 37-8-202 who treats any illness or injury within the scope and limitations of his practice or other person who is licensed or otherwise authorized in this state to furnish health care services.

(14) "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent.

**Section 3. Establishment of health maintenance organizations.**

(1) Notwithstanding any law of this state to the contrary, a person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with [sections 1 through 29]. A person may not establish or operate a health maintenance organization in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner. A foreign person may qualify for a certificate of authority if it first obtains from the secretary of state a certificate of authority to transact business in this state as a foreign corporation under 35-1-1001.

(2) Each health maintenance organization operating in this state as of [the effective date of this act] shall submit an application for a certificate of authority under subsection (3) within 30 days after the effective date of rules adopted by the commissioner and the department of health as provided in [section 20]. Each such applicant may continue to operate in this state until the commissioner acts upon the application. If an application is denied under [section 4], the applicant must be treated as a health maintenance organization whose certificate of authority has been revoked.

(3) Each application of a health maintenance organization, whether separately licensed or not, for a certificate of authority must:

(a) be verified by an officer or authorized representative of the applicant;

(b) be in a form prescribed by the commissioner;

(c) contain:

(i) the applicant's name;

(ii) the location of the applicant's home office or principal office in the United States (if a foreign person);

(iii) the date of organization or incorporation;

(iv) the form of organization (including whether the providers affiliated with the health maintenance organization will be salaried employees or group or individual contractors);

(v) the state or country of domicile; and

(vi) any additional information the commissioner may reasonably require; and

(d) set forth the following information or be accompanied by the following documents, as applicable:

(i) a copy of the applicant's organizational documents, such as its corporate charters or articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto, certified by the public officer with whom the originals were filed in the state or country of domicile;

(ii) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the applicant's internal affairs, certified by its secretary or other officer having custody thereof;

(iii) a list of the names, addresses, and official positions of the persons responsible for the conduct of the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee; the principal officers in the case of a corporation; and the partners or members in the case of a partnership or association;

(iv) a copy of any contract made or to be made between:

(A) any provider and the applicant; or

(B) any person listed in subsection (3)(d)(iii) and the applicant. The applicant may file a list of providers executing a standard contract and a copy of the contract instead of copies of each executed contract.

(v) the extent to which any of the following will be included in provider contracts and the form of any provisions that:

(A) limit a provider's ability to seek reimbursement for basic health care services or health care services from an enrollee;

(B) permit or require a provider to assume a financial risk in the health maintenance organization, including any provisions for assessing the provider, adjusting capitation or fee-for-service rates, or sharing in the earnings or losses; and

(C) govern amending or terminating an agreement with a provider;

(vi) a financial statement showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement satisfies this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of [sections 1 through 29].

(vii) a description of the proposed method of marketing, a financial plan that includes a projection of operating results anticipated until the organization has had net income for at least 1 year, and a statement as to the sources of working capital as well as any other source of funding;

(viii) a power of attorney executed by the applicant, on a form prescribed by the commissioner, appointing the commissioner, his successors in office, and his authorized deputies as the applicant's attorney to receive service of legal process issued against it in this state;

(ix) a statement reasonably describing the geographic service area or areas to be served by county, including:

(A) a chart showing the number of primary and specialty care providers with locations and service areas by county;

(B) the method of handling emergency care, with the location of each emergency care facility; and

(C) the method of handling out-of-area services;

(x) a description of the way in which the health maintenance organization provides services to enrollees in each geographic service area, including the extent to which a provider under contract with the health maintenance organization provides primary care to those enrollees;

(xi) a description of the complaint procedures to be used as required under [section 11];

(xii) a description of the procedures and programs to be implemented to meet the quality of health care requirements in [section 4];

(xiii) a description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under [section 6];

(xiv) a summary of the way in which administrative services will be provided, including the size and qualifications of the administrative staff and the projected cost of administration in relation to premium income. If the health maintenance organization delegates management authority for a major corporate function to a person outside the organization, the health maintenance organization shall include a copy of the contract in its application for a certificate of authority. Contracts for delegated management authority must be filed with the commissioner in accordance with the filing provisions of [section 8(7)], however, nothing in this subsection deprives the health maintenance organization of its right to confidentiality of any proprietary information, and the commissioner may not disclose that proprietary information to any other person. All contracts must include:

(A) the services to be provided;

(B) the standards of performance for the manager;

(C) the method of payment, including any provisions for the administrator to participate in the profits or losses of the plan;

(D) the duration of the contract; and

(E) any provisions for modifying, terminating, or renewing the contract.

(xv) a summary of all financial guaranties by providers, sponsors, affiliates, or parents within a holding company system or any other guaranties that are intended to ensure the financial success of the plan, including hold harmless agreements by providers, insolvency insurance, reinsurance, or other guaranties;

(xvi) a summary of benefits to be offered enrollees, including any limitations and exclusions and the renewability of all contracts to be written;

(xvii) evidence that it can meet the requirement of [section 13(10)]; and  
(xviii) any other information that the commissioner may reasonably require to make the determinations required in [section 4].

(4) Each health maintenance organization shall file each substantial change, alteration, or amendment to the information submitted under subsection (3) with the commissioner at least 30 days prior to its effective date, including changes in articles of incorporation and bylaws, organization type, geographic service area, provider contracts, provider availability, plan administration, financial projections and guaranties, and any other change that might affect the financial solvency of the plan. The commissioner may, after notice and hearing, disapprove any proposed change, alteration, or amendment to the business plan. The commissioner may make reasonable rules exempting from the filing requirements of this subsection those items he considers unnecessary.

(5) An applicant or a health maintenance organization holding a certificate of authority shall file with the commissioner all contracts of reinsurance and any modifications thereto. An agreement between a health maintenance organization and an insurer is subject to Title 33, chapter 2, part 12. A reinsurance agreement must remain in full force and effect for at least 90 days following written notice of cancellation by either party by certified mail to the commissioner.

(6) Each health maintenance organization shall maintain, at its administrative office, and make available to the commissioner upon request executed copies of all provider contracts.

(7) The commissioner may make reasonable rules exempting an insurer or health service corporation operating a health maintenance organization as a plan from the filing requirements of this section if information requested in the application has been submitted to the commissioner under other laws and rules administered by the commissioner.

**Section 4. Issuance of certificate of authority.** (1) Upon receipt of an application for issuance of a certificate of authority, the commissioner shall transmit copies of the application and accompanying documents to the department of health. The department of health shall determine whether the applicant for a certificate of authority, with respect to health care services to be furnished, has:

(a) demonstrated the willingness and potential ability to assure that it will provide health care services in a manner assuring availability and accessibility of adequate personnel and facilities and enhancing availability, accessibility, and continuity of service;

(b) arrangements, established in accordance with the rules made by the department of health, for an ongoing quality assurance program concerning health care availability, accessibility, and continuity of service; and

(c) a procedure, established in accordance with rules of the department of health, to develop, compile, evaluate, and report statistics relating to the cost of its operations, the pattern of utilization of its services, the availability and accessibility of its services, and any other matters as may be reasonably required by the department of health.

(2) Within 60 days of receipt of the application from a health maintenance organization for issuance of a certificate of authority, the department of health shall certify to the commissioner that the proposed health maintenance organization meets the requirements of subsection (1) or shall, after notice and hearing, notify the commissioner that the health maintenance organization does not meet those requirements and specify in what respects it is deficient. The director may extend by not more than an additional 30 days the period within which he may certify to the commissioner that the proposed health maintenance organization meets or does not meet the requirements of subsection (1) by giving notice of the extension to the commissioner and the health maintenance organization before the expiration of the initial 60-day period.

(3) The commissioner shall issue or deny a certificate of authority to any person filing an application pursuant to [section 3] within 180 days of receipt of the certification from the department of health. The commissioner shall grant a certificate of authority upon payment of the application fee prescribed in [section 22] if the commissioner is satisfied that each of the following conditions is met:

(a) The persons responsible for the conduct of the applicant's affairs are competent and trustworthy.

(b) The department of health certifies, in accordance with subsection (2), that the health maintenance organization's proposed plan of operation meets the requirements of subsection (1).

(c) The health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments.

(d) The health maintenance organization is financially responsible and can reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may in his discretion consider:

(i) the financial soundness of the arrangements for health care services and the schedule of charges used in connection therewith;

(ii) the adequacy of working capital;

(iii) any agreement with an insurer, a health service corporation, a government, or any other organization for ensuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the health maintenance organization;

(iv) any agreement with providers for the provision of health care services;

(v) any deposit of cash or securities submitted in accordance with [section 13]; and

(vi) any additional information as the commissioner may reasonably require.

(e) The enrollees will be afforded an opportunity to participate in matters of policy and operation pursuant to [section 6].

(f) Nothing in the proposed method of operation, as shown by the information submitted pursuant to [section 3] or by independent investigation, violates any provision of [sections 1 through 29] or rules adopted by the commissioner or the department of health.

(g) Any deficiencies identified by the department of health have been corrected.

(4) The commissioner may in his discretion deny a certificate of authority only if he complies with the requirements of [section 21].

**Section 5. Powers of health maintenance organizations.** (1) The powers of a health maintenance organization include but are not limited to the following:

(a) the purchase, lease, construction, renovation, operation, or maintenance of a hospital, a medical facility, or both, its ancillary equipment, and such property as may reasonably be required for its principal office or for such purposes as may be necessary in the transaction of the business of the organization;

(b) the making of loans to a medical group under contract with it in furtherance of its program or the making of loans to a corporation under its control for the purpose of acquiring or constructing a medical facility or hospital or in furtherance of a program providing health care services to enrollees;

(c) the furnishing of health care services through a provider who is under contract with or employed by the health maintenance organization;

(d) the contracting with a person for the performance on its behalf of certain functions, such as marketing, enrollment, and administration;

(e) the contracting with an insurer authorized to transact insurance in this state, or with a health service corporation authorized to do business in this state, for the provision of insurance, indemnity, or reimbursement against the cost of health care services provided by the health maintenance organization; and

(f) the offering of other health care services in addition to basic health care services.

(2) A health maintenance organization shall file notice, with adequate supporting information, with the commissioner before exercising a power granted in subsection (1)(a), (1)(b), or (1)(d). The commissioner may, after notice and hearing, within 60 days disapprove the exercise of a power under subsection (1)(a), (1)(b), or (1)(d) only if, in his opinion, it would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations. The commissioner may make reasonable rules exempting from the filing requirement of this subsection those activities having a de minimis effect. The commissioner may exempt certain contracts from the filing requirement whenever exercise of the authority granted in this section would have



little or no effect on the health maintenance organization's financial condition and ability to meet obligations.

(3) Nothing in this section exempts the activities of a health maintenance organization from any applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

**Section 6. Governing body.** (1) The governing body of a health maintenance organization may include providers or other individuals, or both.

(2) The governing body shall establish a mechanism to give the enrollees an opportunity to participate in matters of policy and operation through the establishment of advisory panels, by the use of advisory referenda on major policy decisions, or through the use of other mechanisms.

**Section 7. Fiduciary responsibilities.** (1) Any director, officer, employee, or partner of a health maintenance organization who receives, collects, disburses, or invests funds in connection with the activities of the health maintenance organization is responsible for the funds in the manner of a fiduciary to the health maintenance organization.

(2) A health maintenance organization shall maintain in force a fidelity bond on employees and officers in an amount not less than \$100,000 or such other sum as may be prescribed by the commissioner. Each bond must be written with at least a 1-year discovery period and, if written with less than a 3-year discovery period, must contain a provision that a cancellation or termination of the bond, whether by or at the request of the insured or by the underwriter, may not take effect prior to the expiration of 90 days after written notice of the cancellation or termination has been filed with the commissioner unless the commissioner approves an earlier cancellation or termination date.

**Section 8. Evidence of coverage and charges for health care services.** (1) Every enrollee residing in this state is entitled to an evidence of coverage. The health maintenance organization shall issue the evidence of coverage, except that if the enrollee obtains coverage through an insurance policy issued by an insurer or a contract issued by a health service corporation, whether by option or otherwise, the insurer or the health service corporation shall issue the evidence of coverage.

(2) A health maintenance organization may not issue or deliver an enrollment form, an evidence of coverage, or an amendment to an approved enrollment form or evidence of coverage to a person in this state before a copy of the enrollment form, the evidence of coverage, or the amendment to the approved enrollment form or evidence of coverage is filed with and approved by the commissioner.

(3) An evidence of coverage issued or delivered to a person resident in this state may not contain a provision or statement that is untrue, misleading, or deceptive as defined in [section 14(1)]. The evidence of coverage must contain:

(a) a clear and concise statement, if a contract, or a reasonably complete summary, if a certificate, of:

(i) the health care services and the insurance or other benefits, if any, to which the enrollee is entitled;

(ii) any limitations on the services, kinds of services, or benefits to be provided, including any deductible or copayment feature;

(iii) the location at which and the manner in which information is available as to how services may be obtained;

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, that the enrollee is obligated to pay with respect to individual contracts; and

(v) a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints.

(b) definitions of geographical service area, emergency care, urgent care, out-of-area services, dependent, and primary provider, if these terms or terms of similar meaning are used in the evidence of coverage and have an effect on the benefits covered by the plan. The definition of geographical service area need not be stated in the text of the evidence of coverage if the definition is adequately described in an attachment, which is given to each enrollee along with the evidence of coverage.

(c) clear disclosure of each provision that limits benefits or access to service in the exclusions, limitations, and exceptions sections of the evidence of coverage. The exclusions, limitations, and exceptions that must be disclosed include but are not limited to:

(i) emergency and urgent care;

(ii) restrictions on the selection of primary or referral providers;

(iii) restrictions on changing providers during the contract period;

(iv) out-of-pocket costs, including copayments and deductibles;

(v) charges for missed appointments or other administrative sanctions;

(vi) restrictions on access to care if copayments or other charges are not paid; and

(vii) any restrictions on coverage for dependents who do not reside in the service area.

(d) clear disclosure of any benefits for home health care, skilled nursing care, kidney disease treatment, diabetes, maternity benefits for dependent children, alcoholism and other drug abuse, and nervous and mental disorders;

(e) a provision requiring immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of an enrollee or his dependents;

(f) a provision requiring medical treatment and referral services to appropriate ancillary services for mental illness and for the abuse of or addiction to alcohol or drugs in accordance with the limits and coverage provided in Title 33, chapter 22, part 7; however:

(i) after the primary care physician refers an enrollee for treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction, the health maintenance organization may not limit the enrollee to a health maintenance organization provider for the treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction;

(ii) if an enrollee chooses a provider other than the health maintenance organization provider for such treatment and referral services, the enrollee's designated provider must limit his treatment and services to the scope of the referral in order to receive payment from the health maintenance organization;

(iii) the amount paid by the health maintenance organization to the enrollee's designated provider may not exceed the amount paid by the health maintenance organization to one of its providers for equivalent treatment or services;

(g) a provision as follows:

"Conformity With State Statutes: Any provision of this evidence of coverage that on its effective date is in conflict with the statutes of the state in which the insured resides on that date is hereby amended to conform to the minimum requirements of those statutes."

(h) a provision that the health maintenance organization shall issue, without evidence of insurability, to the enrollee, his dependents, or family members continuing coverage on the enrollee, his dependents, or family members:

(i) if the evidence of coverage or any portion of it on an enrollee, his dependents, or family members covered under the evidence of coverage ceases because of termination of employment or of his membership in the class or classes eligible for coverage under the policy or because his employer discontinues his business or the coverage;

(ii) if the enrollee had been enrolled in the health maintenance organization for a period of 3 months preceding the termination of group coverage; and

(iii) if the enrollee applied for continuing coverage within 31 days after the termination of group coverage. The conversion contract may not exclude, as a preexisting condition, any condition covered by the group contract from which the enrollee converts.

(i) a provision that clearly describes the amount of money an enrollee shall pay to the health maintenance organization to be covered for basic health care services.

(4) A health maintenance organization may amend an enrollment form or an evidence of coverage in a separate document if the separate document is filed with and approved by the commissioner and issued to the enrollee.

(5) (a) A health maintenance organization shall provide the same coverage for newborn infants, required by subsection (3)(e), as it provides for

enrollees, except that for newborn infants there may be no waiting or elimination periods. A health maintenance organization may not assess a deductible or reduce benefits applicable to the coverage for newborn infants unless the deductible or reduction in benefits is consistent with the deductible or reduction in benefits applicable to all covered persons.

(b) A health maintenance organization may not issue or amend an evidence of coverage in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an enrollee or his dependents from and after the moment of birth.

(c) If a health maintenance organization requires payment of a specific fee to provide coverage of a newborn infant beyond 31 days of the date of birth of the infant, the evidence of coverage may contain a provision that requires notification to the health maintenance organization, within 31 days after the date of birth, of the birth of an infant and payment of the required fee.

(6) A health maintenance organization may not use a schedule of charges for enrollee coverage for health care services or an amendment to a schedule of charges before it files a copy of the schedule of charges or the amendment to it with the commissioner. A health maintenance organization may evidence a subsequent amendment to a schedule of charges in a separate document issued to the enrollee. The charges in the schedule must be established in accordance with actuarial principles for various categories of enrollees, except that charges applicable to an enrollee must not be individually determined based on the status of his health.

(7) The commissioner shall, within 60 days, approve a form if the requirements of subsections (1) through (5) are met. A health maintenance organization may not issue a form before the commissioner approves the form. If the commissioner disapproves the filing, he shall notify the filer. In the notice, the commissioner shall specify the reasons for his disapproval. The commissioner shall grant a hearing within 30 days after he receives a written request by the filer.

(8) The commissioner may in his discretion require a health maintenance organization to submit any relevant information he considers necessary in determining whether to approve or disapprove a filing made pursuant to this section.

**Section 9. Annual statement — revocation for failure to file — penalty for perjury.** (1) Unless it is operated by an insurer or a health service corporation as a plan, each authorized health maintenance organization shall annually on or before March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the preceding December 31. The statement must be in the general form and content required by the commissioner. The statement must be verified by the oath of at least two principal officers of the health maintenance organization. The commissioner may in his discretion waive any verification under oath.

(2) At the time of filing its annual statement, the health maintenance organization shall pay the commissioner the fee for filing its statement as

prescribed in [section 22]. The commissioner may refuse to accept the fee for continuance of the insurer's certificate of authority, as provided in [section 22], or may in his discretion suspend or revoke the certificate of authority of a health maintenance organization that fails to file an annual statement when due.

(3) The commissioner may, after notice and hearing, impose a fine not to exceed \$5,000 per violation upon a director, officer, partner, member, agent, or employee of a health maintenance organization who knowingly subscribes to or concurs in making or publishing an annual statement required by law that contains a material statement which is false.

(4) The commissioner may require such reports as he considers reasonably necessary and appropriate to enable him to carry out his duties under [sections 1 through 29], including but not limited to a statement of operations, transactions, and affairs of a health maintenance organization operated by an insurer or a health service corporation as a plan.

**Section 10. Information to enrollees.** Each authorized health maintenance organization shall provide to its enrollees 30 days' advance notice in writing of any material change in the operation of the health maintenance organization that will affect them directly.

**Section 11. Complaint system.** (1) (a) Each authorized health maintenance organization shall establish and maintain a complaint system to provide reasonable procedures to resolve written complaints initiated by enrollees. A health maintenance organization may not use a complaint system:

- (i) before the commissioner approves it; and
  - (ii) unless the health maintenance organization describes it in each evidence of coverage issued or delivered to an enrollee in this state.
- (b) Each time the health maintenance organization denies a claim or initiates disenrollment, cancellation, or nonrenewal, it shall notify the affected enrollee of the right to file a complaint and the procedure for filing a complaint.
- (c) Each health maintenance organization shall acknowledge a complaint within 10 days of receiving it.
- (d) Each health maintenance organization shall retain records of all complaints for 3 years and shall develop a summary for each year that must include:
- (i) a description of the procedures of the complaint system;
  - (ii) the total number of complaints handled through the complaint system, a compilation of causes underlying the complaints filed, the date on which each complaint was filed, the date on which each complaint was resolved, the disposition of each complaint filed, the time it took to process each complaint, and a summary of each administrative change made because of a complaint; and
  - (iii) the number, amount, and disposition of malpractice claims made by enrollees of the health maintenance organization that were settled during the year by the health maintenance organization.

(e) The health maintenance organization shall annually on or before March 1 file with the commissioner the summary described in subsection (1)(d) for the preceding year.

(2) The commissioner shall hold in confidence the information provided by the health maintenance organization pursuant to subsection (1)(d)(iii).

(3) The commissioner may examine a complaint system.

**Section 12. Investment regulations.** Except for a health maintenance organization operated as a plan by a health service corporation, a domestic health maintenance organization may invest its funds only as prescribed in Title 33, chapter 2, part 8.

**Section 13. Protection against insolvency.** (1) Except as provided in subsections (4) through (7), each authorized health maintenance organization shall deposit with the commissioner cash, securities, or any combination of cash or securities acceptable to the commissioner in the amount set forth in this section.

(2) The amount of the deposit for a health maintenance organization during the first year of its operation must be the greater of:

(a) 5% of its estimated expenditures for health care services for its first year of operation;

(b) twice its estimated average monthly uncovered expenditures for its first year of operation; or

(c) \$100,000.

(3) At the beginning of each succeeding year, unless not applicable, the health maintenance organization shall deposit with the commissioner cash, securities, or any combination of cash or securities acceptable to the commissioner, in an amount equal to 4% of its estimated annual uncovered expenditures for that year.

(4) Unless not applicable, a health maintenance organization that is in operation on [the effective date of this act] shall make a deposit equal to the greater of:

(a) 1% of the preceding 12 months' uncovered expenditures; or

(b) \$100,000 on the first day of the fiscal year beginning 6 months or more after [the effective date of this act]. In the second fiscal year, if applicable, the amount of the additional deposit must be equal to 2% of its estimated annual uncovered expenditures. In the third fiscal year, if applicable, the additional deposit must be equal to 3% of its estimated annual uncovered expenditures for that year. In the fourth fiscal year and subsequent years, if applicable, the additional deposit must be equal to 4% of its estimated annual uncovered expenditures for each year. Each year's estimate after the first year of operation must reasonably reflect the preceding year's operating experience and delivery arrangements.

(5) The commissioner may in his discretion waive any of the deposit requirements set forth in subsections (1) through (4) whenever he is satisfied that:

(a) the health maintenance organization has sufficient net worth and an adequate history of generating net income to assure its financial viability for the next year;

(b) the health maintenance organization's performance and obligations are guaranteed by an organization with sufficient net worth and an adequate history of generating net income; or

(c) the health maintenance organization's assets or its contracts with insurers, health service corporations, governments, or other organizations are reasonably sufficient to assure the performance of its obligations.

(6) When a health maintenance organization achieves a net worth not including land, buildings, and equipment of at least \$1 million or achieves a net worth including organization-related land, buildings, and equipment of at least \$5 million the annual deposit requirement under subsection (3) does not apply. The annual deposit requirement under subsection (3) does not apply to a health maintenance organization if the total amount of the accumulated deposit is greater than the capital requirement for the formation or admittance of a disability insurer in this state. If the health maintenance organization has a guaranteeing organization that has been in operation for at least 5 years and has a net worth not including land, buildings, and equipment of at least \$1 million or that has been in operation for at least 10 years and has a net worth including organization-related land, buildings, and equipment of at least \$5 million, the annual deposit requirement under subsection (3) does not apply. If the guaranteeing organization is sponsoring more than one health maintenance organization, however, the net worth requirement is increased by a multiple equal to the number of such health maintenance organizations. This requirement to maintain a deposit in excess of the deposit required of a disability insurer does not apply during any time that the guaranteeing organization maintains for each health maintenance organization it sponsors a net worth at least equal to the capital and surplus requirements for a disability insurer.

(7) All income from deposits belongs to the depositing health maintenance organization and must be paid to it as it becomes available. A health maintenance organization that has made a securities deposit may withdraw the deposit or any part of it after making a substitute deposit of cash, securities, or any combination of cash or securities of equal amount and value. A health maintenance organization may not substitute securities without prior approval by the commissioner.

(8) In any year in which an annual deposit is not required of a health maintenance organization, at the health maintenance organization's request, the commissioner shall reduce the previously accumulated deposit by \$100,000 for each \$250,000 of net worth in excess of the amount that allows the health maintenance organization to be exempt from the annual deposit requirement. If the amount of net worth no longer supports a reduction of its required deposit, the health maintenance organization shall immediately redeposit \$100,000 for each \$250,000 of reduction in net worth, except that its total deposit may not be required to exceed the maximum required under this section.

(9) Unless it is operated by an insurer or a health service corporation as a plan, each health maintenance organization shall have a minimum capital of at least \$200,000 in addition to any deposit requirements under this section. The capital account must be in excess of any accrued liabilities and be in the form of cash, securities, or any combination of cash or securities acceptable to the commissioner.

(10) Each health maintenance organization shall demonstrate that if it becomes insolvent:

(a) enrollees hospitalized on the date of insolvency will be covered until discharged; and

(b) enrollees will be entitled to similar alternate insurance coverage that does not contain any medical underwriting or preexisting limitation requirements.

**Section 14. Prohibited practices.** (1) A health maintenance organization, or representative thereof, may not cause or knowingly permit the use of advertising that is untrue or misleading, solicitation that is untrue or misleading, or any form of evidence of coverage that is deceptive. For purposes of [sections 1 through 29]:

(a) a statement or item of information is considered to be misleading, whether or not it may be literally untrue, if, in the total context in which the statement is made or the item of information is communicated, a reasonable person, not possessing special knowledge regarding health care coverage, may reasonably understand the statement or item of information as indicating a benefit or advantage or the absence of an exclusion, limitation, or disadvantage of possible significance to an enrollee of, or person considering enrollment in, a health maintenance organization if the benefit or advantage or absence of limitation, exclusion, or disadvantage does not in fact exist; and

(b) an evidence of coverage is considered to be deceptive if, when taken as a whole and with consideration given to typography, format, and language, it can cause a reasonable person, not possessing special knowledge regarding health maintenance organizations, to expect benefits, services, charges, or other advantages that the evidence of coverage does not provide or which the health maintenance organization issuing the evidence of coverage does not regularly make available to enrollees covered under the evidence of coverage.

(2) Title 33, chapter 18, applies to health maintenance organizations and evidences of coverage issued by a health maintenance organization, except to the extent that the commissioner determines that the nature of health maintenance organizations and evidences of coverage render the chapter clearly inappropriate.

(3) A health maintenance organization shall clearly disclose in the evidence of coverage the circumstances under which it may disenroll, cancel, or refuse to renew an enrollee. A health maintenance organization may only disenroll, cancel, or refuse to renew an enrollee if the enrollee:

(a) has failed to pay required premiums by the end of the grace period;



(b) has committed acts of physical or verbal abuse that pose a threat to providers or other enrollees of the health maintenance organization;

(c) has allowed a nonenrollee to use the health maintenance organization's certification card to obtain services or has knowingly provided fraudulent information in applying for coverage;

(d) has moved outside of the geographical service area of the health maintenance organization;

(e) has violated rules of the health maintenance organization stated in the evidence of coverage;

(f) has violated rules adopted by the commissioner for enrollment in a health maintenance organization; or

(g) is unable to establish or maintain a satisfactory physician-patient relationship with the physician responsible for the enrollee's care. Disenrollment of an enrollee for this reason must be permitted only if the health maintenance organization can demonstrate that it provided the enrollee with the opportunity to select an alternate primary care physician, made a reasonable effort to assist the enrollee in establishing a satisfactory physician-patient relationship, and informed the enrollee that he may file a grievance on this matter.

(4) A health maintenance organization may not disenroll an enrollee under subsection (3) for reasons related to the physical or mental condition of the enrollee or for any of the following reasons:

(a) failure of the enrollee to follow a prescribed course of treatment; or

(b) administrative actions, such as failure to keep an appointment.

(5) (a) A health maintenance organization that disenrolls a group certificate holder for any reason not listed in subsection (3) or provided in rules adopted by the commissioner shall make arrangements to provide similar alternate insurance coverage to enrollees. The insurance coverage must be continued until the disenrolled group certificate holder finds its own coverage or a period of 12 months elapses, whichever comes first. The premium on the individual coverage must be at the then-customary rate applicable to the individual coverage offered by the insurer, health service corporation, or health maintenance organization that provides the alternate insurance coverage.

(b) If a health maintenance organization disenrolls an enrollee covered on an individual basis for any reason not listed in subsection (3) or provided in rules adopted by the commissioner, coverage must be continued until the anniversary date of the policy or for 1 year, whichever is earlier. A health maintenance organization that disenrolls an individual enrollee for failure to pay a required premium or for fraudulent statements on the enrollment form need not provide alternate insurance coverage to that enrollee.

(6) A health maintenance organization may not refer to itself as an insurer unless licensed as an insurer or use a name deceptively similar to

the name or description of an insurer authorized to transact insurance in this state.

(7) A person may not refer to itself as a health maintenance organization or HMO unless it holds a valid certificate of authority issued by the commissioner.

**Section 15. Agent license required — application, issuance, renewal, fees — penalty.** (1) No individual, partnership, or corporation may act as or hold himself out to be an agent of a health maintenance organization unless he is:

(a) licensed as a disability insurance agent by the commissioner pursuant to chapter 17, parts 1, 2, and 4 of this title or licensed as an enrollment representative under 33-30-311 through 33-30-313; and

(b) appointed or authorized by the health maintenance organization to solicit health care service agreements on its behalf.

(2) Application, appointment and qualification for a health maintenance organization agent license, fees applicable to and the issuance of a health maintenance organization agent license, and renewal of a health maintenance organization agent license must be in accordance with the provisions of chapter 17 that apply to a disability insurance agent.

(3) An individual, partnership, or corporation who holds a disability insurance agent license on [the effective date of this act] need not requalify by an examination to be licensed as a health maintenance organization agent.

(4) The commissioner may, in accordance with 33-1-313, 33-1-317, 33-17-411, and chapter 17, part 10, suspend, revoke, refuse to issue or renew a health maintenance organization agent license, or impose a fine upon the licensee.

**Section 16. Powers of insurers and health service corporations.**

(1) An insurer authorized to transact insurance in this state or a health service corporation authorized to do business in this state may, either directly or through a subsidiary or affiliate, organize and operate a health maintenance organization under the provisions of [sections 1 through 29]. Notwithstanding any other law which may be inconsistent with this section, two or more insurers, health service corporations, or subsidiaries or affiliates thereof may jointly organize and operate a health maintenance organization. The business of insurance is considered to include the provision of health care services by a health maintenance organization owned or operated by an insurer or a subsidiary thereof.

(2) Notwithstanding any insurance or health service corporation laws, an insurer or a health service corporation may contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided through a health maintenance organization and to provide coverage if the health maintenance organization fails to meet its obligations.

(3) The enrollees of a health maintenance organization constitute a permissible group under this title. The insurer or health service corporation

may make benefit payments to health maintenance organizations for health care services rendered by providers under the contracts described in subsection (2).

(4) Nothing in this section exempts a health maintenance organization that provides health care services from complying with the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

**Section 17. Examination.** (1) The commissioner may examine the affairs of a health maintenance organization as often as is reasonably necessary to protect the interests of the people of this state. The commissioner shall make such an examination at least once every 3 years.

(2) The department of health may examine the availability, accessibility, and continuity of the health care services provided by any health maintenance organization and the providers with whom the health maintenance organization has contracts, agreements, or other arrangements as often as is reasonably necessary to protect the interests of the people of this state. The department of health shall make such an examination at least once every 3 years.

(3) Each authorized health maintenance organization and provider shall submit its relevant books and records for the examinations and in every way facilitate the examinations. For the purpose of examination, the commissioner and the department of health may administer oaths to and examine the officers and agents of the health maintenance organization and the principals of the providers concerning their business.

(4) (a) (i) Upon presentation of a detailed account of the charges and expenses of examinations by the commissioner, the health maintenance organization being examined shall pay to the examiner as necessarily incurred on account of the examination the actual travel expenses, a reasonable living-expense allowance, and a per diem, all at reasonable rates customary therefor and as established or adopted by the commissioner. The commissioner may present such an account periodically during the course of the examination or at the termination of the examination as the commissioner considers proper. A person may not pay and an examiner may not accept any additional emolument on account of any such examination.

(ii) If a health maintenance organization fails to pay the charges and expenses as referred to in subsection (4)(a)(i), the commissioner shall pay them out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid must be a lien upon all of the person's assets and property in this state and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund.

(b) The expenses of examination conducted by the director under this section must be assessed against the health maintenance organization and remitted to the director. Such remitted expenses are statutorily appropriated to the department of health as provided in 17-7-502.

(5) In lieu of an examination, the commissioner or the director may accept the report of an examination made by the commissioner or the director of another state.

**Section 18. Suspension or revocation of certificate of authority.**

(1) The commissioner may in his discretion suspend or revoke any certificate of authority issued to a health maintenance organization under [sections 1 through 29] if he finds that any of the following conditions exist:

(a) The health maintenance organization is operating in contravention of its basic organizational document or in a manner contrary to that described in any other information submitted under [section 3] and provided that such operation adversely affects the health maintenance organization's ability to provide benefits and operate under the application approved by the commissioner, unless amendments to such submissions have been filed with and approved by the commissioner.

(b) The health maintenance organization issues evidences of coverage or uses a schedule of charges for health care services that do not comply with the requirements of [section 8].

(c) The health maintenance organization does not provide or arrange for basic health care services.

(d) The director, after notice and hearing, certifies to the commissioner that:

(i) the health maintenance organization does not meet the requirements of [section 4(1)]; or

(ii) the health maintenance organization is unable to fulfill its obligations to furnish health care services.

(e) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.

(f) The health maintenance organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under [section 6].

(g) The health maintenance organization has failed to implement the complaint system required by [section 11] to resolve valid complaints in a reasonable manner.

(h) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner.

(i) The continued operation of the health maintenance organization would be hazardous to its enrollees.

(j) The health maintenance organization has otherwise failed to substantially comply with [sections 1 through 29].

(2) The commissioner may in his discretion suspend or revoke a certificate of authority only if he complies with the requirements of [section 21].

(3) When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization may not, during the period of such suspension, enroll any additional enrollees except newborn

infants or other newly acquired dependents of existing enrollees and may not engage in any advertising or solicitation.

(4) If the commissioner revokes the certificate of authority of a health maintenance organization, the health maintenance organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs and may not transact further business except as may be essential to the orderly conclusion of its affairs. It may not engage in further advertising or solicitation following the effective date of the order of revocation. The commissioner may by written order permit further operation of the health maintenance organization if he finds further operation to be in the best interest of enrollees to the extent that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage.

**Section 19. Supervision, rehabilitation, or liquidation of a health maintenance organization.** (1) The supervision, rehabilitation, or liquidation of a health maintenance organization is considered to be the supervision, rehabilitation, or liquidation of an insurer and must be conducted under the supervision of the commissioner pursuant to chapter 2, part 13. The commissioner may apply for an order directing him to supervise, rehabilitate, or liquidate a health maintenance organization upon any one or more grounds set out in 33-2-1321, 33-2-1331, or 33-2-1341 or when in his opinion the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of this state. Enrollees shall have the same priority in the event of liquidation or rehabilitation as the law provides to policyholders of an insurer.

(2) A claim by a health care provider for an uncovered expenditure has the same priority as a claim by an enrollee if the provider of services agrees not to assert the claim against any enrollee of the health maintenance organization.

**Section 20. Rules.** (1) The commissioner may, after notice and hearing, make reasonable rules necessary to effectuate [sections 1 through 29].

(2) The department of health may make reasonable rules necessary to effectuate [sections 1 through 29].

**Section 21. Administrative procedures.** (1) When the commissioner has cause to believe that grounds for the denial of an application for a certificate of authority exist or that grounds for the suspension or revocation of a certificate of authority exist, he shall give written notice to the health maintenance organization and the department of health specifically stating the grounds for denial, suspension, or revocation and fixing a time of at least 30 days after the notice for a hearing on the matter.

(2) The director or his designated representative may attend the hearing and may participate in the proceeding. The recommendations and findings of the director with respect to matters relating to the availability, accessibility, and continuity of health care services provided in connection with any decision regarding denial, suspension, or revocation of a certificate of authority must be conclusive and binding upon the commissioner. After the hearing, or upon the failure of the health maintenance organization to

appear at the hearing, the commissioner shall make written findings and act as he considers advisable. The commissioner shall mail the written findings to the health maintenance organization and submit a copy to the director. The action of the commissioner and the recommendations and findings of the director are subject to review by the district court having jurisdiction. The court may, in disposing of the issue before it, modify, affirm, or reverse the order of the commissioner in whole or in part.

(3) Where notice and hearing are required with regard to actions taken by the commissioner under [sections 1 through 29], the requirements of 33-1-314 through 33-1-316 and Title 33, chapter 1, part 7, apply, except that the formal rules of pleading and evidence must be observed. To the extent that 33-1-314 through 33-1-316 and Title 33, chapter 1, part 7, do not address the notice and hearing requirements of [sections 1 through 29], the provisions of Title 2, chapter 4, parts 6 and 7, apply.

(4) Where notice and hearing are required with regard to actions taken by the director under [sections 1 through 29], the provisions of Title 2, chapter 4, parts 6 and 7, apply.

**Section 22. Fees.** (1) Each health maintenance organization shall pay to the commissioner the following fees:

(a) for filing an application for a certificate of authority or amendment thereto, \$300;

(b) for filing an amendment to the organization documents that requires approval, \$25;

(c) for filing each annual statement, \$25;

(d) for annual continuation of certificate of authority, \$300.

(2) All fees and miscellaneous charges, except fines or penalties or those amounts received pursuant to [sections 9(3) and 23], collected by the commissioner pursuant to [sections 1 through 29] and the rules adopted thereunder must be deposited in the insurance regulatory trust account pursuant to 17-2-121 through 17-2-123.

(3) The director may assess fees necessary and adequate to cover the expenses of the director's functions under this chapter. Such fees are statutorily appropriated to the department of health as provided in 17-7-502.

**Section 23. Penalties and enforcement.** (1) The commissioner may, in addition to suspension or revocation of a certificate of authority under [section 18], after notice and hearing, impose an administrative penalty in an amount not less than \$500 or more than \$10,000 if he gives reasonable notice in writing of the intent to levy the penalty and the health maintenance organization has a reasonable time within which to remedy the defect in its operations that gave rise to the penalty citation.

(2) If the commissioner or the director has cause to believe that a violation of [sections 1 through 29] has occurred or is threatened, the commissioner or the director may:

(a) give notice to the health maintenance organization and to the representatives or other persons who appear to be involved in the suspected violation;

(b) arrange a conference with the alleged violators or their authorized representatives to attempt to ascertain the facts relating to the suspected violation; and

(c) if it appears that a violation has occurred or is threatened, arrive at an adequate and effective means of correcting or preventing the violation.

(3) (a) The commissioner may issue an order directing a health maintenance organization or its representative to cease and desist from engaging in an act or practice in violation of [sections 1 through 29].

(b) Within 15 days after service of the cease and desist order, the respondent may request a hearing to determine whether acts or practices in violation of [sections 1 through 29] have occurred. The hearing must be conducted pursuant to Title 2, chapter 4, part 6, and judicial review must be available as provided by Title 2, chapter 4, part 7.

(4) If a health maintenance organization violates a provision of [sections 1 through 29] and the commissioner elects not to issue a cease and desist order or if the respondent does not comply with a cease and desist order issued pursuant to subsection (3), the commissioner may institute a proceeding to obtain injunctive or other appropriate relief in the district court of Lewis and Clark County.

**Section 24. Statutory construction and relationship to other laws.** (1) Except as otherwise provided in [sections 1 through 29], the insurance or health service corporation laws do not apply to any health maintenance organization authorized to transact business under [sections 1 through 29]. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to [sections 1 through 29].

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives may not be construed as a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under [sections 1 through 29] may not be considered to be practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) The provisions of [sections 1 through 29] do not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

**Section 25. Filings and reports as public documents.** All applications, filings, and reports required under [sections 1 through 29], except those that contain trade secrets or privileged or confidential commercial or financial information (other than an annual financial statement that the commissioner may require under [section 9]), are public documents.

**Section 26. Confidentiality of medical information.** (1) Any data or information pertaining to the diagnosis, treatment, or health of an enrollee or applicant obtained from the enrollee, applicant, or a provider by a health

maintenance organization must be held in confidence and may not be disclosed to any person except:

(a) to the extent that it may be necessary to carry out the purposes of [sections 1 through 29];

(b) upon the express consent of the enrollee or applicant;

(c) pursuant to statute or court order for the production of evidence or the discovery thereof; or

(d) in the event of claim or litigation between the enrollee or applicant and the health maintenance organization wherein the data or information is pertinent.

(2) A health maintenance organization is entitled to claim the same statutory privileges against disclosure that the provider who furnished the information to the health maintenance organization is entitled to claim.

**Section 27. Authority of director to contract.** The director in carrying out his obligations under [sections 4(1), 17(2), and 18(1)] may contract with qualified persons to make recommendations concerning the determinations he is required to make. The contractors' recommendations may be accepted or rejected in full or in part by the director.

**Section 28. Acquisition, control, or merger of a health maintenance organization.** (1) Except as provided in 33-2-1106 and subsection (2), no person may tender for, request, or invite tenders of, or enter into an agreement to exchange securities for or acquire in the open market or otherwise, any voting security of a health maintenance organization or enter into any other agreement if, after the consummation thereof, that person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of the health maintenance organization.

(2) No person may enter into an agreement to merge or consolidate with or otherwise to acquire control of a health maintenance organization, unless, at the time any offer, request, or invitation is made or any agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the acquiring person has filed with the commissioner and has sent to the health maintenance organization information required by 33-2-1104(2) and the commissioner has approved the offer, request, invitation, agreement, or acquisition pursuant to 33-2-1105.

**Section 29. Dual choice.** An employer in this state that offers its employees the option to enroll in a health maintenance organization and an employee benefit fund in this state that offers its members the option to enroll in a health maintenance organization may not be required to pay more for health benefits provided by the health maintenance organization than it would otherwise be required to provide by any prevailing collective bargaining agreement or other contract for the provision of health benefits to its employees, if the employer or benefits fund pays to the health maintenance organization chosen by each employee or member an amount equal to the lesser of:

(1) the amount paid on behalf of its other employees or members of health benefits; or



(2) the health maintenance organization's charge for coverage approved by the commissioner pursuant to [section 8].

Section 30. Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations:

- (a) 2-9-202;
- (b) 2-17-105;
- (c) 2-18-812;
- (d) 10-3-203;
- (e) 10-3-312;
- (f) 10-3-314;
- (g) 10-4-301;
- (h) 13-37-304;
- (i) 15-31-702;
- (j) 15-36-112;
- (k) 15-70-101;
- (l) 16-1-404;
- (m) 16-1-410;
- (n) 16-1-411;
- (o) 17-3-212;
- (p) 17-5-404;
- (q) 17-5-424;
- (r) 17-5-804;
- (s) 19-8-504;
- (t) 19-9-702;

- (u) 19-9-1007;
- (v) 19-10-205;
- (w) 19-10-305;
- (x) 19-10-506;
- (y) 19-11-512;
- (z) 19-11-513;
- (aa) 19-11-606;
- (bb) 19-12-301;
- (cc) 19-13-604;
- (dd) 20-6-406;
- (ee) 20-8-111;
- (ff) 23-5-612;
- (gg) [section 17];
- (hh) [section 22];
- (ii) 37-51-501;
- (jj) 53-24-206;
- (kk) 75-1-1101;
- (ll) 75-7-305;
- (mm) 80-2-103;
- (nn) 80-2-228;
- (oo) 90-3-301;
- (pp) 90-3-302;
- (qq) 90-15-103; and
- (rr) Sec. 13, HB 861, L. 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments."

Section 31. Section 33-1-102, MCA, is amended to read:

**"33-1-102. Compliance required — exceptions — health service corporations.** (1) No person shall transact a business of insurance in

Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) No provision of this code shall apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code shall not apply to health service corporations to the extent that the existence and operations of such corporations are authorized by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) *This code does not apply to health maintenance organizations to the extent that the existence and operations of such organizations are authorized by [sections 1 through 29].*

Section 32. Section 33-1-704, MCA, is amended to read:

**"33-1-704. Hearing procedure.** (1) All hearings shall be open to the public unless closed pursuant to the provisions of 2-3-203.

(2) The commissioner shall allow any party to the hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence and to examine witnesses, to present evidence in support of his interest, and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence in his behalf.

(3) The commissioner shall permit to become a party to the hearing by intervention, if timely, any person who was not an original party thereto and whose pecuniary interests will be directly and immediately affected by the commissioner's order made upon the hearing.

(4) *Except as provided in [section 21],* rules of pleading or evidence need not be observed at any hearing.

(5) Upon written request seasonably made by a party to the hearing and at that person's expense, the commissioner shall cause a full stenographic record of the proceedings to be made by a competent reporter. If transcribed, a copy of such stenographic record shall be furnished to the commissioner without cost to the commissioner or the state and shall be a part of the commissioner's record of the hearing. If so transcribed, a copy of such stenographic record shall be furnished to any other party to such hearing at the request and expense of such other party. If no stenographic record is made or transcribed, the commissioner shall prepare an adequate record of the evidence and of the proceedings."

Section 33. **Codification instruction.** Sections 1 through 29 are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to sections 1 through 29.

**Section 34. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 35. Effective date — applicability.** Section 20 and this section are effective on passage and approval. This act applies to health maintenance organizations formed before or after the effective date of this act.

Approved April 9, 1987.

## CHAPTER NO. 458

[HB 535]

AN ACT ALLOCATING CLASS B-10 NONRESIDENT COMBINATION HUNTING AND FISHING LICENSES BETWEEN APPLICANTS INTENDING TO EMPLOY LICENSED OUTFITTERS AND ALL OTHER APPLICANTS; CREATING A CLASS B-11 NONRESIDENT COMBINATION LICENSE THAT INCLUDES A FISHING, GAME BIRD, AND DEER LICENSE; LIMITING THE NUMBER OF AUTHORIZED CLASS B-11 LICENSES TO 6,000; PROVIDING A METHOD FOR ALLOCATING CLASS B-11 NONRESIDENT COMBINATION LICENSES AMONG HUNTERS WITH LICENSED OUTFITTERS, HUNTERS WITH RESIDENT LANDOWNER SPONSORS, AND OTHER HUNTERS; AMENDING SECTION 87-2-504, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Class B-11—nonresident deer combination license.** (1) Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of a fee of \$175 and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles the holder to all the privileges of the Class B, Class B-1, and Class B-7 licenses. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(2) Six thousand Class B-11 licenses are authorized for sale each license year.

**Section 2. Sale of Class B-10 and Class B-11 licenses.** (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with 5,600 of the authorized Class B-10 licenses and 2,000 Class B-11 licenses reserved for applicants indicating their intent to use the services of a licensed outfitter, and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident

sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a reserved license under subsection (1) must contain a written affirmation that the applicant intends to hunt with a licensed outfitter or a resident sponsor and must indicate the name of the licensed outfitter or resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a licensed outfitter or resident sponsor and which affirms that the outfitter or resident will:

(a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with him, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor.

(4) The department shall make the reserved Class B-10 and Class B-11 licenses that remain unsold on April 15 available to nonresident applicants without restriction as to hunting with a licensed outfitter or resident sponsor.

(5) All Class B-10 and Class B-11 licenses not reserved under subsection (1) and all unsold reserved licenses available under subsection (4) must be issued by a drawing among all applicants for the respective unreserved licenses.

Section 3. Section 87-2-504, MCA, is amended to read:

**"87-2-504. Class B-7 and B-8—nonresident deer licenses.** Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase one each of the following licenses: Class B-7, deer A tag, \$100; Class B-8, deer B tag, \$50; and will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the carcasses of those animals as authorized by department rules. Unless purchased as part of a B-10 or B-11 license, a Class B-7 license must be assigned for use in a specific administrative region or portion thereof. *If purchased as part of a Class B-11 license, the Class B-7 license is valid throughout the state.*"

**Section 4. Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 5. Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 87, chapter 2, and the provisions of Title 87 apply to sections 1 and 2.

**Section 6. Effective date.** This act is effective March 1, 1988.

Approved April 9, 1987.

## CHAPTER NO. 459

[HB 491]

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VII, SECTION 9, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE LEGISLATURE MAY ESTABLISH SPECIFIC RESIDENCY REQUIREMENTS FOR JUDGES OTHER THAN SUPREME COURT JUSTICES, DISTRICT COURT JUDGES, AND JUSTICES OF THE PEACE; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Article VII, section 9, of The Constitution of the State of Montana is amended to read:

**"Section 9. Qualifications.** (1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No supreme court justice or district court judge shall solicit or receive compensation in any form whatever on account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state. *During his term of office, a district court judge shall reside in the district and a justice of the peace shall reside in the county in which he is elected or appointed. The residency requirement for every other judge must be provided by law."*

**Section 2. Effective date.** If approved by the electorate, this amendment is effective July 1, 1989.

Section 3. **Submission to electorate.** This amendment shall be submitted to the electors of Montana at the general election to be held November 8, 1988, by printing on the ballot the full title of this act and the following:

- ☐ FOR allowing the legislature to establish specific residency requirements for judges other than supreme court justices, district court judges, and justices of the peace.
- ☐ AGAINST allowing the legislature to establish specific residency requirements for judges other than supreme court justices, district court judges, and justices of the peace.

Approved April 10, 1987.

## CHAPTER NO. 460

[SB 329]

AN ACT GENERALLY REVISING THE MONTANA NATURAL AREAS ACT OF 1974; AMENDING SECTIONS 17-7-502, 76-12-102, 76-12-104, 76-12-107, 76-12-112, AND 76-12-115, MCA; REPEALING SECTIONS 76-12-105, 76-12-106, 76-12-113, AND 76-12-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 76-12-102, MCA, is amended to read:

**"76-12-102. Legislative findings.** The legislature finds that:

(1) in the expanses of Montana there are natural areas possessing significant scenic, educational, scientific, biological, and/or geological values or areas possessing these characteristics to a degree promising their restoration to a natural state;

(2) since the development of these areas is an irreversible commitment of a finite and diminishing resource of fundamental importance, *selected* areas should be preserved for the benefit of this and future generations;

(3) currently there are no regulations promulgated by the state or local governments to insure adequate protection for natural areas;

(4) *it is necessary to establish a process for developing a system of natural areas and to encourage public and private participation in the establishment of a natural areas system for the benefit of the citizens of the state; and*

(5) *designations of natural areas should first consider protected natural features in publicly owned and privately dedicated lands, such as nature preserves, natural areas, parks, and wilderness areas, and should avoid duplication of these features."*

Section 2. Section 76-12-104, MCA, is amended to read:

**"76-12-104. Definitions.** (1) "Board" means the board of land commissioners.

(2) "Council" means the natural areas advisory council *provided for in [section 6]*.

(3) "Department" means the department of state lands.

(4) "Natural area" means an area of land which must generally appear to have been affected primarily by the forces of nature with the visual aspects of human intrusion not dominant and also must have one or more of the following characteristics:

(a) an outstanding mixture or variety of vegetation, wildlife, water resource, landscape, and scenic values;

(b) an important or rare ecological or geological feature or other rare or significant natural feature worthy of preservation for scientific, educational, or ecological purposes.

(5) *"Natural areas system" means the composite of lands in the state that exhibit the characteristics of natural areas and that have been designated by the board or dedicated or otherwise protected and managed as natural areas.*

(6) *"Register" means the Montana register of natural areas established under [section 3]."*

**Section 3. Duties of department — plan for natural areas system.** The department may:

(1) identify the existing and potential natural areas on lands under its jurisdiction and annually prepare a register listing the existing natural areas on private, county, state, and federal land;

(2) prepare and implement a biennial administrative plan for a natural areas system that will:

(i) assure equitable representation of the diversity of natural area types that are found to occur on private, county, state, and federal lands; and

(ii) include identification of important natural area needs, viable methods to make eligible lands a part of the natural areas system, responsible management entities, goals for establishing natural areas, obligations of cooperating agencies, organizations, and individuals, and administrative procedures for registering natural areas with the department;

(3) consider the concerns and comments of the council, the board, and the public in preparing and implementing the administrative plan described in subsection (2);

(4) make recommendations to the board for designation of natural areas on state lands and for acquisition of interests in other lands for the preservation of natural areas;

(5) provide that designated natural areas on state lands are available for multiple uses, including but not limited to grazing, recreation, and



snowmobiling, if such uses are consistent with the state's obligations under The Enabling Act and do not interfere with the management or integrity of the natural area; and

(6) provide that the management of natural areas on state lands includes provisions for weed control consistent with 7-22-2151. The department of state lands assumes any levy under 7-22-2142 in natural areas, lessee is not responsible for fire suppression costs in natural areas, and lessee is not responsible for keeping natural areas free of garbage and debris.

Section 4. Section 76-12-107, MCA, is amended to read:

**"76-12-107. Methods of bringing land under part.** A natural area, as defined in 76-12-104, may become subject to the provisions of this part in any of the following ways:

- (1) designation by the board on lands controlled by the board;
- (2) designation by the legislature on lands owned by the state of Montana;
- (3) acquisition by the board by purchase with consent of the property owner of sufficient interests in private property to protect the natural area; provided, however, that transfer of surface property or development rights shall not alter the rights attending the subsurface estate if owned by another party;
- (4) gift accepted by the board *under the authority of 77-1-213, including conservation easements, provided that lands accepted must be protected and managed as natural areas and money accepted must be used in accordance with the purposes of this part;*
- (5) trade of state-owned trust land for a natural area o.. federal, county, or private land, provided, however, that lands received in exchange for trust lands should be equal in value to the exchanged trust land and as closely as possible equal in area; or
- (6) *registration of land by the department, following appropriate documentation and owner consent, that has been designated, dedicated, or otherwise protected as a natural area by the owner, including a private landowner, public interest group, or other land management agency."*

Section 5. Section 76-12-112, MCA, is amended to read:

**"76-12-112. Duties of board — administrative rules and hearing requirements.** (1) The board shall, after at least one public hearing, promulgate comprehensive regulations for the protection of acquired and designated natural areas within its jurisdiction. Such regulations shall be consistent with the intent of this part and shall be promulgated and enforced so as to protect the qualities of the natural areas. Special attention shall be given to protecting areas from recreational overuse.

(2) The regulations shall provide *for meetings by the board* for the receipt of testimony on the *department's* proposed designation of natural areas. No area shall be designated by the board unless the opportunity for

public testimony has been afforded at meetings provided for in the regulations and positive notification of all involved landowners and lessees has been made.

(3) *The board shall consider the department's recommendations as provided in [subsection (4) of section 3] and issue a statement of its decision."*

**Section 6. Natural areas advisory council.** There is a natural areas advisory council.

(1) The council consists of six citizens of the state appointed by the governor as follows:

(a) three members having relevant qualifications to evaluate management strategies for natural areas;

(b) one member engaged in agriculture;

(c) one member engaged in ranching; and

(d) one member representing industry.

(2) For the first appointment, three of the members must be appointed for 2 years and three members for 4 years. Thereafter, each member must be appointed for a term of 4 years. Members may be reappointed.

(3) Members appointed to fill unexpired terms must be appointed for the remainder of the unexpired term.

(4) Subsections (5) through (8) of 2-15-122 apply to the council and its members, except that compensation and reimbursement are subject to the availability of funds.

**Section 7. Duties of council.** The council shall:

(1) advise the department of rules that the council considers necessary in carrying out this chapter;

(2) make recommendations to the department concerning the establishment and administration of a natural areas system;

(3) make recommendations to the department concerning areas that are suitable for registration as natural areas; and

(4) assist the department with preparation of publications that will inform the public and obtain input from the public concerning natural areas and their management.

**Section 8.** Section 76-12-115, MCA, is amended to read:

**"76-12-115. Consultation with interested parties.** The department shall consult with citizen organizations, organizations representing Montana's basic resource industries, and other interested state agencies in the administration of this part."

**Section 9. Natural areas account.** (1) There is a natural areas special revenue account within the state special revenue fund established in 17-2-102.

(2) The natural areas account may receive funds from any source as gifts.

(3) The department may spend funds accepted as gifts in accordance with the purposes of this part, including administration of a natural areas program. These funds are statutorily appropriated, as provided in 17-7-502.

Section 10. Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations:

- (a) 2-9-202;
- (b) 2-17-105;
- (c) 2-18-812;
- (d) 10-3-203;
- (e) 10-3-312;
- (f) 10-3-314;
- (g) 10-4-301;
- (h) 13-37-304;
- (i) 15-31-702;
- (j) 15-36-112;
- (k) 15-70-101;
- (l) 16-1-404;
- (m) 16-1-410;
- (n) 16-1-411;
- (o) 17-3-212;
- (p) 17-5-404;
- (q) 17-5-424;
- (r) 17-5-804;

- (s) 19-8-504;
- (t) 19-9-702;
- (u) 19-9-1007;
- (v) 19-10-205;
- (w) 19-10-305;
- (x) 19-10-506;
- (y) 19-11-512;
- (z) 19-11-513;
- (aa) 19-11-606;
- (bb) 19-12-301;
- (cc) 19-13-604;
- (dd) 20-6-406;
- (ee) 20-8-111;
- (ff) 23-5-612;
- (gg) 37-51-501;
- (hh) 53-24-206;
- (ii) 75-1-1101;
- (jj) 75-7-305;
- (kk) 80-2-103;
- (ll) 80-2-228;
- (mm) 90-3-301;
- (nn) 90-3-302;
- (oo) 90-15-103;
- (pp) Sec. 13, HB 861, L. 1985; *and*
- (qq) [section 9].

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments."

**Section 11. Repealer.** Sections 76-12-105, 76-12-106, 76-12-113, and 76-12-114, MCA, are repealed.

**Section 12. Extension of authority.** Any existing authority of the board of land commissioners to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 13. Codification instructions.** (1) Section 6 is intended to be codified as an integral part of Title 2, chapter 15, part 32, and the provisions of Title 2, chapter 15, part 32, apply to section 6.

(2) Sections 3, 7, and 9 are intended to be codified as an integral part of Title 76, chapter 12, part 1, and the provisions of Title 76, chapter 12, part 1, apply to sections 3, 7, and 9.

**Section 14. Effective date.** This act is effective on passage and approval.

**Section 15. Termination.** Sections 6 and 7 terminate on June 30, 1993.

Approved April 13, 1987.

## CHAPTER NO. 461

[HB 700]

AN ACT PROVIDING AUTHORITY TO THE MONTANA SCIENCE AND TECHNOLOGY DEVELOPMENT BOARD TO ISSUE SCIENCE AND TECHNOLOGY DEVELOPMENT SEED CAPITAL FUND BONDS TO FINANCE TECHNOLOGY INVESTMENTS; CREATING NECESSARY FUNDS AND ACCOUNTS; MAKING STATUTORY APPROPRIATIONS OF CERTAIN MONEY; AUTHORIZING TRANSFER OF A PORTION OF THE COAL SEVERANCE TAX PERMANENT TRUST FUND; PROVIDING FOR AUDITS OF THE BOARD; AMENDING SECTIONS 17-7-502, 90-3-203, 90-3-302, AND 90-3-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** This part shall be known and may be cited as the "Science and Technology Development Board Seed Capital Bond Act".

**Section 2. Legislative finding and declaration.** The legislature finds and declares that:

(1) it is the policy of the state of Montana to promote the health, safety, and general welfare of all the people of the state;

(2) such policy will be furthered through strengthening and diversifying the state's economy by facilitating a public-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a changing economic structure and to create new jobs and expand business opportunities; and

(3) such strengthening and diversification will be fostered by assisting in the acceleration of development of technology in the state through the making of technology investments.

**Section 3. Definitions.** As used in this part, the following definitions apply:

(1) "Bonds and notes" means bonds and notes authorized by [section 6].

(2) "Certified Montana capital company" has the meaning given in 90-8-104.

(3) "Expansion capital project" means a technology development project undertaken to enable a company to expand its manufacturing and marketing activities in order to move its products or services into new markets.

(4) "Obligations" means:

(a) bonds and notes; and

(b) refunding bonds and notes.

(5) "Refunding bonds and notes" means refunding bonds and notes authorized by [section 6].

(6) "Return-on-investment agreement" means an agreement required by 90-3-302(1).

(7) "Seed capital project" means a technology development project to develop a business plan, prove a product concept, complete product development, or conduct market research for a specific product prior to the actual sale of any similar product for an enterprise that is not profitable at the time of the investment.

(8) "Start-up capital project" means a technology development project to enable a company to initiate manufacturing on a regular basis.

(9) "Technology development account" means the separate account created in [section 5].

(10) "Technology investment program" means the program to be pursued by the board under [section 12].

(11) "Technology investment program debt service fund" means the separate fund created in [section 4].

**Section 4. Technology investment program debt service fund.** (1) There is a technology investment program debt service fund within the debt service fund type established in 17-2-102.

(2) There must be paid into the technology investment program debt service fund:

(a) the amounts from time to time directed to be paid under [section 16];

(b) accrued interest on obligations paid by the initial purchaser of the obligations;

(c) all interest, principal, royalty, and other payments received by the board with respect to technology investments made from money in the

technology development account that is not paid into the coal severance tax permanent trust fund under [section 16];

(d) all proceeds of the investment of money in the technology development account; and

(e) all proceeds of refunding bonds and notes, other than proceeds necessary to pay the costs of issuance of the refunding bonds and notes.

(3) Money in the technology investment program debt service fund is pledged to the payment, when due and payable, of principal of and redemption premiums, if any, and interest on obligations. Money in the debt service fund must be used for these purposes.

**Section 5. Technology development account.** (1) There is a technology development account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the technology development account:

(a) all proceeds of bonds and notes, other than accrued interest paid by initial purchasers; and

(b) proceeds of refunding bonds and notes necessary to pay the costs of issuance.

**Section 6. Bonds and notes.** (1) Subject to the limitations contained in this section, the board may issue, in one or more series from time to time prior to [the date that is 6 years after the effective date of this part], bonds and notes in the amount it considers necessary and proper to finance the technology investment program. All obligations must be authorized by resolution of the board.

(2) Subject to the limitations contained in this section, the board may issue, in one or more series from time to time, refunding bonds or notes, or both, as the board considers necessary to refund any obligations that have been issued under this section, including the payment of any redemption premium and any interest accrued or to accrue to the date of payment or early redemption, if any.

(3) (a) Each series of obligations may be issued in such denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with such provisions, if any, for conversion or exchange and for the issuance of temporary obligations in anticipation of the issuance of definitive obligations, as the board determines. The obligations shall bear interest, if any, at such rate or rates as provided in the resolution authorizing their issuance. The obligations shall mature on such date or dates not exceeding 13 years from [the effective date of sections 1 through 20], subject to such optional or mandatory redemption at such earlier times and prices and upon such notice, with such provisions for payment and discharge by the deposit of money or securities in escrow for that purpose and payable at the office of such banking institution within or outside the state, as the board determines.

(b) In all respects not specified in this section, the board is authorized to prescribe the form and terms of the obligations.

(c) Obligations and any interest coupons appurtenant thereto must be signed by the governor and the chairman or other designated member of the board and countersigned by the chief administrative officer of the board. They must be issued under the state seal. Signing may be by facsimile signatures, and the seal may be affixed by facsimile in the manner and subject to the limitations prescribed by law.

(d) The state treasurer shall keep a record of all such obligations issued and sold.

(4) Each series of obligations must be authorized by resolution of the board and may be sold by the board or, in the case of refunding bonds and notes, exchanged for outstanding obligations at public or private sale at prices above or below the stated principal amount as the board determines.

**Section 7. Trust indenture.** In the discretion of the board, a series of obligations may be secured by a trust indenture by and between the board and a trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state. Each trust indenture or an executed counterpart thereof must be filed in the office of the secretary of state. The filing is constructive notice of its contents to all persons from the time of the filing. The recording of the trust indenture or its contents is not necessary. The trust indenture or the resolution may contain provisions for protecting and enforcing the rights and remedies of the holders of the obligations as determined by the board to be reasonable and proper and not in violation of law.

**Section 8. Provisions of resolution on investment.** If permitted in the resolution authorizing the issuance of the refunding bonds or notes or the trust agreement securing them, the proceeds of the refunding bonds or notes may be invested as provided by the board pending the application of the proceeds of the refunding bonds or notes, with other available funds, to the payment of principal of and redemption premium, if any, and interest on the obligations being refunded and to the payment of interest on the refunding bonds and notes and the expenses related to refunding.

**Section 9. Negotiability of obligations.** Unless otherwise stated in the resolution authorizing them, obligations are considered negotiable instruments under Title 30, chapter 8, subject only to the provisions for registration.

**Section 10. Signatures.** In case any member of the board whose signature appears on an obligation ceases to be a member before the delivery thereof, the member's signature is nevertheless valid and sufficient for all purposes, the same as if the member had remained in office until delivery.

**Section 11. Limit on obligations.** (1) There may not be outstanding at any time obligations in an aggregate principal amount exceeding, together with unpaid interest thereon to maturity, \$38 million.

(2) Not more than \$16 million of proceeds of bonds and notes may be used for technology investments, costs of issuance of bonds and notes, and administrative costs of the board and its staff.

(3) Obligations by their terms no longer having a claim to be paid from amounts to be paid into the technology investment program debt service



fund by reason of the deposit of money or securities in escrow for such purpose are not considered outstanding for purposes of subsection (1).

**Section 12. Technology investment program — statutory appropriation.** (1) To further state policy, the board shall pursue a program of making technology investments with money in the technology development account for technology development projects that are seed capital projects, start-up capital projects, or expansion capital projects. Prior to making an investment, the board shall determine, after technical and financial review by the board or committees thereof in accordance with procedures established by the board, that the project, if successful, will accelerate development and application of advanced and innovative technology in the state's economy by encouraging or facilitating the development of new products, processes, or technologies that make the state's economy more productive and profitable and have commercial application in existing and new businesses.

(2) Money in the technology development account is statutorily appropriated for the purpose of making technology investments and the payment of the obligations as provided in 17-7-502. Money in the technology development account may be used for administrative costs of the board and its staff for the technology investment program to the extent authorized by the legislature.

**Section 13. Criteria for technology investments.** (1) Technology investments may be made from money in the technology development account only upon a favorable determination by the board of:

(a) the relevance of the proposed technology development project to the purpose of this part;

(b) the prospects for collaboration on the project between public and private sectors of the state's economy in mineral technology, agricultural technology, forestry technology, biotechnology, microelectronics and computer sciences, energy technology, information sciences, and materials science;

(c) the prospects for achieving commercial success in general and for creating significant numbers of new jobs in the state in particular;

(d) the quality of the specific product and business development methodology proposed;

(e) the suitability of any proposed milestone for evaluating progress of technology development project results; and

(f) the availability of matching funds required under 90-3-301(2).

(2) In this evaluation process, the board shall consider the investment's:

(a) job creation potential;

(b) potential benefit for existing industry;

(c) potential for creating new industry; and

(d) involvement of existing institutional research strength or whether it involves a newly targeted technology area with development potential.

(3) Each return-on-investment agreement for technology investment made from money in the technology development account shall:

(a) require periodic financial and progress reports concerning the technology development project and any other reports the board determines necessary to monitor the progress of the technology development project;

(b) require the technology development project to be conducted in the state; and

(c) contain any other provision the board considers appropriate in light of the purpose of the technology investment program.

**Section 14. Technology investment requirements.** A technology investment may be made from money in the technology development account only if the board anticipates receiving repayment of the investment within 12 years from [the effective date of this part]. The return-on-investment agreement must provide for the payment of interest at a rate determined by the board. The agreement need not require payments on a date or dates certain but may be payable on the occurrence of certain events or from certain specified sources, including but not limited to a percentage of gross sales revenues or a sales override on products, processes, services, or technologies derived in whole or in part from the proceeds of the technology investment. The board may use the technology development account only for technology investments from which it expects repayment on a schedule and in aggregate amounts sufficient to pay principal and interest on obligations.

**Section 15. Montana capital companies.** (1) The board shall make at least 20% of the technology development account available for investment in certified Montana capital companies in order to further the development of private sector seed, start-up, and expansion capital resources available for investment in technology-oriented business development and expansion activities. Certified Montana capital companies must be selected for investment by the board on the basis of the capital company's demonstrated ability to make sound investments and its business development experience. The board shall adopt rules governing such investments to ensure that any money made available to certified Montana capital companies is used to make technology investments that meet the requirements of [sections 13 and 14].

(2) The board may make technology investments in start-up or expansion capital projects from money in the technology development account only after then-existing certified Montana capital companies have been offered the opportunity to invest or coinvest in such projects. However, a decision by any certified Montana capital company to make any technology investment in such a project may not obligate the board to make any technology investment. Offers to and investment by certified Montana capital companies must be made in accordance with rules adopted by the board to carry out the purposes of this part.

**Section 16. Transfer of portion of coal severance tax permanent trust fund.** (1) (a) There must be deposited into the technology investment program debt service fund from the coal severance tax permanent

trust fund maintained pursuant to 17-6-203 such amounts, not to exceed \$38 million, as are necessary from time to time, after application of all other money in the technology investment program debt service fund, to pay principal of and premium, if any, and interest on obligations when due.

(b) The chairman of the board shall advise the state treasurer prior to the date on which any payment is due of the amount needed to be transferred.

(2) After all obligations have been paid or payment has been provided for under the terms of the obligations, any interest, principal, royalty, and other payments received by the board with respect to technology investments made from money in the technology development account must be deposited into the coal severance tax permanent trust fund.

(3) The legislature shall provide for the continued assessment, levy, collection, and deposit into the coal severance tax permanent trust fund so there is sufficient money to make the deposits into the technology investment program debt service fund under this section.

(4) This section may not be amended to reduce the security for an obligation prior to the time it is paid or provision for its payment has been made under its terms.

**Section 17. Personal liability — suit to compel performance.** (1) The members of the board and officers and employees of state agencies are not personally liable or accountable on or by reason of the issuance of any obligation.

(2) The holder of an obligation or any party in interest, subject to its provisions, may sue to enforce and compel the performance of the obligation.

**Section 18. Pledge of the state.** In accordance with the constitutions of the United States and the state, the state pledges that it will not in any way impair the terms or conditions of any agreement between the state and the holders of obligations.

**Section 19. Effect of federal taxation — legal investments.** (1) Obligations may be issued whether or not interest thereon is exempt from federal income tax. The resolution authorizing their issuance may contain agreements of the state, and the board is authorized to enter into agreements, to comply with provisions of the Internal Revenue Code of 1986 with respect to obligations.

(2) Obligations are:

(a) legal investments for any person or board charged with investment of public funds;

(b) acceptable as security for any deposit of public money; and

(c) securities in which funds, including capital, in the control of insurance companies; insurance associations; banks; savings banks; banking associations; trust companies; building and loan associations; credit unions;

pension, profit-sharing, and retirement funds; and executors, administrators, guardians, trustees, or other fiduciaries may be legally and properly invested.

Section 20. **Exemption from registration.** Title 30, chapter 10, part 2, does not apply to obligations issued under [sections 1 through 19].

Section 21. Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations:

- (a) 2-9-202;
- (b) 2-17-105;
- (c) 2-18-812;
- (d) 10-3-203;
- (e) 10-3-312;
- (f) 10-3-314;
- (g) 10-4-301;
- (h) 13-37-304;
- (i) 15-31-702;
- (j) 15-36-112;
- (k) 15-70-101;
- (l) 16-1-404;
- (m) 16-1-410;
- (n) 16-1-411;
- (o) 17-3-212;
- (p) 17-5-404;
- (q) 17-5-424;
- (r) 17-5-804;

(s) 19-8-504;  
(t) 19-9-702;  
(u) 19-9-1007;  
(v) 19-10-205;  
(w) 19-10-305;  
(x) 19-10-506;  
(y) 19-11-512;  
(z) 19-11-513;  
(aa) 19-11-606;  
(bb) 19-12-301;  
(cc) 19-13-604;  
(dd) 20-6-406;  
(ee) 20-8-111;  
(ff) 23-5-612;  
(gg) 37-51-501;  
(hh) 53-24-206;  
(ii) 75-1-1101;  
(jj) 75-7-305;  
(kk) 80-2-103;  
(ll) 80-2-228;  
(mm) 90-3-301;  
(nn) 90-3-302;  
(oo) [section 7];  
(pp) 90-15-103; and  
(qq) Sec. 13, HB 861, L. 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments."

Section 22. Section 90-3-203, MCA, is amended to read:

**"90-3-203. Powers and duties of board.** The board shall:

(1) establish policies and priorities that will expand and develop the use of science and technology for economic development in Montana;

(2) provide technical assistance for the transfer of technology to Montana businesses in order to encourage the use of new technology by Montana business and industry;

(3) make technology investments in technology development projects in the following areas that have short- or long-term potential to stimulate economic development in Montana:

(a) research capability development;

(b) applied technological research;

(c) technology assistance and transfer; and

(d) seed capital awards for development and commercialization of new products and processes;

(4) accept grants or receive devises of money or property to be used in Montana for investments described in this chapter;

(5) submit to the governor and the legislature a report describing the board's programs and accomplishments by November 1 of each even-numbered year or at the request of the governor;

(6) adopt rules necessary to implement the provisions of this chapter, including but not limited to rules:

(a) governing the conduct of board business;

(b) establishing matching fund requirements for capability, basic research, and seed capital investment programs;

(c) establishing criteria for determining the eligibility of projects and programs for technology investments;

(d) establishing methods of committing funds, types and amounts of fees, and types of research investments to be made; and

(7) *adopt specific goals and objectives for each program administered by the board."*

Section 23. Section 90-3-302, MCA, is amended to read:

**"90-3-302. Return-on-investment agreements.** (1) The board shall enter into return-on-investment agreements for those products or processes that are to be developed and commercialized as a result of a technology investment. As a part of such an agreement, the board shall require payment of a return that it considers commensurate with the risk of its original investment. The private sector company shall own any patent rights obtained as a result of work done by the private sector company.

(2) All income received by the board *not required to be paid into the technology investment program debt service fund* is appropriated to its use. This income is statutorily appropriated, as provided in 17-7-502. As this income is received, it will supplant the appropriation of coal tax revenues to the board. Such income received by the board in excess of the amount appropriated to it from coal severance tax revenues accrues to a science and technology research and development account in the state special revenue fund."

Section 24. Section 90-3-304, MCA, is amended to read:

**"90-3-304. Accountability — audits.** (1) The board shall develop independent review and audit procedures to ensure that investments made by it are used for the purposes identified in its investment agreements.

(2) The board's technology investment agreements must contain provisions considered necessary by the board to ensure the proper inspection and review of projects, the attainment of project goals, and the maintenance of adequate financial records by recipients of board funds.

(3) *The board's books and records must be audited by or at the direction of the legislative auditor. The legislative auditor must conduct a performance audit of the board's goals, objectives, and statutory duties prior to the 51st legislative session and at such times as determined necessary by the legislative audit committee. The actual costs of audits must be paid from the board's funds."*

Section 25. **Extension of authority.** Any existing authority of the Montana science and technology development board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 26. **Codification instruction.** Sections 1 through 20 are intended to be codified as an integral part of Title 90, chapter 3, and the provisions of Title 90, chapter 3, apply to sections 1 through 20.

Section 27. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 28. **Three-fourths vote required.** Since this act appropriates money from the coal severance tax trust fund, Article IX, section 5, of the Montana constitution requires a vote of three-fourths of the members of each house for passage.

Section 29. **Effective date.** This act is effective on passage and approval.

Approved April 13, 1987.

**CHAPTER NO. 462**

[SB 189]

AN ACT TO PROVIDE FOR DISCLOSURE TO CERTAIN SCHOOL OFFICIALS OF THE IDENTITY OF A YOUTH WHO ADMITS VIOLATING OR IS ADJUDICATED AS HAVING VIOLATED A LAW RELATING TO UNLAWFUL POSSESSION OF AN INTOXICATING SUBSTANCE OR A DANGEROUS DRUG; AND AMENDING SECTION 41-5-601, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 41-5-601, MCA, is amended to read:

**"41-5-601. Publicity.** (1) No publicity shall be given to the identity of an arrested youth or to any matter or proceeding in the youth court involving a youth proceeded against as, or found to be, a delinquent youth or youth in need of supervision except as provided in subsections (2) and (3).

(2) When a petition is filed under 41-5-501, publicity may not be withheld as to the identity of any youth formally charged with or proceeded against or found to be a delinquent youth as a result of the commission of any offense that would be punishable as a felony if the youth were an adult.

(3) *The identity of any youth who admits violating or is adjudicated as having violated 45-5-624 or 45-9-102 may be disclosed by youth court officials to the administrative officials of the school in which the youth is a student for purposes of referral for enrollment in a substance abuse program or enforcement of school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records."*

Approved April 14, 1987.

**CHAPTER NO. 463**

[SB 303]

AN ACT REVISING THE PROCEDURES TO BE FOLLOWED IN PROSECUTING CHILD ABUSE CASES; ADDING PSYCHOLOGICAL CARE TO THE DEFINITION OF "ADEQUATE HEALTH CARE"; AUTHORIZING PETITIONS FOR PERMANENT LEGAL CUSTODY WITH THE RIGHT TO CONSENT TO ADOPTION; PROVIDING FOR SERVICE BY PUBLICATION; AMENDING SECTIONS 41-3-102 AND 41-3-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 41-3-102, MCA, is amended to read:

**"41-3-102. Definitions.** As used in this chapter, the following definitions apply:



- (1) "Child" or "youth" means any person under 18 years of age.
- (2) An "abused or neglected child" means a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare.
- (3) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:
  - (a) inflicts or allows to be inflicted upon the child physical or mental injury, including injuries sustained as a result of excessive corporal punishment;
  - (b) commits or allows to be committed a sexual assault against the child or exploits the child or allows the child to be exploited for sexual purposes or commits or allows to be committed the act of sexual abuse of children as defined in subsection (1) of 45-5-625;
  - (c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or health care, though financially able to do so or offered financial or other reasonable means to do so;
  - (d) abandons the child by leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or
  - (e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.
- (4) "Adequate health care" means any medical or nonmedical remedial health care, including the prevention of the withholding of medically indicated treatment or *medically indicated psychological care* permitted or authorized under state law.
- (5) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions. However, the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment:
  - (a) the infant is chronically and irreversibly comatose;
  - (b) the provision of such treatment would:
    - (i) merely prolong dying;
    - (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(iii) otherwise be futile in terms of the survival of the infant; or

(c) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane. For purposes of this subsection, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

(6) "Threatened harm" means imminent risk of harm.

(7) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(8) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(9) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(10) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for his necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody of the child and whose legal custody has been transferred to a licensed agency.

(11) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section.

(12) "Supervision" means the authority granted by a youth court or by a voluntary agreement of a parent to determine the foster care placement of a child and the length of stay of a child in foster care and provide for the needs of a child under subsection (1) of 41-3-1122.

(13) "Department" means the department of social and rehabilitation services provided for in 2-15-2201.

(14) "Limited emancipation" means a status conferred on a dependent youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older."

Section 2. Section 41-3-401, MCA, is amended to read:

**"41-3-401. Abuse, neglect, and dependency petitions.** (1) The county attorney, attorney general, or an attorney hired by the county welfare department or office of human services shall be responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney or attorney general, or an attorney hired by the county welfare department or office of human services with the written consent of the county attorney or attorney general, may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency *cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.*

(5) In the event *personal* service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced by a representative of the department of social and rehabilitation services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

- (a) state the nature of the alleged abuse, neglect, or dependency;
- (b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;
- (c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

- (10) The petition may ask for the following relief:
- (a) temporary investigative authority and protective services;
  - (b) temporary legal custody;
  - (c) termination of the parent-child legal relationship *and permanent legal custody with the right to consent to adoption*;
  - (d) any combination of the above or such other relief as may be required for the best interest of the youth.
- (11) The petition may be modified for different relief at any time within the discretion of the court.
- (12) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party."

Section 3. **Appeals.** Appeals of court orders or decrees made under this part shall be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law. An appeal does not stay the order or decree appealed from; however, the supreme court may order a stay upon application and hearing if suitable provision is made for the care and custody of the child.

Section 4. **Codification instruction.** Section 6 is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to section 6.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 14, 1987.

## CHAPTER NO. 464

[SB 315]

AN ACT TO GENERALLY REVISE THE WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; TO PROVIDE THAT OBTAINING BENEFITS FRAUDULENTLY CONSTITUTES THEFT; AMENDING SECTIONS 19-12-401, 39-71-116, 39-71-118, 39-71-119, 39-71-203, 39-71-204, 39-71-401, 39-71-407, 39-71-414, 39-71-502, 39-71-503, 39-71-605, 39-71-611 THROUGH 39-71-614, 39-71-701 THROUGH 39-71-704, 39-71-708, 39-71-710, 39-71-721, 39-71-736, 39-71-737, 39-71-741, 39-71-803, 39-71-1003, 39-71-2106, 39-71-2901, 39-71-2903, 39-71-2905, 39-71-2907, 39-71-2909, 39-72-102, AND 45-6-301, MCA; REPEALING SECTIONS 39-71-104, 39-71-121, 39-71-122, 39-71-309, 39-71-410, 39-71-705 THROUGH 39-71-707, 39-71-709, 39-71-738, 39-71-914, 39-71-1001, 39-71-1002, 39-71-1005, 39-71-2906, 39-71-2908, AND 39-72-104, MCA; MAKING CERTAIN PROVISIONS RETROACTIVE; AND PROVIDING APPLICABILITY DATES AND EFFECTIVE DATES."

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Declaration of public policy.** For the purposes of interpreting and applying Title 39, chapters 71 and 72, the following is the public policy of this state:

(1) It is an objective of the Montana workers' compensation system to provide, without regard to fault, wage supplement and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole; they are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

(2) A worker's removal from the work force due to a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, it is an objective of the workers' compensation system to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

(3) Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

(4) Title 39, chapters 71 and 72, must be construed according to their terms and not liberally in favor of any party.

Section 2. Section 39-71-116, MCA, is amended to read:

**"39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the division of workers' compensation prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or

sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists).

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(4) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(5) "*Days*" means calendar days, unless otherwise specified.

(6) "*Department*" means the department of labor and industry.

(7) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702.

(8) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(9) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state compensation insurance fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(10) "Invalid" means one who is physically or mentally incapacitated.

(11) "*Maximum healing*" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

(12) "Order" means any decision, rule, direction, requirement, or standard of the division or any other determination arrived at or decision made by the division.

(13) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year; provided, that an estimate may be made by the division for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the division, as the case may actually be on December 31 of such current year.

(14) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in [section 36] but suffers impairment or partial wage loss, or both.

(15) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in

*which a worker is unable to return to work in the worker's job pool after exhausting all options set forth in [section 36].*

(16) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(17) "The plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(18) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(19) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(20) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(21) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker *reaches maximum healing*.

(22) "Year", unless otherwise specified, means calendar year."

Section 3. Section 39-71-119, MCA, is amended to read:

**"39-71-119. Injury and accident defined.** (1) "Injury" or "injured" means:

(a) *internal or external physical harm to the body;*

(b) *damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or*

(c) *death.*

(2) *An injury is caused by an accident. An accident is:*

(a) *an unexpected traumatic incident or unusual strain;*

(b) *identifiable by time and place of occurrence;*

(c) *identifiable by member or part of the body affected; and*

(d) *caused by a specific event on a single day or during a single work shift.*

(3) "Injury" or "injured" does not mean a physical or mental condition arising from:

(a) *emotional or mental stress; or*

(b) *a nonphysical stimulus or activity.*

(4) "Injury" or "injured" does not include a disease that is not caused by an accident.

*(5) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical harm in relation to other factors contributing to the physical harm."*

**Section 4. Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee. Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) Wages do not include:

(a) employee travel expense reimbursements or allowances for meals, lodging, travel, and subsistence;

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan; or

(e) vacation or sick leave benefits accrued but not paid.

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except if:

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work; or

(b) for good cause shown by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods.

**Section 5.** Section 39-71-203, MCA, is amended to read:

**"39-71-203. Powers of division — rules.** (1) The division is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, that are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

(2) *The division may adopt rules to carry out the provisions of this chapter."*

**Section 6.** Section 39-71-204, MCA, is amended to read:



**"39-71-204. Rescission, alteration, or amendment by division of its orders, decisions, or awards — effect — appeal.** (1) *The division has continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor.*

(2) Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award *has the same effect as original orders or awards.*

(3) *If a party is aggrieved by a division order, the party may appeal the dispute to the workers' compensation judge."*

**Section 7. Filing true claim — obtaining benefits through deception or other fraudulent means.** (1) A person filing a claim under this chapter or chapter 72 of this title, by signing the claim, affirms the information filed is true and correct to the best of that person's knowledge.

(2) A person who obtains or assists in obtaining benefits to which the person is not entitled under this chapter or chapter 72 of this title may be guilty of theft under 45-6-301. A county attorney may initiate criminal proceedings against the person.

**Section 8. Disputes — jurisdiction — evidence — settlement requirements — mediation.** (1) A dispute concerning benefits arising under this chapter or chapter 72, other than the disputes described in subsection (2), must be brought before a department mediator as provided in [sections 52 through 57]. If a dispute still exists after the parties satisfy the mediation requirements in [sections 52 through 57], either party may petition the workers' compensation court for a resolution.

(2) A dispute arising under this chapter that does not concern benefits or a dispute for which a specific provision of this chapter gives the division jurisdiction must be brought before the division.

(3) An appeal from a division order may be made to the workers' compensation court.

(4) The common law and statutory rules of evidence do not apply in a case brought to hearing before the division.

(5) Except as otherwise provided in this chapter, before a party may bring a dispute concerning benefits before a mediator, the parties shall attempt to settle as follows:

(a) The party making a demand shall present the other party with a specific written demand that contains sufficient explanation and documentary evidence to enable the other party to thoroughly evaluate the demand.

(b) The party receiving the demand shall respond in writing within 15 working days of receipt. If the demand is denied in whole or in part, the response shall state the basis of the denial.

(c) Upon motion of a party, the mediator has the authority to dismiss a petition if he finds that either party did not comply with this subsection,

but the mediator's decision may be reviewed by the workers' compensation court upon motion of a party.

(d) Nothing in this subsection relieves a party of an obligation otherwise contained in this chapter.

**Section 9. Financial incentives to institute safety programs.** The state compensation insurance fund, plan No. 3, and private insurers, plan No. 2, may provide financial incentives to an employer who implements a formal safety program. The insurance carrier may provide to an employer a premium discount that reflects the degree of risk diminished by the implemented safety program.

**Section 10.** Section 39-71-401, MCA, is amended to read:

**"39-71-401. Employments covered and employments exempted.**

(1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

- (a) household and domestic employment;
- (b) casual employment as defined in 39-71-116;
- (c) employment of members of an employer's family dwelling in the employer's household;
- (d) employment of sole proprietors or working members of a partnership, *except as provided in subsection (3)*;
- (e) *employment of a broker or salesman performing under a license issued by the board of realty regulation;*
- (f) *employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;*
- (g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;
- (h) *employment of any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;*
- (i) employment with any railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;
- (j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district.

(3) A sole proprietor, or a working member of a partnership who holds himself out or considers himself an independent contractor, must elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3, but he may apply to the division for an exemption from the Workers' Compensation Act for himself. The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor. When an application is approved by the division, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(4) (a) *A private corporation shall provide coverage for its officers and other employees under the provisions of compensation plan No. 1, 2, or 3. However, pursuant to such rules as the division promulgates and subject in all cases to approval by the division, an officer of a private corporation may elect not to be bound as an employee under this chapter by giving a written notice, on a form provided by the division, served in the following manner:*

(i) *if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the employer and the division; or*

(ii) *if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the employer, the division, and the insurer.*

(b) *If the employer changes plans or insurers, the officer's previous election is not effective and the officer shall again serve notice as provided if he elects not to be bound.*

(c) *The appointment or election of an employee as an officer of a corporation for the purpose of excluding the employee from coverage under this chapter does not entitle the officer to elect not to be bound as an employee under this chapter. In any case, the officer must sign the notice required by subsection (4)(a) under oath or affirmation, and he is subject to the penalties for false swearing under 45-7-202 if he falsifies the notice.*

(5) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the division, distributed through insurers or directly by the division, and posted by employers in accordance with rules adopted by the division. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

Section 11. Section 39-71-407, MCA, is amended to read:

**"39-71-407. Liability of insurers — limitations.** (1) Every insurer is liable for the payment of compensation, in the manner and to the extent

hereinafter provided, to an employee of an employer it insures who receives an injury arising out of and in the course of his employment or, in the case of his death from such injury, to his beneficiaries, if any.

(2) (a) *An insurer is liable for an injury as defined in 39-71-119 if the claimant establishes it is more probable than not that:*

(i) *a claimed injury has occurred; or*

(ii) *a claimed injury aggravated a preexisting condition.*

(b) *Proof that it was medically possible that a claimed injury occurred or that such claimed injury aggravated a preexisting condition is not sufficient to establish liability.*

(3) *An employee who suffers an injury or dies while traveling is not covered by this chapter unless:*

(a) (i) *the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement; and*

(ii) *the travel is necessitated by and on behalf of the employer as an integral part, or condition, of the employment; or*

(b) *the travel is required by the employer as part of the employee's job duties.*

(4) *An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the sole and exclusive cause of the injury or death. However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply."*

Section 12. Section 39-71-414, MCA, is amended to read:

**"39-71-414. Subrogation.** (1) If an action is prosecuted as provided for in 39-71-412 or 39-71-413 and except as otherwise provided in this section, the insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery.

(2) (a) If the injured employee intends to institute the third party action, he shall give the insurer reasonable notice of his intention to institute the action.

(b) The injured employee may request that the insurer pay a proportionate share of the reasonable cost of the action, including attorneys' fees.

(c) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by this section.

(d) If the injured employee or the employee's personal representative institutes the action, the employee is entitled to at least one-third of the amount recovered by judgment or settlement less a proportionate share of reasonable costs, including attorneys' fees, if the amount of recovery is

insufficient to provide the employee with that amount after payment of subrogation.

(3) If an injured employee refuses or fails to institute the third party action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any amount received by judgment or settlement which is in excess of the amounts paid or to be paid under the Workers' Compensation Act after the insurer's reasonable costs, including attorneys' fees for prosecuting the action, have been deducted from the recovery.

(4) An insurer may enter into compromise agreements in settlement of subrogation rights.

(5) If the amount of compensation and other benefits payable under the Workers' Compensation Act have not been fully determined at the time the employee, the employee's heirs or personal representatives, or the insurer have settled in any manner the action as provided for in this section, the division shall determine what proportion of the settlement shall be allocated under subrogation. The division's determination may be appealed to the workers' compensation judge.

(6) (a) *The insurer is entitled to full subrogation rights under this section, even though the claimant is able to demonstrate damages in excess of the workers' compensation benefits and the third-party recovery combined. The insurer may subrogate against the entire settlement or award of a third party claim brought by the claimant or his personal representative, without regard to the nature of the damages.*

(b) *If no survival action exists and the parties reach a settlement of a wrongful death claim without apportionment of damages by a court or jury, the insurer may subrogate against the entire settlement amount, without regard to the parties' apportionment of the damages, unless the insurer is a party to the settlement agreement."*

Section 13. Section 39-71-502, MCA, is amended to read:

**"39-71-502. Creation and purpose of uninsured employers' fund.** There is created an uninsured employers' fund. The purpose of the fund is to pay to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, *except as provided in 39-71-503(2).*"

Section 14. Section 39-71-503, MCA, is amended to read:

**"39-71-503. Administration of fund.** (1) The division shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) *Surpluses and reserves shall not be kept for the fund. The division shall make such payments as it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes preference over the payment of medical benefits. No lump-sum payments of*

*future projected benefits, including impairment awards, may be made from the fund. The board of investments shall invest the moneys of the fund. The cost of administration of the fund shall be paid out of the money in the fund."*

Section 15. Section 39-71-605, MCA, is amended to read:

**"39-71-605. Examination of employee by physician — effect of refusal to submit to examination — report and testimony of physician — cost.** (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, he shall, upon the written request of the insurer, submit from time to time to examination by a physician or panel of physicians, who shall be provided and paid for by such insurer, and shall likewise submit to examination from time to time by any physician or panel of physicians selected by the division.

(b) The request or order for such examination shall fix a time and place therefor, due regard being had to the convenience of the employee and his physical condition and ability to attend at the time and place fixed. The employee shall be entitled to have a physician present at any such examination. So long as the employee, after such written request, shall fail or refuse to submit to such examination or shall in any way obstruct the same, his right to compensation shall be suspended. Any physician or panel of physicians employed by the insurer or the division who shall make or be present at any such examination may be required to testify as to the results thereof.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the division, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to such examination as it may deem desirable by a physician or panel of physicians within the state or elsewhere who have had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician or panel of physicians making the examination shall file a written report of findings with the division for its use in the determination of the controversy involved. The division shall pay the physician or panel of physicians for the examination and shall be reimbursed by the party who requested it.

(3) *This section does not apply to impairment evaluations provided for in [section 24]."*

Section 16. Section 39-71-611, MCA, is amended to read:

**"39-71-611. Costs and attorneys' fees payable on denial of claim or termination of benefits later found compensable.** (1) *The insurer shall pay reasonable costs and attorney fees as established by the workers' compensation court if:*

(a) *the insurer denies liability for a claim for compensation or terminates compensation benefits;*

(b) *the claim is later adjudged compensable by the workers' compensation court; and*

(c) *in the case of attorneys' fees, the workers' compensation court determines that the insurer's actions in denying liability or terminating benefits were unreasonable.*

(2) *A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18."*

Section 17. Section 39-71-612, MCA, is amended to read:

**"39-71-612. Costs and attorneys' fees that may be assessed against an insurer by workers' compensation judge.** (1) If an insurer pays or submits a written offer of payment of compensation under chapter 71 or 72 of this title but controversy relates to the amount of compensation due, the case is brought before the workers' compensation judge for adjudication of the controversy, and the award granted by the judge is greater than the amount paid or offered by the insurer, a reasonable attorney's fee and costs as established by the workers' compensation judge if the case has gone to a hearing may be awarded by the judge in addition to the amount of compensation.

(2) *An award of attorneys' fees under subsection (1) may only be made if it is determined that the actions of the insurer were unreasonable. Any written offer of payment made 30 days or more before the date of hearing must be considered a valid offer of payment for the purposes of this section.*

(3) *A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18."*

Section 18. Section 39-71-613, MCA, is amended to read:

**"39-71-613. Regulation of attorneys' fees — forfeiture of fee for noncompliance.** (1) When an attorney represents or acts on behalf of a claimant or any other party on any workers' compensation claim, the attorney shall submit to the division a contract of employment, *on a form provided by the division*, stating specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The administrator of the division may regulate the amount of the attorney's fee in any workers' compensation case. In regulating the amount of the fee, the administrator shall consider:

(a) *the benefits the claimant gained due to the efforts of the attorney;*

(b) *the time the attorney was required to spend on the case;*

(c) *the complexity of the case; and*

(d) *any other relevant matter the administrator may consider appropriate.*

(3) If an attorney violates a provision of this section, a rule adopted under this section, or an order fixing an attorney's fee under this section, he shall forfeit the right to any fee which he may have collected or been entitled to collect."

Section 19. Section 39-71-614, MCA, is amended to read:

**"39-71-614. Calculation of attorney fees — limitation.** (1) The amount of an attorney's fee assessed against an insurer under 39-71-611 or 39-71-612 must be based exclusively on the time spent by the attorney in representing the claimant on the issues brought to hearing. The attorney must document the time spent, *but the judge is not bound by the documentation submitted.*

(2) The judge shall determine a reasonable attorney fee and assess costs. The hourly rate applied to the time spent must be based on the attorney's customary and current hourly rate for legal work performed in this state, *subject to a maximum established by the division.*

(3) This section does not restrict a claimant and an attorney from entering into a contingency fee arrangement under which the attorney receives a percentage of the amount of compensation payments received by the claimant because of the efforts of the attorney. However, an amount equal to any fee and costs assessed against an insurer under 39-71-611 or 39-71-612 and this section must be deducted from the fee an attorney is entitled to from the claimant under a contingency fee arrangement."

Section 20. **Employer not to terminate worker for filing claim — preference — jurisdiction over dispute.** (1) An employer may not use as grounds for terminating a worker the filing of a claim under this chapter or chapter 72 of this title.

(2) When an injured worker is capable of returning to work within 2 years from the date of injury and has received a medical release to return to work, the worker must be given a preference over other applicants for a comparable position that becomes vacant if the position is consistent with the worker's physical condition and vocational abilities.

(3) This preference applies only to employment with the employer for whom the employee was working at the time the injury occurred.

(4) The division, department, and workers' compensation court do not have jurisdiction to administer or resolve a dispute under this section. Exclusive jurisdiction is with the district court.

Section 21. Section 39-71-701, MCA, is amended to read:

**"39-71-701. Compensation for temporary total disability.** (1) *Subject to the limitation in 39-71-736, a worker is eligible for temporary total disability benefits when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing.*

(2) *The determination of temporary total disability must be supported by a preponderance of medical evidence.*

(3) Weekly compensation benefits for injury producing temporary total disability shall be 66 ⅔% of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed the state's average weekly wage at the time of injury. Temporary total disability benefits shall be paid for the duration of the worker's temporary disability. The



*weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).*

(4) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

(5) *Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1989, weekly compensation benefits for temporary total disability may not exceed the state's average weekly wage of \$299 established July 1, 1986."*

Section 22. Section 39-71-702, MCA, is amended to read:

**"39-71-702. Compensation for permanent total disability.** (1) *If a worker is no longer temporarily totally disabled and is unable to return to work due to injury, the worker is eligible for permanent total disability benefits. At an insurer's request, an evaluation of all options under [section 36] must be made before permanent total disability status is determined. Permanent total disability benefits must be paid for the duration of the worker's permanent total disability, subject to 39-71-710 and [section 47].*

(2) *The determination of permanent total disability must be supported by a preponderance of medical evidence.*

(3) *Weekly compensation benefits for an injury resulting in permanent total disability shall be 66 ⅔% of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed the state's average weekly wage at the time of injury.*

(4) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

(5) *A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid, and on each succeeding July 1. A worker may not receive more than 10 such adjustments. The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the division over the state's average weekly wage adopted for the previous year, or 3%, whichever is less.*

(6) *Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1989, the maximum weekly compensation benefits for permanent total disability may not exceed the state's average weekly wage of \$299 established July 1, 1986."*

Section 23. Section 39-71-703, MCA, is amended to read:

**"39-71-703. Compensation for permanent partial disability — impairment awards and wage supplements.** (1) *The benefits available*

for permanent partial disability are impairment awards and wage supplements. A worker who has reached maximum healing and is not eligible for permanent total disability benefits but who has a medically determined physical restriction as a result of a work-related injury may be eligible for an impairment award and wage supplement benefits as follows:

(a) The following procedure must be followed for an impairment award:

(i) Each percentage point of impairment is compensated in an amount equal to 5 weeks times 66 ⅔% of the wages received at the time of the injury, subject to a maximum compensation rate of one-half of the state's average weekly wage at the time of injury.

(ii) When a worker reaches maximum healing, an impairment rating is rendered by one or more physicians as provided for in [section 24]. Impairment benefits are payable beginning the date of maximum healing.

(iii) An impairment award may be paid biweekly or in a lump sum, at the discretion of the worker. Lump sums paid for impairments are not subject to the requirements set forth in 39-71-741, except that lump-sum conversions for benefits not accrued may be reduced to present value at the rate set forth by the division in 39-71-741(5).

(iv) If a worker becomes eligible for permanent total disability benefits, the insurer may recover any lump-sum advance paid to a claimant for impairment, as set forth in 39-71-741(5). Such right of recovery does not apply to lump-sum benefits paid for the period prior to claimant's eligibility for permanent total disability benefits.

(v) If a worker suffers additional injury, an impairment award payable for the additional injury must be reduced by the amount of a previous award paid for impairment to the same site on the body.

(b) The following procedure must be followed for a wage supplement:

(i) A worker must be compensated in weekly benefits equal to 66 ⅔% of the difference between the worker's actual wages received at the time of the injury and the wages the worker is qualified to earn in the worker's job pool, subject to a maximum compensation rate of one-half the state's average weekly wage at the time of injury.

(ii) Eligibility for wage supplement benefits begins at maximum healing and terminates at the expiration of 500 weeks minus the number of weeks for which a worker's impairment award is payable, subject to 39-71-710. A worker's failure to sustain a wage loss compensable under subsection (1)(b)(i) does not extend the period of eligibility. However, if a worker becomes eligible for temporary total disability, permanent total disability, or total rehabilitation benefits after reaching maximum healing, the eligibility period for wage supplement benefits is extended by any period for which a worker is compensated by those benefits after reaching maximum healing.

(2) The determination of permanent partial disability must be supported by a preponderance of medical evidence.

(3) Notwithstanding subsection (1), beginning July 1, 1987, through June 30, 1989, the maximum weekly compensation benefits for permanent

*partial disability may not exceed \$149.50, which is one-half the state's average weekly wage established July 1, 1986."*

**Section 24. Impairment evaluation — ratings.** (1) An impairment rating:

(a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;

(b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment published by the American Medical Association; and

(c) must be expressed as a percentage of the whole person.

(2) A claimant or insurer, or both, may obtain an impairment rating from a physician of the party's choice. If the claimant and insurer cannot agree upon the rating, the procedure in subsection (3) must be followed.

(3) (a) Upon request of the claimant or insurer, the division shall direct the claimant to an evaluator for a rating. The evaluator shall:

(i) evaluate the claimant to determine the degree of impairment, if any, that exists due to the injury; and

(ii) submit a report to the division, the claimant, and the insurer.

(b) Unless the following procedure is followed, the insurer shall begin paying the impairment award, if any, within 30 days of the evaluator's mailing of the report:

(i) Either the claimant or the insurer, within 15 days after the date of mailing of the report by the first evaluator, may request that the claimant be evaluated by a second evaluator. If a second evaluation is requested, the division shall direct the claimant to a second evaluator, who shall determine the degree of impairment, if any, that exists due to the injury.

(ii) The reports of both examinations must be submitted to a third evaluator, who may also examine the claimant or seek other consultation. The three evaluators shall consult with one another, and then the third evaluator shall submit a final report to the division, the claimant, and the insurer. The final report must state the degree of impairment, if any, that exists due to the injury.

(iii) Unless either party disputes the rating in the final report as provided in subsection (6), the insurer shall begin paying the impairment award, if any, within 45 days of the date of mailing of the report by the third evaluator.

(4) The division shall appoint impairment evaluators to render ratings under subsection (1). The division shall adopt rules that set forth the qualifications of evaluators and the locations of examinations. An evaluator must be a physician licensed under Title 37, chapter 3. The division may seek nominations from the board of medical examiners.

(5) The cost of impairment evaluations is assessed to the insurer, except that the cost of an evaluation under subsection (3)(b)(i) or (3)(b)(ii) is assessed to the requesting party.

(6) A party may dispute a final impairment rating rendered under subsection (3)(b)(ii) by filing a petition with the workers' compensation court within 15 days of the evaluator's mailing of the report. Disputes over impairment ratings are not subject to 39-71-605 or to mandatory mediation.

(7) An impairment rating rendered under subsection (3) is presumed correct. This presumption is rebuttable.

Section 25. Section 39-71-704, MCA, is amended to read:

**"39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates.** (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following shall be furnished:

(a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained.

(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, shall be established annually by the workers' compensation division and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be based on the median fees as billed to the state compensation insurance fund during the year preceding the adoption of the schedule. The division shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees. These rules shall be modeled on the 1974 revision of the 1969 California Relative Value Studies.

(3) *Beginning January 1, 1988, the division shall establish rates for hospital services necessary for the treatment of injured workers. Approved rates must be in effect for a period of 12 months from the date of approval. The division may coordinate this ratesetting function with other public agencies that have similar responsibilities.*

(4) *Notwithstanding subsection (2), beginning January 1, 1988, and ending January 1, 1990, the maximum fees payable by insurers must be limited to the relative value fee schedule established in January 1987. Notwithstanding subsection (3), the hospital rates payable by insurers must be limited to those set in January 1988, until December 31, 1989."*

Section 26. Section 39-71-708, MCA, is amended to read:

**"39-71-708. Compensation for disfigurement.** (1) The division may award proper and equitable benefits for serious face, head, or neck disfigurement, not to exceed \$2,500, in addition to benefits payable under 39-71-703.

(2) No payment under this section shall be in lieu of the separate benefit of medical and hospital services or of any benefits paid under 39-71-701 for temporary total disability."

Section 27. Section 39-71-710, MCA, is amended to read:

**"39-71-710. Termination of benefits upon retirement.** (1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive full social security retirement benefits, the claimant is considered to be retired. When the claimant is considered retired, the liability of the insurer is ended for payment of wage supplement, permanent total disability, and rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, any impairment award, and medical benefits.

(2) If a claimant who is eligible to receive social security retirement benefits and is gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits."

Section 28. **Benefits not due while claimant is incarcerated.** A claimant is not eligible for any disability or rehabilitation compensation benefits while the claimant is incarcerated as the result of conviction of a felony. The insurer remains liable for medical benefits. No time limit on benefits otherwise provided in this chapter is extended due to a period of incarceration.

Section 29. Section 39-71-721, MCA, is amended to read:

**"39-71-721. Compensation for injury causing death — limitation.** (1) (a) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover such payments from the beneficiary's biweekly payments as provided in 39-71-741(5).

(2) To beneficiaries as defined in 39-71-116(2)(a) through (2)(d), weekly compensation benefits for an injury causing death are 66 ⅔% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in 39-71-116(2)(e) and (2)(f), weekly benefits must be paid to the extent of the dependency at the time of the

injury, subject to a maximum of 66 ⅔% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary as defined in 39-71-116(2), a lump-sum payment of \$3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of such beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116(2)(b) through (2)(d).

(6) In all cases, benefits must be paid to beneficiaries, as defined in 39-71-116(2).

(7) *Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.*

(8) *Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1989, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of \$299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1989, the minimum weekly compensation for injury causing death shall be \$149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death."*

Section 30. Section 39-71-736, MCA, is amended to read:

**"39-71-736. Compensation — from what date paid.** (1) (a) No compensation may be paid for the first 6 days loss of wages due to an injury. A claimant is eligible for compensation starting with the 7th day of wage loss.

(b) However, separate benefits of medical and hospital services shall be furnished from the date of injury.

(2) *For the purpose of this section, an injured worker is not considered to have a wage loss if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the 6-day waiting period."*

Section 31. Section 39-71-737, MCA, is amended to read:

**"39-71-737. Compensation to run consecutively — exceptions.** Compensation shall run consecutively and not concurrently, and payment shall not be made for two classes of disability over the same period except that impairment awards and auxiliary rehabilitation benefits may be paid concurrently with other classes of benefits, and wage supplement and partial rehabilitation benefits may be paid concurrently."

Section 32. Section 39-71-741, MCA, is amended to read:

**“39-71-741. Compromise settlements, lump-sum payments, and lump-sum advance payments. (1) (a) Benefits may be converted in whole to a lump sum:**

*(i) if a claimant and an insurer dispute the initial compensability of an injury; and*

*(ii) if the claimant and insurer agree to a settlement.*

*(b) The agreement is subject to division approval. The division may disapprove an agreement under this section only if there is not a reasonable dispute over compensability.*

*(c) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the division or by any court.*

*(d) The parties' failure to reach an agreement is not a dispute over which a mediator or the workers' compensation court has jurisdiction.*

*(2) (a) If an insurer has accepted initial liability for an injury, permanent total and permanent partial wage supplement benefits may be converted in whole to a lump-sum payment.*

*(b) The conversion may be made only upon agreement between a claimant and an insurer.*

*(c) The agreement is subject to division approval. The division may approve an agreement if:*

*(i) there is a reasonable dispute concerning the amount of the insurer's future liability or benefits; or*

*(ii) the amount of the insurer's projected liability is reasonably certain and the settlement amount is not substantially less than the present value of the insurer's liability.*

*(d) The parties' failure to reach agreement is not a dispute over which a mediator or the workers' compensation court has jurisdiction.*

*(e) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the division or by any court.*

*(3) (a) Permanent partial wage supplement benefits may be converted in part to a lump-sum advance.*

*(b) The conversion may be made only upon agreement between a claimant and an insurer.*

*(c) The agreement is subject to division approval. The division may approve an agreement if the parties demonstrate that the claimant has financial need that:*

*(i) relates to the necessities of life or relates to an accumulation of debt incurred prior to injury; and*

*(ii) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.*

*(d) The parties' failure to reach an agreement is not a dispute over which a mediator or the workers' compensation court has jurisdiction.*

(4) *Permanent total disability benefits may be converted to a lump-sum advance. The total of all lump-sum advance payments to a claimant may not exceed \$20,000. A conversion may be made only upon the written application of the injured worker with the concurrence of the insurer. Approval of the lump-sum advance payment rests in the discretion of the division. The approval or award of a lump-sum advance payment by the division or court must be the exception. It may be given only if the worker has demonstrated financial need that:*

(a) *relates to:*

(i) *the necessities of life;*

(ii) *an accumulation of debt incurred prior to the injury; or*

(iii) *a self-employment venture as set forth in [section 47]; and*

(b) *arises subsequent to the date of injury or arises because of reduced income as a result of the injury.*

(5) (a) *An insurer may recoup any lump-sum advance amortized at the rate established by the division, prorated biweekly over the projected duration of the compensation period.*

(b) *The rate adopted by the division must be based on the average rate for United States 10-year treasury bills in the previous calendar year, rounded to the nearest whole number.*

(c) *If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.*

(6) *The division has full power, authority, and jurisdiction to allow, approve, or condition compromise settlements or lump-sum advances agreed to by workers and insurers. All such compromise settlements and lump-sum payments are void without the approval of the division. Approval by the division must be in writing. The division shall directly notify a claimant of a division order approving or denying a claimant's compromise or lump-sum payment.*

(7) *Subject to [section 8], a dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump-sum advance under subsection (4) is considered a dispute, for which a mediator and the workers' compensation court have jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release settlement or a lump-sum advance but the division disapproves the agreement, the parties may request the workers' compensation court to review the division's decision."*

Section 33. Section 39-71-803, MCA, is amended to read:

**"39-71-803. Occupational deafness distinguished from traumatic loss of hearing.** Occupational deafness as herein provided is distinguished from traumatic loss of hearing, which may be compensated under parts 7 and 10 of this chapter."



Section 34. **Definitions.** As used in this chapter, the following definitions apply:

(1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation practitioners.

(2) "Disabled worker" means one who has a medically determined restriction resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury.

(3) "I.W.R.P." means an individualized, written rehabilitation program prepared by the department of social and rehabilitation services.

(4) "Rehabilitation benefits" means benefits provided in [sections 44 through 46] and 39-71-1003.

(5) "Rehabilitation provider" means a rehabilitation counselor, other than the department of social and rehabilitation services, certified by the board for rehabilitation certification and designated by the insurer to the division.

(6) "Rehabilitation services" consists of a program of evaluation, planning, and delivery of goods and services to assist a disabled worker to return to work.

(7) (a) "Worker's job pool" means those jobs typically available for which a worker is qualified, consistent with the worker's age, education, vocational experience and aptitude and compatible with the worker's physical capacities and limitations as the result of the worker's injury. Lack of immediate job openings is not a factor to be considered.

(b) A worker's job pool may be either local or statewide, as follows:

(i) a local job is one either in a central city that has within its economically integrated geographical area a population of less than 50,000 or in a city with a population of more than 50,000 as determined by the division; or

(ii) a statewide job is one anywhere in the state of Montana.

Section 35. Section 39-71-1003, MCA, is amended to read:

**"39-71-1003. Eligibility for vocational rehabilitation expenses.** *Upon certification by the department of social and rehabilitation services, a disabled worker may be paid vocational rehabilitation expenses from funds provided in 39-71-1004, in addition to benefits payable under the Workers' Compensation Act."*

Section 36. **Rehabilitation goal and options.** (1) The goal of rehabilitation services is to return a disabled worker to work, with a minimum of retraining, as soon as possible after an injury occurs.

(2) The first appropriate option among the following must be chosen for the worker:

(a) return to the same position;

- (b) return to a modified position;
  - (c) return to a related occupation suited to the claimant's education and marketable skills;
  - (d) on-the-job training;
  - (e) short-term retraining program (less than 24 months);
  - (f) long-term retraining program (48 months maximum); or
  - (g) self-employment.
- (3) Whenever possible, employment in a worker's local job pool must be considered and selected prior to consideration of employment in a worker's statewide job pool.

**Section 37. Rehabilitation services — required and provided by insurers and the department of social and rehabilitation services.**

(1) Rehabilitation services are required for disabled workers and may be initiated by:

- (a) an insurer by designating a rehabilitation provider and notifying the division;
- (b) the division by requiring the insurer to designate a rehabilitation provider; or
- (c) a disabled worker through a request to the division. The division shall then require the insurer to designate a rehabilitation provider.

(2) Rehabilitation services provided under this part must be delivered:

- (a) through a rehabilitation counselor certified by the board of rehabilitation certification;
- (b) by a vocational rehabilitation counselor employed by the department of social and rehabilitation services; or
- (c) by both.

(3) A disabled worker served by the department of social and rehabilitation services may receive only those vocational rehabilitation services as provided in Title 53, chapter 7, parts 1 and 2.

**Section 38. Designated rehabilitation provider — evaluation and report.** (1) If a disabled worker is capable of returning to work, the designated rehabilitation provider shall evaluate and determine the return-to-work capabilities of the disabled worker pursuant to [section 36(2)(a) through 36(2)(d)].

(2) If an insurer's designated rehabilitation provider has determined that all appropriate services have been provided to the disabled worker under [section 36(2)(a) through 36(2)(d)] and the worker has returned to work, the insurer shall document that determination to the division.

(3) If the worker has not returned to work as provided in subsection (2), the insurer shall notify the division. The division shall then designate

a rehabilitation panel as provided in [section 39] and refer the worker to the panel.

**Section 39. Rehabilitation panels.** (1) The division shall designate and administer rehabilitation panels. The purpose of a panel is to advise the division on a worker's eligibility for rehabilitation services. Each panel shall issue to the division a report as provided in [section 40].

(2) Each panel must be composed of at least:

(a) a representative of the department of social and rehabilitation services;

(b) a representative from the department who has expertise in job service listings, occupational supply and demand in Montana, and other Montana career information; and

(c) a representative from the division, who shall chair the panel.

(3) The division shall pay the cost of the panel.

(4) The insurer shall provide the panel with the worker's medical records, rehabilitation reports, and other pertinent information in its possession.

(5) The panel may consult with the worker, insurer, medical and rehabilitation providers, and any other person and may have access to any information it considers pertinent to carry out its responsibility.

(6) Information received by the panel is confidential, except that it may be disclosed to the worker, insurer, and division.

**Section 40. Rehabilitation panel report.** (1) The rehabilitation panel shall:

(a) review all records, statements, and other pertinent information; and

(b) prepare a report to the division, with copies to the insurer and worker.

(2) The report must:

(a) identify the first appropriate rehabilitation option by following the priorities set forth in [section 36]; and

(b) contain findings of why a higher listed priority, if any, is not appropriate.

(3) Depending on which option the panel identifies as appropriate, the report also must contain findings that:

(a) identify jobs in the local or statewide job pool and the worker's anticipated earnings from each job;

(b) describe an appropriate on-the-job training program, the worker's anticipated earnings, and anticipated insurer's contribution, if any;

(c) describe an appropriate retraining program, short- or long-term, the employment opportunities anticipated upon the worker's completion of the program, and the worker's anticipated earnings; or

(d) describe the worker's potential for specific self-employment, limitations the worker might have in such self-employment and any assistance necessary, and the worker's anticipated earnings.

(4) An insurer or a worker on his own motion may submit information to the panel prior to the time the panel issues its final report.

**Section 41. Division's order of determination — exception — hearing.** (1) The division shall issue an initial order of determination within 10 working days of receipt of a report from a rehabilitation panel. If the initial order of determination differs from the findings and recommendations of the panel, the order must state the reasons for the difference.

(2) Within 10 working days from the date the initial order of determination is mailed, a party may submit a written exception to the order. On its own motion or at the request of any party, the division shall conduct a hearing. The division shall issue a final order of determination within 20 working days of the hearing.

(3) If no party submits an exception within 10 working days, the initial order of determination becomes the final order of determination and must be issued by the division.

(4) Within 10 working days after the date of mailing of the division's final order of determination, an appeal may be taken to the workers' compensation court.

**Section 42. Referral to department of social and rehabilitation services for retraining — benefits — appeals.** (1) If in its final order of determination the division considers a worker able to return to work in the worker's job pool, the insurer is not liable for rehabilitation benefits, even though the worker independently may pursue a training program of the worker's own choice or seek vocational rehabilitation services from the department of social and rehabilitation services.

(2) If in its final order of determination the division finds the worker needs retraining, the division shall determine the maximum duration for which funds under 39-71-1003 may be used for rehabilitation services under [section 36(2)(d) through 36(2)(f)] and shall refer the worker to the department of social and rehabilitation services for a determination of vocational handicap.

(3) If the department of social and rehabilitation services determines that a disabled worker has a vocational handicap, the worker is eligible for funds under 39-71-1003 up to the maximum duration established in the division's final order of determination.

(4) If a disabled worker seeks vocational rehabilitation services from the department of social and rehabilitation services without giving the insurer the opportunity to designate a rehabilitation provider or, subsequently, without giving the division the opportunity to designate a rehabilitation panel to provide a report, the insurer is not liable for rehabilitation benefits. The insurer may terminate rehabilitation and other benefits, if any, being received by the worker by following the procedure set forth in [section 49].

(5) The department of social and rehabilitation services, in providing rehabilitation services to a worker referred to it by the division, shall consider but is not bound by the rehabilitation panel report.

(6) If the department of social and rehabilitation services has determined that all appropriate rehabilitation services have been provided to a disabled worker, the department shall document that determination to the division.

(7) The appeal process before the board of social and rehabilitation appeals provided for in 53-7-106 is the exclusive remedy for a person aggrieved in the receipt of services provided by the department of social and rehabilitation services.

**Section 43. Agreement between worker and insurer regarding option.** A worker and an insurer may agree that an option in [section 36] is appropriate without following the procedures provided in this part. Failure to reach agreement is not a dispute under [section 8].

**Section 44. Total rehabilitation benefits during period of rehabilitation services — limitation — termination.** (1) A worker who no longer is temporarily totally disabled but meets the definition of a disabled worker may be eligible for total rehabilitation benefits.

(2) Eligibility for total rehabilitation benefits begins on the date of maximum healing or the date notice is given to the division by the insurer that a rehabilitation provider has been designated, whichever is later.

(3) Benefits must be paid at the disabled worker's temporary total disability rate for a period not exceeding 26 weeks from the date of eligibility, except that the division may extend the period for good cause. The insurer may extend the benefits without division approval but must notify the division of the extension.

(4) Total rehabilitation benefits under this section terminate when:

(a) a worker returns to work;

(b) a worker is qualified to return to work under the priorities in [section 36] pursuant to a division order; or

(c) an I.W.R.P. is submitted to the division by the department of social and rehabilitation services.

(5) The insurer shall provide written notice to the worker and division that benefits have been terminated.

**Section 45. Wage supplement and partial rehabilitation benefits.** (1) A worker who is in a rehabilitation program under [section 42] in accordance with and for the maximum duration established by a final order of determination by the division is eligible to receive the following benefits:

(a) wage supplement benefits as provided in 39-71-703 but with the rate based on 66 ⅔% of the worker's actual wages received at the time of injury, subject to a maximum of one-half the state's average weekly wage; and

(b) a partial rehabilitation benefit that, together with the wage supplement provided in subsection (1)(a), provides the worker with weekly benefits equal to the worker's temporary total disability rate.

(2) After the worker completes the rehabilitation program, the worker's further eligibility, if any, for wage supplement benefits under 39-71-703 is reduced by the number of weeks of wage supplement benefits received under subsection (1)(a).

(3) Notwithstanding subsection (1)(a), beginning July 1, 1987, through June 30, 1989, the maximum weekly compensation benefit under that subsection may not exceed \$149.50, which is one-half the state's weekly wage established July 1, 1986.

**Section 46. Auxiliary rehabilitation benefits.** In addition to benefits otherwise provided in this chapter, separate benefits not exceeding a total of \$4,000 may be paid by the insurer for:

- (1) reasonable travel and relocation expenses used to:
  - (a) search for new employment;
  - (b) return to work but in a new location; and
  - (c) implement a rehabilitation program pursuant to a final order of determination by the division; and
- (2) reasonable participation with an employer in an on-the-job training program.

**Section 47. Self-employment — criteria.** (1) A worker who is eligible for permanent total disability benefits may be eligible for a self-employment venture. A lump sum of \$20,000 or less of permanent total disability benefits may be granted under 39-71-741 to assist the worker in the self-employment venture. Any previous lump-sum advance made under 39-71-741(4) must be considered so that the total amount of lump-sum payments of permanent total disability benefits does not exceed \$20,000.

(2) In addition to meeting the requirements set forth in 39-71-741, the self-employment venture must be considered feasible under criteria set forth by the division.

(3) When the worker begins the self-employment venture, his eligibility for permanent total disability benefits ends but the worker may be eligible for permanent partial disability benefits under 39-71-703.

(4) If a worker again becomes eligible for permanent total disability benefits, the insurer may recoup any lump sum of permanent total disability benefits awarded for a self-employment venture, as provided in 39-71-741.

**Section 48. Exchange of information.** The department of social and rehabilitation services, the insurer's designated rehabilitation provider, and the division shall provide to one another case information as necessary to carry out the purposes of this part.

**Section 49. Termination of benefits for noncooperation with rehabilitation provider or the department of social and rehabilitation services — division hearing and appeal.** (1) If an insurer believes a worker is refusing unreasonably to cooperate with the rehabilitation provider or the department of social and rehabilitation services, the insurer, with 14 days' notice to the worker and division on a form approved by the division, may terminate any rehabilitation benefits the worker is receiving under this part until the worker cooperates. If the worker is receiving wage supplement benefits, those benefits must continue until the division's determination under subsection (3) is made.

(2) The worker may contest the insurer's termination of benefits by filing a written exception to the division within 10 working days after the date of the 14-day notice. The worker or insurer may request a hearing or the division may hold a hearing on its own motion. The division shall issue an order within 30 days of the hearing.

(3) If no exceptions are timely filed or the division determines the worker unreasonably refused to cooperate, the insurer may terminate wage loss supplement benefits the worker is receiving until the worker cooperates with the rehabilitation provider. If the worker prevails at a hearing before the division, it may award attorney fees and costs to the worker under 39-71-612.

(4) Within 10 working days after the division mails its order to the party's last-known address, a party may appeal to the workers' compensation court.

**Section 50. Division jurisdiction over rehabilitation disputes — appeals.** In addition to pursuing the hearing opportunities provided in [sections 41 and 49], a party may bring a dispute arising under the provisions of this part, except for a dispute over which the department of social and rehabilitation services has jurisdiction under [section 42], before the division under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, and any rules promulgated by the division. Within 10 days after mailing of the division's final order, an interested party may appeal to the workers' compensation court.

Section 51. Section 39-71-2106, MCA, is amended to read:

**"39-71-2106. Requiring security of employer.** (1) *The division may require any employer who elects to be bound by compensation plan No. 1 to provide a security deposit. Such security deposit may be a surety bond, government bond, or letter of credit approved by the division and must be the greater of:*

(a) *\$250,000; or*

(b) *an average of the workers' compensation liabilities incurred by the employer in Montana for the past 3 calendar years.*

(2) If the division finds that an employer has lost his solvency or financial ability to pay the compensation herein provided to be paid which might reasonably be expected to be chargeable to the employer during the fiscal year to be covered by the permission or that the employer is an association, corporation, or organization of individual employers seeking

permission to operate under compensation plan No. 1, the division must require the employer, before granting to him permission or before continuing or engaging in such employment subject to the provisions of compensation plan No. 1, to give security *in addition to the security described in subsection (1)* for the payment of compensation, which security must be in such an amount as the division finds is reasonable and necessary to meet all liabilities of the employer which may reasonably and ordinarily be expected to accrue during the fiscal year.

(3) The security *provided for in subsection (2)* must be deposited with the division and may be a certain estimated percent of the employer's last preceding annual payroll or a certain percent of the established amount of his annual payroll for the fiscal year; or the security may be in the form of a bond or undertaking executed to the division in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that the employer will well and truly pay or cause to be paid all sums and amounts for which the employer shall become liable under the terms of this chapter to his employees during the fiscal year; or such security may consist of any state, county, municipal, or school district bonds or the bonds or evidence of indebtedness of any individuals or corporations which the division deems solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the division as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities or any remaining part thereof shall be returned to the depositor.

(4) The division is liable for the value and safekeeping of all such deposits or securities and shall, at any time, upon demand of a bondsman or the depositor, account for the same and the earnings thereof."

**Section 52. Purpose.** The purpose of [sections 52 through 57] is to prevent when possible the filing in the workers' compensation court of actions by claimants or insurers relating to claims under chapter 71 or 72 of this title if an equitable and reasonable resolution of the dispute may be effected at an earlier stage. To achieve this purpose, [section 52 through 57] provide for a procedure for mandatory, nonbinding mediation.

**Section 53. Department authority — rules.** (1) The department shall designate mediators and shall implement the provisions of [sections 52 through 57].

(2) The department may adopt the rules necessary to implement [sections 52 through 57]. The rules may prescribe:

- (a) the qualifications of mediators; and
- (b) a procedure for the conduct of mediation proceedings.

(3) The cost to the department of implementing [sections 52 through 57] must be paid out of the workers' compensation administration fund.

**Section 54. Mandatory, nonbinding mediation.** (1) Except as otherwise provided, in a dispute arising under chapter 71 or 72 of this title, the insurer and claimant shall mediate any issue concerning benefits and the



mediator shall issue a report following the mediation process recommending a solution to the dispute before either party may file a petition in the workers' compensation court.

(2) The resolution recommended by the mediator is without administrative or judicial authority and is not binding on the parties.

**Section 55. Duties of mediator.** A mediator shall assist the parties in negotiating a resolution to their dispute by:

- (1) facilitating an exchange of information between the parties;
- (2) assuring that all relevant evidence is brought forth during the mediation process;
- (3) suggesting possible solutions to issues of dispute between the parties;
- (4) recommending a solution; and
- (5) assisting the parties to voluntarily resolve their dispute.

**Section 56. Limitations on mediation proceedings.** (1) Mediation proceedings are:

- (a) held in private;
  - (b) informal and held without a verbatim record; and
  - (c) confidential.
- (2) All communications, verbal or written, from the parties to the mediator and any information and evidence presented to the mediator during the proceeding are confidential.
- (3) A mediator's files and records are closed to all but the parties.
- (4) (a) A mediator may not be called to testify in any proceeding concerning the issues discussed in the mediation process.
- (b) Neither the mediator's report nor any of the information or recommendations contained in it are admissible as evidence in any action subsequently brought in any court of law.
- (5) Notwithstanding subsections (1) through (4), a mediator may issue a report and the parties and the mediator may be required to attend a conference as set forth in [section 57].

**Section 57. Mediation procedure.** (1) Except as otherwise provided, a claimant or an insurer having a dispute relating to benefits under chapter 71 or 72 of this title may petition the department for mediation of the dispute.

(2) A party may take part in mediation proceedings with or without representation.

(3) The mediator shall review the division file for the case and may receive any additional documentation or evidence either party submits.

(4) The mediator shall request that each party offer argument summarizing the party's position. A party's argument must include the evidence the party would present if the case were being presented to the worker's compensation judge but is not limited by the rules of evidence.

(5) After the parties have presented all their information and evidence to the mediator, he shall recommend a solution to the parties within a reasonable time to be established by rule.

(6) A party shall notify the mediator within 45 days of the mailing of his report whether the party accepts the mediator's recommendation. If either party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute.

(7) (a) If a mediator determines that either party failed to cooperate in the mediation process, the mediator shall prepare a written report setting forth the determination and the grounds for the determination. The report must be mailed to the parties and to the workers' compensation court. Unless a party disputes the determination as set forth in subsection (7)(c), the parties shall repeat the mediation process, but only one time.

(b) A mediator may determine that a party has failed to cooperate in the mediation process only if the party failed to:

(i) supply information or offer a summary of the party's position as reasonably requested by the mediator;

(ii) attend scheduled mediation conferences unless excused by the mediator; or

(iii) listen to and review the information and position offered by the opposing party.

(c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the court shall summon the parties and the mediator to determine by oral discussion whether the mediator's determination of noncooperation is supportable. If the court finds that the mediator's determination is supportable, the court may order the parties to attempt a second time to mediate their dispute.

Section 58. Section 39-71-2901, MCA, is amended to read:

**"39-71-2901. Location of office — court powers.** (1) The principal office of the workers' compensation judge shall be in the city of Helena.

(2) *The workers' compensation court has power to:*

(a) *preserve and enforce order in its immediate presence;*

(b) *provide for the orderly conduct of proceedings before it and its officers;*

(c) *compel obedience to its judgments, orders, and process in the same manner and by the same procedures as in civil actions in district court;*

(d) *compel the attendance of persons to testify; and*

(e) *punish for contempt in the same manner and by the same procedures as in district court.*"

Section 59. Section 39-71-2903, MCA, is amended to read:

**"39-71-2903. Administrative procedure act and rules of evidence applicable.** All proceedings and hearings before the workers' compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. *The workers' compensation judge is bound by common law and statutory rules of evidence.*"

Section 60. Section 39-71-2905, MCA, is amended to read:

**"39-71-2905. Petition to workers' compensation judge.** A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute *after satisfying dispute resolution requirements otherwise provided in this chapter.* The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in chapter 71 of this title. If the dispute relates to benefits due a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. *After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71, except as provided in 39-71-516 and [section 20].* The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under chapter 71."

Section 61. Section 39-71-2907, MCA, is amended to read:

**"39-71-2907. Increase in award for unreasonable delay or refusal to pay.** (1) When payment of compensation has been unreasonably delayed or refused by an insurer, either prior or subsequent to the issuance of an order by the workers' compensation judge granting a claimant compensation benefits, the full amount of the compensation benefits due a claimant, between the time compensation benefits were delayed or refused and the date of the order granting a claimant compensation benefits, may be increased by the workers' compensation judge by 20%. The question of unreasonable delay or refusal shall be determined by the workers' compensation judge, and such a finding constitutes good cause to rescind, alter, or amend any order, decision, or award previously made in the cause for the purpose of making the increase provided herein.

(2) *A finding of unreasonableness under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.*"

Section 62. Section 39-71-2909, MCA, is amended to read:

**"39-71-2909. Authority to review, diminish, or increase awards.** The judge may, upon the petition of a claimant or an insurer that the disability of the claimant has changed, review, diminish, or increase, in accordance with the law on benefits as set forth in chapter 71 of this title, any benefits previously awarded by the judge."

**Section 63. Signing of petitions, pleadings, motions, and other papers — requirements — sanctions.** (1) Every petition, pleading, motion, or other paper of a party appearing before the workers' compensation court and represented by an attorney must be signed by at least one attorney of record in his individual name. The signer's address also must be stated.

(2) A party who is not represented by an attorney shall sign his petition, pleading, motion, or other paper and state his address.

(3) The signature of an attorney or party constitutes a certificate by him that:

- (a) he has read the petition, pleading, motion, or other paper;
- (b) to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact;
- (c) it is warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law; and
- (d) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(4) If a petition, pleading, motion, or other paper is signed in violation of this section, the court, upon motion or upon its own initiative, shall impose an appropriate sanction upon the person who signed it, a represented party, or both. The sanction may include an order to pay to the other party or parties the amount of the reasonable expense incurred because of the filing of the petition, pleading, motion, or other paper, including reasonable attorney fees.

**Section 64.** Section 39-72-102, MCA, is amended to read:

**"39-72-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116.

(2) "Child" is as defined in 39-71-116.

(3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work in the *worker's job pool*. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "permanent *partial* disability".

(4) "Division" is as defined in 39-71-116.

(5) "Employee" is as defined in 39-71-118.

(6) "Employer" is as defined in 39-71-117.

(7) "Independent contractor" is as defined in 39-71-120.

(8) "Insurer" is as defined in 39-71-116.

(9) "Invalid" is as defined in 39-71-116.

(10) "Occupational disease" means *harm, damage, or death as set forth in 39-71-119(1) arising out of or contracted in the course and scope of employment and caused by events occurring on more than a single day or work shift. The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.*

(11) "Order" is as defined in 39-71-116.

(12) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO<sub>2</sub>) and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs causing the characteristic x-ray pattern and by other variable clinical manifestations.

(14) "Wages" is as defined in [section 4].

(15) "Year" is as defined in 39-71-116(8) and 39-71-116(22)."

Section 65. Section 45-6-301, MCA, is amended to read:

**"45-6-301. Theft.** (1) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

- (a) has the purpose of depriving the owner of the property;
- (b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or
- (c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when he purposely or knowingly obtains by threat or deception control over property of the owner and:

- (a) has the purpose of depriving the owner of the property;
- (b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or
- (c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when he purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

- (a) has the purpose of depriving the owner of the property;
- (b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 53 by a state or county agency, regardless of the original source of assistance, by means of:

- (a) a knowingly false statement, representation, or impersonation; or
- (b) a fraudulent scheme or device.

(5) *A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over any part of any benefits provided under Title 39, chapters 71 or 72, by means of:*

- (a) *a knowingly false statement, representation, or impersonation; or*
- (b) *deception or other fraudulent action.*

(6) A person convicted of the offense of theft of property not exceeding \$300 in value shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of the offense of theft of property exceeding \$300 in value or theft of any commonly domesticated hooved animal shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(7) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Section 66. Section 19-12-401, MCA, is amended to read:

**"19-12-401. Eligibility for pension benefits.** In order to qualify for participation in the volunteer firefighters' pension plan under 19-12-404, a volunteer firefighter must meet each of the following requirements:

(1) (a) To qualify for full participation, he must have completed a total of at least 20 years' service as an active volunteer firefighter and as an active member of a qualified volunteer fire company.

(b) If a firefighter is prevented from completing at least 20 years' service by dissolution or discontinuance of his volunteer fire company, personal relocation due to transfer or loss of employment, personal disability, or any other factor beyond his reasonable control, he may qualify for partial participation if he has completed at least 10 years' service. In that event, he is eligible for only a proportion of the benefits specified in 19-12-404, determined by multiplying the benefits by a fraction, the numerator of which is the number of years of active service completed and the denominator of which is 20.

(c) The years of active service are cumulative and need not be continuous. The service need not be acquired with one single fire company but may be a total of separate periods of active service with different fire companies in different fire districts.

(d) Effective March 1, 1965, the annual period of service for the purpose of this chapter is the fiscal year. No fractional part of any year may count toward the service requirement, and to receive credit for any particular year, a volunteer firefighter must serve with one particular volunteer fire company throughout that entire fiscal year.

(2) (a) Except as provided in subsection (2)(b), he must have attained the age of 55, but he need not be an active volunteer firefighter or an active member of any volunteer fire company when he reaches that age.

(b) An active member of a volunteer fire company whose duty-related injury results in a permanent total disability as defined in 39-71-116 is eligible to receive a partial pension regardless of his age calculated as follows:

(i) for a member with less than 10 years of service, a pension calculated as provided in subsection (1)(b) in which the numerator equals 10; or

(ii) for a member with 10 years or more of service, a pension calculated as provided in subsection (1)(b).

(3) During each of the years for which he claims credit under subsection (1), he must have completed a minimum of 30 hours of instruction in matters pertaining to firefighting under a program formulated and supervised by the chief or foreman of his volunteer fire company.

(4) Effective July 1, 1965, no volunteer firefighter may receive credit for any year of membership in a volunteer fire company unless, throughout the year:

(a) the company maintained firefighting equipment in serviceable condition of a value of \$2,500 or more; and

(b) the company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates.

(5) He must have ceased to be an active member of any volunteer fire company, and if he applies for and receives pension benefits hereunder, he will not thereafter be eligible to become an active member of any volunteer fire company."

Section 67. Section 39-71-118, MCA, is amended to read:

**"39-71-118. Employee, worker, and workman defined.** (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation

law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education approved by the state board of public education at designated postsecondary vocational-technical centers; or

(e) an airman or other person employed as a volunteer under 67-2-105.

(2) If the employer is a partnership or sole proprietorship, such employer may elect to include as an employee within the provisions of this chapter any member of such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business. In the event of such election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered, and no partner or sole proprietor shall be deemed an employee within this chapter until such notice has been given. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the insurance carrier shall assume a salary or wage of such electing employee to be not less than \$900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter."

**Section 68. Repealer.** Sections 39-71-104, 39-71-121, 39-71-122, 39-71-309, 39-71-410, 39-71-705 through 39-71-707, 39-71-709, 39-71-738, 39-71-914, 39-71-1001, 39-71-1002, 39-71-1005, 39-71-2906, 39-71-2908, and 39-72-104, MCA, are repealed.

**Section 69. Extension of authority.** Any existing authority of the department of labor and industry and the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 70. Codification instructions.** (1) Sections 1 and 4 are intended to be codified as an integral part of Title 39, chapter 71, part 1, and the provisions of Title 39, chapter 71, part 1, apply to sections 1 and 4.

(2) Sections 8 and 52 through 57 are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to sections 8 and 52 through 57.

(3) Sections 7 and 20 are intended to be codified as an integral part of Title 39, chapter 71, part 3, and the provisions of Title 39, chapter 71, part 3, apply to sections 7 and 20.



(4) Section 9 is intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to section 9.

(5) Sections 24 and 28 are intended to be codified as an integral part of Title 39, chapter 71, part 7, and the provisions of Title 39, chapter 71, part 7, apply to sections 24 and 28.

(6) Sections 34 and 36 through 50 are intended to be codified as an integral part of Title 39, chapter 71, part 10, and the provisions of Title 39, chapter 71, part 10, apply to sections 34 and 36 through 50.

(7) Section 63 is intended to be codified as an integral part of Title 39, chapter 71, part 29, and the provisions of Title 39, chapter 71, part 29, apply to section 63.

**Section 71. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 72. Applicability.** (1) Sections 8 and 52 through 57 apply retroactively, within the meaning of 1-2-109, to all injuries and diseases, regardless of the date of occurrence. With respect to rehabilitation disputes, sections 8 and 52 through 57 apply retroactively, within the meaning of 1-2-109, unless the division had jurisdiction over the dispute under the law in effect at the time of injury.

(2) The remaining portions of this act apply only to injuries, diseases, and events occurring after June 30, 1987.

**Section 73. Effective dates.** (1) Except as provided in subsection (2), this act is effective July 1, 1987.

(2) Sections 5, 53, 69, and this section are effective on passage and approval.

Approved April 14, 1987.

## CHAPTER NO. 465

[SB 344]

AN ACT TO CREATE A CERTIFICATION STANDARDS AND PRACTICES ADVISORY COUNCIL ALLOCATED TO THE BOARD OF PUBLIC EDUCATION; TO PROVIDE A SPECIAL REVENUE FUND FOR THE DISPOSITION OF A PORTION OF CERTIFICATION FEES TO COVER THE EXPENSES OF THE COUNCIL; AMENDING SECTIONS 17-7-502 AND 20-4-109, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** As used in [sections 1 through 4], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Approved teacher education program" means a program that is offered by an accredited teacher education institution and approved by the board of public education.

(2) "Council" means the certification standards and practices advisory council created in [section 2].

(3) "Specialist" means a person employed by a school district in a profession other than the teaching profession.

**Section 2. Certification standards and practices advisory council.**

(1) There is a certification standards and practices advisory council allocated to the board of public education.

(2) The council consists of seven members appointed by majority vote of the board of public education. The membership of the council must include:

(a) four teachers engaged in classroom teaching, including:

(i) one who teaches within kindergarten through grade 8;

(ii) one who teaches within grades 9 through 12 or at a designated post-secondary vocational-technical center;

(iii) one who is employed as a specialist; and

(iv) one additional teacher from any category set forth in this subsection (2)(a);

(b) one faculty member from an approved teacher education program offered by an accredited teacher education institution;

(c) one person employed as an administrator, with the certification required in 20-4-106(1)(c); and

(d) one school district trustee.

(3) The board of public education shall select and appoint the members by June 1. If a vacancy occurs on the council, the board of public education shall appoint a person from the category of membership, as provided in subsection (2), in which the vacancy has occurred.

(4) The term of office of an appointed member is 2 years.

**Section 3. Officers — quorum — expenses — meetings.** (1) The council shall select a chairman and a vice-chairman from its appointed members.

(2) A quorum for a meeting is not less than four council members.

(3) Council members are entitled to travel expenses incurred for each day of attendance at council meetings or in the performance of any duty or service as a council member in accordance with 2-18-501 through 2-18-503.

(4) The council shall meet quarterly and at other times as may be required for the proper conduct of the business of the council at the call of the chairman.

(5) The council may adopt rules for the conduct of its business.

(6) The council shall keep a record of its proceedings.

(7) The council may request research, administrative, and clerical staff assistance from the board of public education.

**Section 4. Duties of the council.** (1) The council shall study and make recommendations to the board of public education in the following areas:

(a) teacher certification standards, including but not limited to precertification training and education requirements and certification renewal requirements and procedures;

(b) administrator certification standards, including but not limited to precertification training and education requirements and certification renewal requirements and procedures;

(c) specialist certification standards, including but not limited to precertification training and education requirements and certification renewal requirements and procedures;

(d) feasibility of establishing standards of professional practices and ethical conduct;

(e) the status and efficacy of approved teacher education programs in Montana; and

(f) policies related to the denial, suspension, and revocation of teaching certification and the appeals process. For the purpose of preparing recommendations in this area, the council is authorized to review the individual cases and files that have been submitted to the board of public education.

(2) The council shall submit a written report annually to the board of public education with its recommendations for the above areas. The council may submit recommendations to the board of public education at other times that the council considers appropriate.

(3) The board of public education shall:

(a) at a regularly scheduled meeting, consider any recommendations and reports of the council; and

(b) approve, disapprove, or modify each recommendation of the council by majority vote of the board.

**Section 5.** Section 20-4-109, MCA, is amended to read:

**"20-4-109. Fees for teacher and specialist certificates.** (1) Each person applying for the issuance or renewal of a teacher or specialist certificate shall pay a fee *not to exceed* \$4 for each school fiscal year that the certificate will be valid. In addition to this fee, each person who has never held any class of Montana teacher or specialist certificate or for whom an emergency authorization of employment has never been issued shall pay a filing fee of \$4. Such fees shall be paid to the superintendent of public instruction, who shall deposit the fees with the state treasurer *in the following manner*:

(a) \$2 to the credit of the *state special revenue fund created in subsection (2)*;

(b) \$2 to the general fund.

(2) *There is an account in the state special revenue fund. Money from fees for teacher or specialist certificates required in subsection (1) must be deposited in the account. The money in the account is statutorily appropriated, as provided in 17-7-502, to the board of public education for expenses for the certification standards and practices advisory council created in [section 2].*"

Section 6. Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations:

- (a) 2-9-202;
- (b) 2-17-105;
- (c) 2-18-812;
- (d) 10-3-203;
- (e) 10-3-312;
- (f) 10-3-314;
- (g) 10-4-301;
- (h) 13-37-304;
- (i) 15-31-702;
- (j) 15-36-112;
- (k) 15-70-101;
- (l) 16-1-404;
- (m) 16-1-410;
- (n) 16-1-411;
- (o) 17-3-212;
- (p) 17-5-404;

- (q) 17-5-424;
- (r) 17-5-804;
- (s) 19-8-504;
- (t) 19-9-702;
- (u) 19-9-1007;
- (v) 19-10-205;
- (w) 19-10-305;
- (x) 19-10-506;
- (y) 19-11-512;
- (z) 19-11-513;
- (aa) 19-11-606;
- (bb) 19-12-301;
- (cc) 19-13-604;
- (dd) 20-6-406;
- (ee) 20-8-111;
- (ff) 23-5-612;
- (gg) 37-51-501;
- (hh) 53-24-206;
- (ii) 75-1-1101;
- (jj) 75-7-305;
- (kk) 80-2-103;
- (ll) 80-2-228;
- (mm) 90-3-301;
- (nn) 90-3-302;
- (oo) 90-15-103;
- (pp) Sec. 13, HB 861, L. 1985; *and*
- (qq) 20-4-109.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments."

**Section 7. Codification instruction.** Sections 1 through 4 are intended to be codified as an integral part of Title 20, and the provisions of Title 20 apply to sections 1 through 4.

**Section 8. Effective date.** This act is effective on July 1, 1987.

Approved April 14, 1987.

## CHAPTER NO. 466

[SB 380]

### AN ACT CLARIFYING THE LAW RELATING TO PRODUCTS LIABILITY ACTIONS AND DEFINING TWO DEFENSES AVAILABLE IN A PRODUCTS LIABILITY CASE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Strict liability of seller of product for physical harm to user or consumer.** (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to his property if:

- (a) the seller is engaged in the business of selling such a product; and
- (b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of his product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and such misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702.

Approved April 14, 1987.

## CHAPTER NO. 467

[HB 29]

AN ACT TRANSFERRING STATE OWNERSHIP RECORDS FROM THE SECRETARY OF STATE TO THE DEPARTMENT OF STATE LANDS; REQUIRING THE DEPARTMENT OF STATE LANDS TO TRANSFER RECORDS OF OTHER STATE PROPERTY INTERESTS TO THE STATE AGENCY ADMINISTERING THE PROPERTY; REQUIRING THE DEPARTMENT OF STATE LANDS TO MAINTAIN A REPOSITORY AND INDEX OF OWNERSHIP RECORDS OF STATE LANDS; REQUIRING STATE AGENCIES TO FILE OWNERSHIP RECORDS WITH THE DEPARTMENT OF STATE LANDS; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF STATE LANDS; AMENDING SECTIONS 2-6-111, 2-15-401, AND 77-1-101, MCA; AND REPEALING SECTIONS 2-17-121 THROUGH 2-17-126, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** When used in [sections 1 through 6], unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Ownership record" means the original deed, abstract, and any other instrument signifying state ownership or other interest in real property.

(2) "State agency" means any board, bureau, department, commission, or officer of the state.

(3) "State land" means land held, possessed, or administered by the state by virtue of fee simple title, grant, or deed. This term does not include:

(a) land acquired through foreclosure of any investments purchased under the provisions of 17-6-211;

(b) land used by virtue of an interest temporary in nature, such as a lease, license, or permit; or

(c) land used for easements and rights-of-way.

**Section 2. Transfer of records held by secretary of state.** By November 1, 1987, the secretary of state shall transfer all ownership

records on file in his office to the department of state lands. The department of state lands shall further transfer the records of land held or administered by the department of highways for highway rights-of-way and maintenance to the department of highways and any remaining ownership records, other than those of state lands, to the state agency administering the interest or property described in such records.

**Section 3. Filing of ownership records.** Except as provided in [section 6], state agencies shall file with the department ownership records of state lands held by the agency.

**Section 4. Department to maintain repository.** The department shall provide a secure yet accessible repository for the ownership records of state land.

**Section 5. Index and verification of ownership records.** (1) The department shall establish and maintain a filing system and index of the following information on state land:

- (a) legal description of the land;
- (b) when the land was acquired or disposed of;
- (c) name of the state agency administering or disposing of the land; and
- (d) name of the grantor or grantee.

(2) To the extent feasible within available funding and personnel, the department shall:

- (a) verify the accuracy of information contained in the ownership records; and
- (b) perfect title to state land whenever necessary.

**Section 6. Treatment of highway lands.** The department of highways is not required to file with the department of state lands records of land used for highway rights-of-way and maintenance but is required to file with the department of state lands ownership records of state land held for administrative purposes.

**Section 7. Rules.** The department of state lands may adopt rules for implementing and administering [sections 1 through 6] concerning transfer and filing of ownership records.

**Section 8.** Section 2-6-111, MCA, is amended to read:

**"2-6-111. Custody and reproduction of records by secretary of state.** (1) The secretary of state is charged with the custody of:

- (a) the enrolled copy of the constitution;
- (b) all the acts and resolutions passed by the legislature;
- (c) the journals of the legislature;
- (d) the great seal;
- (e) all books, records, parchments, maps, and papers kept or deposited in his office pursuant to law.



(2) All records included in subsection (1) may be kept and recorded by photostatic or microphotographic means, microfilm, or any other mechanical process that produces a clear, accurate, and permanent duplicate of the original record in accordance with standards not less than those approved for permanent records by the American national standards institute.

(3) The state records committee created by 2-15-1013 may approve the disposal of original records once those records are reproduced as provided for in subsection (2), unless disposal takes the form of transfer of records; in that case, reproduction will not be necessary. The reproduction, or certified copy thereof, may be used in place of the original for all purposes, including as evidence in any court or proceeding, and shall have the same force and effect as the original record.

(4) The secretary of state shall prepare enlarged typed or photographic copies of the records whenever their production is required by law.

(5) At least two copies shall be made of all records reproduced as provided for in subsection (2). The secretary of state shall place one copy in a fireproof storage place and shall retain the other copy in his office with suitable equipment for displaying such record by projection to not less than its original size and for preparing, for persons entitled thereto, copies of the record.

(6) All duplicates of all records shall be identified and indexed."

Section 9. Section 2-15-401, MCA, is amended to read:

**"2-15-401. Duties of secretary of state.** In addition to the duties prescribed by the constitution, it is the duty of the secretary of state to:

(1) attend at every session of the legislature for the purpose of receiving bills and resolutions and to perform such other duties as may be devolved upon him by resolution of the two houses or either of them;

(2) keep a register of and attest the official acts of the governor, including all appointments made by him, with date of commission and names of appointees and predecessors;

(3) affix the great seal, with his attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

(4) record in proper books all articles of incorporation filed in his office;

(5) take and file in his office receipts for all books distributed by him and direct the county clerk of each county to do the same;

(6) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

(7) furnish, on demand, to any person paying the fees therefor, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in his office;

(8) keep a fee book in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or

charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein;

(9) file in his office descriptions of seals in use by the different state officers;

(10) discharge the duties of member of the board of examiners and of the board of land commissioners and all other duties required of him by law;

(11) register marks as provided in Title 30, chapter 13, part 3;

(12) report annually to the legislative council all watercourse name changes received pursuant to 85-2-134 for publication in the Laws of Montana;

(13) keep a register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application."

Section 10. Section 77-1-101, MCA, is amended to read:

**"77-1-101. Definitions.** Unless the context requires otherwise *and except for the definition of state land in [section 1]*, in this title the following definitions apply:

(1) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(2) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of this state.

(3) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

(4) "State land" or "lands" means lands granted to the state by the United States for any purpose, either directly or through exchange for other lands; lands deeded or devised to the state from any person; and lands that are the property of the state through the operation of law. The term does not include lands the state conveys through the issuance of patent; lands used for building sites, campus grounds, or experimental purposes by any state institution that are the property of that institution; or lands acquired through foreclosure of any investments purchased under the provisions of 17-6-211."

Section 11. **Repealer.** Sections 2-17-121 through 2-17-126, MCA, are repealed.

Section 12. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 13. **Codification instruction.** Sections 1 through 7 are intended to be codified as an integral part of Title 77, chapter 1, and the provisions of Title 77, chapter 1, apply to sections 1 through 7.

Approved April 14, 1987.

**CHAPTER NO. 468**

[HB 161]

AN ACT PROVIDING THAT NEITHER THE DEPARTMENT OF HIGHWAYS NOR A LOCAL AUTHORITY MAY RESTRICT THE OPERATION OF VEHICLES CARRYING PERISHABLE AGRICULTURAL SEEDS ON A PUBLIC HIGHWAY IF CERTAIN CONDITIONS ARE MET; AMENDING SECTION 61-10-128, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-10-128, MCA, is amended to read:

**“61-10-128. When authorities may restrict right to use roadway.** (1) *Neither the department nor a local authority may alter the limitations provided in 61-10-101 through 61-10-110 or substitute other limitations or requirements, except as provided in this section.*

(2) The department by order, or a local road authority by ordinance or resolution, may prohibit the operation of or impose restrictions on the weight and speed of a vehicle traveling on a public highway under its respective jurisdiction and for which it is responsible for maintenance whenever the highway will be seriously damaged or destroyed by deterioration, rain, snow, or other climatic conditions, unless the use of vehicles on the highway is prohibited or the permissible vehicle weights and speed are reduced. The department or the authority which enacts the ordinance or resolution shall erect signs designating the department's order or the authority's ordinance or resolution at each end of that portion of the highway affected, and the order or ordinance or resolution is not effective until the signs are erected. The department, or the authority by ordinance or resolution, may prohibit the operation of trucks or other commercial vehicles, or impose limitations on their weight on designated highways, *subject to the provisions of subsection (3).* These prohibitions and limitations shall be designated by appropriate signs placed on the highways.

(3) *Neither the department nor a local authority may prohibit the operation of or impose a restriction on the weight of a vehicle loaded with perishable agricultural seeds that is traveling on a public highway if:*

(a) *the vehicle is being operated within its legal licensed gross vehicle weight; and*

(b) *the driver has in his possession a federal-state inspection certificate issued for the load.”*

Section 2. **Extension of authority.** Any existing authority of the department of highways to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective on passage and approval.

**Section 4. Termination.** This act terminates June 30, 1989.

Approved April 14, 1987.

## CHAPTER NO. 469

[HB 372]

### AN ACT REVISING CERTAIN INSURANCE FEES; AMENDING SECTION 33-2-708, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-2-708, MCA, is amended to read:

**"33-2-708. Fees and licenses.** (1) The commissioner shall collect in advance and the persons so served shall so pay to the commissioner the following fees and licenses:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (b) below) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with such application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers ..... \$ 300.00

(B) foreign insurers ..... 300.00

(ii) annual continuation of certificate of authority ..... 300.00

(iii) reinstatement of certificate of authority ..... 25.00

(iv) amendment of certificate of authority ..... 50.00

(b) articles of incorporation:

(i) filing original articles of incorporation of domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state ..... 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation ..... 25.00

(c) filing bylaws or amendment thereof where required ..... 10.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority ..... 25.00

|                                                                                                                           |        |
|---------------------------------------------------------------------------------------------------------------------------|--------|
| (e) resident agent's license:                                                                                             |        |
| (i) application for original license, including issuance of license, if issued (life and/or disability) .....             | 15.00  |
| (ii) application for original license, including issuance of license, if issued (other than life and/or disability) ..... | 15.00  |
| (iii) appointment of agent, each insurer .....                                                                            | 10.00  |
| (iv) annual renewal, each insurer .....                                                                                   | 10.00  |
| (v) temporary license .....                                                                                               | 10.00  |
| (vi) amendment of license (excluding additions thereto) or reissuance of master license .....                             | 10.00  |
| (f) nonresident agent's license:                                                                                          |        |
| (i) application for original license, including issuance of license, if issued (life and/or disability) .....             | 100.00 |
| (ii) application for original license, including issuance of license, if issued (other than life and/or disability) ..... | 100.00 |
| (iii) appointment of agent, each insurer .....                                                                            | 10.00  |
| (iv) annual renewal, each insurer .....                                                                                   | 10.00  |
| (v) amendment of license (excluding additions thereto) or reissuance of master license .....                              | 10.00  |
| (g) solicitor's license:                                                                                                  |        |
| (i) application for original license, including issuance of license, if issued .....                                      | 15.00  |
| (ii) annual renewal of license .....                                                                                      | 15.00  |
| (iii) appointment of solicitor .....                                                                                      | 10.00  |
| (h) examination for license as agent or solicitor, each examination .....                                                 | 15.00  |
| (i) surplus line agent's license:                                                                                         |        |
| (i) application for original license and for issuance of license, if issued .....                                         | 50.00  |
| (ii) annual renewal of license .....                                                                                      | 50.00  |
| (j) adjuster's license:                                                                                                   |        |
| (i) application for original license and for issuance of license, if issued .....                                         | 15.00  |
| (ii) annual renewal of license .....                                                                                      | 15.00  |
| (k) insurance vending machine license, each machine, each year .....                                                      | 10.00  |

(l) commissioner's certificate under seal (except when on certificates of authority or licenses) ..... 10.00

(m) copies of documents on file in the commissioner's office, per page ..... .50

(n) policy forms:

(i) filing each policy form ..... 25.00

(ii) filing each application, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks ..... 10.00

(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days ..... 100.00

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706 collected by him pursuant to Title 33 and the rules adopted thereunder.

(3) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 will be refunded.

(4) All fees and examination and miscellaneous charges, except fines or penalties or those amounts received pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by the commissioner pursuant to Title 33 and the rules adopted thereunder must be deposited in the insurance regulatory trust account pursuant to 17-2-121 through 17-2-123."

Section 2. **Effective date.** This act is effective May 1, 1987.

Approved April 14, 1987.

## CHAPTER NO. 470

[HB 852]

AN ACT TO REQUIRE THAT FUNDS DERIVED BY THE OFFICE OF PUBLIC INSTRUCTION FROM THE MEDIA LIBRARY AND DIVISION OF RESOURCES AND ASSESSMENT BE DEPOSITED IN ACCOUNTS IN THE STATE SPECIAL REVENUE FUND; AND AMENDING SECTIONS 20-3-108 AND 20-7-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-3-108, MCA, is amended to read:

**"20-3-108. Division of resources and assessment account.** *There is a resources and assessment account in the state special revenue fund. Funds derived from the sale of educational materials or services provided by the division of resources and assessment shall be deposited in the resources and assessment account. In addition to other available funds, the superintendent of public instruction shall use these funds for the operation*

and maintenance of the division of resources and assessment as authorized by 20-3-106.”

Section 2. Section 20-7-201, MCA, is amended to read:

**“20-7-201. State visual, aural, and other educational media library.** A library of visual, aural, and other educational media shall be established and maintained by the superintendent of public instruction. The media shall be selected by the superintendent of public instruction on the basis of their usefulness as teaching aids and resources for schools and other educational groups within the state and shall be made available to such schools and groups on a rental fee basis. The rental fees for the use of the materials in the library shall be set by the superintendent of public instruction and shall be deposited in *the audiovisual and media library account in the state special revenue fund*. The superintendent of public instruction may use these funds, as well as any other funds advanced by a legislative appropriation to the *audiovisual and media library account*, for the operation, maintenance, enlargement, and other related costs of the library.”

Approved April 14, 1987.

## CHAPTER NO. 471

[SB 122]

AN ACT REVISING THE PROCEDURE FOR APPEALING COUNTY TAX APPEAL BOARD DECISIONS TO THE STATE TAX APPEAL BOARD; ALLOWING THE STATE TAX APPEAL BOARD TO USE A HEARINGS OFFICER; PERMITTING A TAPE RECORDED RECORD IN LIEU OF A TRANSCRIPT OF A HEARING; AMENDING SECTIONS 15-2-301 AND 15-15-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A PARTIAL TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-2-301, MCA, is amended to read:

**“15-2-301. Appeal of county tax appeal board decisions.** (1) *The county tax appeal board shall mail a copy of its decision to the taxpayer and to the property assessment division of the department of revenue. Any person or the department in behalf of the state or any municipal corporation aggrieved by the action of the county tax appeal board may appeal to the state board by filing with the state tax appeal board a notice of appeal within 30 calendar days after the receipt of the decision of the county board, which notice shall specify the action complained of and the reasons assigned for such complaint. Notice of acceptance of an appeal must be given to the county tax appeal board by the state tax appeal board. The state board shall set such appeal for hearing either in its office in the capital or such county seat as the board considers advisable to facilitate the performance of its duties or to accommodate parties in interest and shall*

give to the appellant and to the *respondent* at least 15 calendar days' notice of the time and place of such hearing.

(2) At the time of giving notice of *acceptance of an appeal*, the state board may require the county board to certify to it the minutes of the proceedings resulting in such action and all testimony taken in connection therewith. The state board may, in its discretion, determine the appeal on such record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony. For the purpose of expediting its work, the state board may refer any appeal to one of its members and the person so designated shall have and exercise all the powers of the board in conducting such hearings and shall, as soon as possible thereafter, report the proceedings, together with a transcript or a *tape recording of the hearing*, to the board, and the state board shall determine such appeal on the record so made.

(3) On all hearings at county seats throughout the state, the state board or the member designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the testimony received and the cost thereof may be paid out of the general appropriation for the board.

(4) In connection with any appeal under this section, the state board shall not be bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. The decision of the state tax appeal board shall be final and binding upon all interested parties unless reversed or modified by judicial review. To the extent this section is in conflict with the Montana Administrative Procedure Act, this section shall supersede that act. The state tax appeal board may not amend or repeal any administrative rule of the department. The state tax appeal board must give an administrative rule full effect unless the board finds any such rule arbitrary, capricious, or otherwise unlawful."

Section 2. Section 15-2-301, MCA, is amended to read:

**"15-2-301. Appeal of county tax appeal board decisions.** (1) Any person or the department of revenue in behalf of the state or any municipal corporation aggrieved by the action of any county tax appeal board may appeal to the state board by filing with the county tax appeal board a notice of appeal and a duplicate thereof with the state board within 20 calendar days after the receipt of the decision of the county board, which notice shall specify the action complained of and the reasons assigned for such complaint. The county tax appeal boards shall mail their decisions to the property assessment division of the department. Receipt, for purposes of appeal, by the department is when the county tax appeal board decision is received by the property assessment division of the department. The state board shall set such appeal for hearing either in its office in the capital or such county seat as the board considers advisable to facilitate the performance of its duties or to accommodate parties in interest and shall give to the appellant and to the county board at least 15 calendar days' notice of the time and place of such hearing.

(2) At the time of giving such notice, the state board may require the county board to certify to it the minutes of the proceedings resulting in



such action and all testimony taken in connection therewith. The state board may, in its discretion, determine the appeal on such record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony. For the purpose of expediting its work, the state board may refer any such appeal to one of its members and the person so designated shall have and exercise all the powers of the board in conducting such hearings and shall, as soon as possible thereafter, report the proceedings, together with a transcript of the testimony received, to the board and the state board shall determine such appeal on the record so made.

*(3) Whenever it has at least 1,000 appeals pending, the board may employ as a hearings officer a person with legal training, appraisal experience, or experience as a member of a tax appeal board. However, a member of a county tax appeal board may not serve as hearings officer in a matter that he heard as a member of the county board. For the purpose of expediting its work, the state board may refer any appeal to one of its members or to a hearings officer and the person so designated shall have and exercise all the powers of the board in conducting such hearings and shall, as soon as possible thereafter, report the proceedings, together with a transcript of the testimony received, to the board and the state board shall determine such appeal on the record so made.*

(4) On all hearings at county seats throughout the state, the state board or the person designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the testimony received and the cost thereof may be paid out of the general appropriation for the board.

(5) In connection with any appeal under this section, the state board shall not be bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. The decision of the state tax appeal board shall be final and binding upon all interested parties unless reversed or modified by judicial review. To the extent this section is in conflict with the Montana Administrative Procedure Act, this section shall supersede that act. The state tax appeal board may not amend or repeal any administrative rule of the department. The state tax appeal board must give an administrative rule full effect unless the board finds any such rule arbitrary, capricious, or otherwise unlawful."

Section 3. Section 15-15-103, MCA, is amended to read:

**"15-15-103. Examination of applicant — failure to hear application.** (1) Before the county tax appeal board grants any application or makes any reduction applied for, it must examine on oath the person or agent making the application, touching the value of the property of each person. No reduction must be made unless such person or agent makes an application, as provided in 15-15-102, and attends and answers all questions pertinent to the inquiry. The testimony of all witnesses upon such hearing must be taken in shorthand or by stenotype or electronically recorded and preserved for 1 year. If the decision of the county tax appeal board is appealed, all testimony must be transcribed or otherwise reduced to writing and forwarded, together with all exhibits, to the state tax appeal board. The date of hearing, the proceedings before the board, and the decision

must be entered upon the minutes of the board, and the board shall notify the applicant of its decision by mail within 3 days thereafter. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than 3 days after the board holds its final hearing of the year.

(2) If a county tax appeal board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, except that listed in 15-2-302, the taxpayer's application is considered to be granted on the day following the board's final meeting for that year. The county treasurer shall enter the appraisal or classification sought in the application in the assessment book."

**Section 4. Extension of authority.** Any existing authority of the state tax appeal board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 5. Effective date — termination.** (1) This act is effective on passage and approval.

(2) Section 2 terminates June 30, 1989.

Approved April 15, 1987.

## CHAPTER NO. 472

[SB 142]

AN ACT TO GIVE THE IMMEDIATELY PRECEDING OWNER OF FORECLOSED AGRICULTURAL LAND THE RIGHT TO PURCHASE OR LEASE SUCH LAND BY MEETING THE TERMS AND CONDITIONS OF THE HIGHEST OFFER MADE TO PURCHASE OR LEASE SUCH LAND; AND PROVIDING AN APPLICABILITY DATE, AN IMMEDIATE EFFECTIVE DATE, AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** As used in [this act], the following definitions apply:

(1) "Agricultural land" means real property that is principally used for the production of livestock, poultry, field crops, fruit, or other animal or vegetable matter for food or fiber.

(2) "Holder of foreclosed agricultural land" means a national- or state-chartered bank, a mutual or stock insurance company regulated by any state, a mortgage company, a farm credit system lender, or a state or federal agency that has acquired the right to dispose of agricultural land through foreclosure of a mortgage on the land or through execution of a judgment obtained by it against the immediately preceding owner of the land.

**Section 2. Right of first refusal.** (1) A holder of foreclosed agricultural land shall, when leasing such land or any portion thereof to a third party, make a good faith offer to lease the land or portion thereof to the immediately preceding owner if such owner has financial resources and farm management skills and experience to assure a reasonable prospect of success in the proposed farming operation. The offer to lease land to the immediately preceding owner must be upon the same terms and conditions offered by a third party that are acceptable to the lessor.

(2) A holder of foreclosed agricultural land shall, when selling such land or any portion thereof to a third party, make a good faith offer to sell the land or portion thereof to the immediately preceding owner for the same price offered by a third party that is acceptable to the seller.

(3) An offer to lease to the immediately preceding owner is required each time the foreclosed agricultural land is leased to a third party, except that once the immediately preceding owner fails to meet the terms of a lease offer, the right to meet future offers is extinguished and no offer to lease is required. An offer to sell to the immediately preceding owner is required only the first time the property is sold to a third party.

(4) An offer sent by certified mail to the name and address filed by the immediately preceding owner under [section 4] is a good faith offer.

(5) This section does not apply to foreclosed agricultural land if such land is owned by the state pursuant to The Enabling Act (Act of February 22, 1889, Ch. 180, 25 Stat. 676).

**Section 3. Time to exercise right.** (1) An immediately preceding owner of foreclosed agricultural land may not exercise the right to lease agricultural land later than 15 days after receiving an offer to lease under [section 2] and may not exercise the right to purchase agricultural land later than 60 days after receiving an offer to sell under [section 2].

(2) The right of the immediately preceding owner to purchase or lease any foreclosed agricultural land under [section 2] applies only for the same length of time that real estate may be held by a bank under 32-1-423(2).

**Section 4. Notice required from immediately preceding owner.**

(1) An immediately preceding owner must notify in writing the holder of foreclosed agricultural land of the name and current address of one individual who is authorized to exercise the right of first refusal on behalf of the immediately preceding owner. If the immediately preceding owner is an entity for which no single individual is ordinarily authorized to act, the notice shall also indicate the necessary transfer of authority that enables the individual named in the notice to act.

(2) Failure of the immediately preceding owner to file the notice required by subsection (1) within 25 days after publication of notice of foreclosure or execution sale is served or within 15 days after a change of his address operates as a waiver of the right of first refusal.

(3) A foreclosing creditor, within the definition of holder of foreclosed agricultural land, or a sheriff must advise the immediately preceding owner at the time notice of foreclosure or writ of execution is served of the right

of first refusal granted in [section 2] and of the notice requirement of subsection (1).

**Section 5. Applicability.** This act applies to agricultural land acquired by foreclosure or by judgment in satisfaction of debt after the effective date of this act until June 30, 1991, and no right of first refusal under this act may accrue after June 30, 1991.

**Section 6. Effective date — termination date.** This act is effective on passage and approval and terminates June 30, 1996.

Approved April 15, 1987.

## CHAPTER NO. 473

[SB 184]

AN ACT AMENDING SECTION 75-1-201, MCA, TO DECLARE THAT THE ISSUANCE OF A PERMIT TO DRILL AN OIL OR GAS WELL IS NOT A MAJOR ACTION OF STATE GOVERNMENT UNDER THE PROVISIONS OF THE MONTANA ENVIRONMENTAL POLICY ACT UNTIL A PROGRAMMATIC ENVIRONMENTAL STATEMENT IS ADOPTED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-1-201, MCA, is amended to read:

**"75-1-201. General directions — environmental impact statements.** (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state shall be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except as provided in subsection (2), shall:

(i) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(ii) identify and develop methods and procedures which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(iii) include in every recommendation or report on proposals for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on:

- (A) the environmental impact of the proposed action;
- (B) any adverse environmental effects which cannot be avoided should the proposal be implemented;
- (C) alternatives to the proposed action;
- (D) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and
- (E) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;
- (iv) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;
- (v) recognize the national and long-range character of environmental problems and, where consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of mankind's world environment;
- (vi) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;
- (vii) initiate and utilize ecological information in the planning and development of resource-oriented projects; and
- (viii) assist the environmental quality council established by 5-16-101; and
- (c) prior to making any detailed statement as provided in subsection (1)(b)(iii), the responsible state official shall consult with and obtain the comments of any state agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate state, federal, and local agencies which are authorized to develop and enforce environmental standards shall be made available to the governor, the environmental quality council, and the public and shall accompany the proposal through the existing agency review processes.
- (2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.
- (3) (a) *Until the board of oil and gas conservation adopts a programmatic environmental statement, but no later than June 30, 1989, the issuance of a permit to drill a well for oil or gas is not a major action of state government as that term is used in subsection (1)(b)(iii).*
- (b) *The board of oil and gas conservation shall adopt a programmatic statement by June 30, 1989, that must include but not be limited to:*
  - (i) *such environmental impacts as may be found to be associated with the drilling for and production of oil and gas in the major producing basins and ecosystems in Montana;*
  - (ii) *such methods of accomplishing drilling and production of oil and gas as may be found to be necessary to avoid permanent impairment of the*

*environment or to mitigate long-term impacts so that the environment and renewable resources of the ecosystem may either be returned to conditions similar to those existing before drilling or production occurs or conditions that reflect a natural progression of environmental change;*

*(iii) the process that will be employed by the board of oil and gas conservation to evaluate such environmental impacts of individual drilling proposals as may be found to exist;*

*(iv) an appropriate method for incorporating such environmental review as may be found to be necessary into the board's rules and drill permitting process and for accomplishing the review in an expedient manner;*

*(v) the maximum time periods that will be required to complete the drill permitting process, including any environmental review; and*

*(vi) a record of information and analysis for the board of oil and gas conservation to rely upon in responding to public and private concerns about drilling and production.*

*(c) The governor shall direct and have management responsibility for the preparation of the programmatic statement, including responsibility on behalf of the board of oil and gas conservation for the disbursement and expenditure of funds necessary to complete the statement. The facilities and personnel of appropriate state agencies must be used to the extent the governor deems necessary to complete the statement. The governor shall forward the completed draft programmatic statement to the board of oil and gas conservation for hearing pursuant to the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the statement to the board for adoption and use in the issuance of permits to drill for oil and gas."*

**Section 2. Effective date.** This act is effective on passage and approval.

Approved April 15, 1987.

## CHAPTER NO. 474

[SB 187]

**AN ACT ALLOWING SPECIAL VEHICLE COMBINATIONS TO OPERATE BY SPECIAL PERMIT UPON INTERSTATE HIGHWAYS; INCREASING THE SPECIAL PERMIT FEES FOR SPECIAL COMBINATIONS; ESTABLISHING A 55 MILE PER HOUR SPEED LIMIT ON THE OPERATION OF SPECIAL COMBINATION VEHICLES; AUTHORIZING THE DEPARTMENT OF HIGHWAYS TO PRESCRIBE DRIVER QUALIFICATIONS, EQUIPMENT, AND SAFETY STANDARDS SPECIFICALLY FOR SPECIAL VEHICLE COMBINATIONS; AMENDING SECTIONS 61-8-312, 61-10-107 AND 61-10-124, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.**

**WHEREAS, Montana is surrounded by states and provinces that allow motor carriers to pull special vehicle combinations upon their four-lane highways while Montana prohibits such combinations; and**

WHEREAS, shippers will increasingly route their shipments around Montana to the detriment of Montana's transportation industry and of public revenues if special vehicle combinations continue to be excluded here; and

WHEREAS, highway traffic safety will be enhanced by the allowance and strict regulation of special vehicle combinations.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-8-312, MCA, is amended to read:

**"61-8-312. Special speed limitations on trucks, truck tractors, motor-driven cycles, and vehicles towing house trailers.** (1) No person shall operate any truck or truck tractor the gross weight of which exceeds 8,000 pounds at a speed greater than 65 miles per hour on those completed sections of interstate and four-lane divided highways and 60 miles per hour on those completed sections of primary and secondary highways. However, the truck nighttime speed limit shall not exceed that of automobiles as stated in 61-8-303.

(2) *No person shall operate any truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles subject to special permits under 61-10-124(4) at a speed greater than 55 miles per hour.*

(3) No person shall operate any motor-driven cycle at any time mentioned in 61-9-201 at a speed greater than 35 miles per hour unless such motor-driven cycle is equipped with a headlamp or lamps which are adequate to reveal a person or vehicle at a distance of 300 feet ahead.

(4) No person shall operate a vehicle which is towing a house trailer at a speed greater than a maximum of 50 miles per hour."

Section 2. Section 61-10-124, MCA, is amended to read:

**"61-10-124. Special permits — fee.** (1) Except as provided in subsections (2)(b) and (4), in addition to the regular registration and gross vehicle weight fees, a fee of \$10 for each trip permit and a fee of \$75 for each term permit issued for size and weight in excess of that specified in 61-10-101 through 61-10-110 shall be paid for all movements under special permits on the public highways under the jurisdiction of the department.

(2) (a) Except as provided in subsections (2)(b) and (4), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; and an overheight vehicle, combination of vehicles, load, or other thing in excess of 13 ½ feet, or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in subsection (4). Special permits for vehicle combinations may specify and special permits under subsection (4) must specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited

to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). The fee for this permit is \$75. This permit covers a period of 1 year and expires on December 31 of each year with no grace period.

(c) With payment of the appropriate gross weight fee required by 61-10-203 and with payment of the fee prescribed in subsection (1), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(4) *The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:*

*(a) the combination may be operated only on highways that are part of the federal-aid interstate system as defined in 60-1-103 and within a 2-mile radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.*

*(b) a combination of vehicles powered by a cab-over (tilt cab) type truck-tractor or a truck may not exceed overall length of 105 feet, inclusive of front and rear bumpers and overhang;*

*(c) a combination of vehicles powered by a conventional truck-tractor may not exceed overall length of 110 feet, inclusive of front and rear bumpers and overhang;*

*(d) no individual cargo unit of the combination may exceed 28 ½ feet in length and 102 inches in width;*

*(e) gross weight fees under 61-10-203 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;*

*(f) the combination must have a restricted route permit under 61-10-107(3) and a special overlength permit issued at a fee of \$200 for a term permit or \$20 for each trip permit;*

*(g) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and*

*(h) the department may enforce any other restrictions determined by the department to be necessary."*

Section 3. Section 61-10-107, MCA, is amended to read:



**"61-10-107. Maximum gross weight — when permit required.**

(1) An axle may not carry a load in excess of 20,000 pounds, and no two consecutive axles more than 40 inches or less than 96 inches apart may carry a load in excess of 34,000 pounds. For purposes of this section, axles 40 inches or less apart are considered as a single axle. A vehicle or combination may not have more than nine axles. The maximum gross weight allowed on a vehicle, group of axles, or combination of vehicles shall be determined by the formula  $W \text{ equals } 500 (LN/N \text{ minus } 1 \text{ plus } 12N \text{ plus } 36)$  in which  $W$  equals gross weight,  $L$  equals wheel base in feet, and  $N$  equals number of axles, except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the overall distance between the first and last axles of such consecutive sets of tandem axles is 36 feet or more.

(2) Notwithstanding a vehicle's conformance with the requirements of subsection (1), its maximum load per inch of tire width, excluding the steering axle, may not exceed 600 pounds, based on the table in 61-10-105(3).

(3) If the gross weight of a vehicle or combination exceeds 80,000 pounds, the vehicle or combination must have a special permit, which may be issued in the discretion of the department of highways based on evaluation of safety, highway capacity, and economics of highway maintenance and vehicle operation. The fee shall be \$20 per trip permit or \$100 per term permit. A term permit may not be issued for a period of time greater than the period for which the GVW license is valid. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. Permits may specify *and permits issued under 61-10-124(4) must specify highway routing.*

(4) A special permit issued under subsection (3) for the transportation of agricultural products by farm vehicles from a harvesting combine or other harvesting machinery to the point of first unloading shall be for the full term of the harvest season of the agricultural product transported.

(5) This section does not apply to highways which are a part of the national system of interstate and defense highways (as referred to in 23 U.S.C. 127) when application of this section would prevent this state from receiving federal funds for highway purposes."

**Section 4. Violation — penalty.** A person, firm, or corporation convicted of violating any provision of 61-10-124(4) or any restriction on the special permits issued by the department under 61-10-124(4) shall be punished by a fine of not less than \$500 or more than \$1,000 and all special permits issued for the operation of the combination in violation shall be confiscated. The combination must be separated into combinations of legal length before the units may proceed.

**Section 5. Rules regarding overlength vehicles.** The department of highways may adopt rules to implement 61-10-124(4) and may by rule prescribe standards for the qualifications of drivers operating special vehicle combinations under 61-10-124(4) and for the equipping and operation of such combinations to enhance highway traffic safety.

**Section 6. Codification instruction.** Sections 4 and 5 are intended to be codified as an integral part of Title 61, chapter 10, part 1, and the provisions of Title 61 apply to sections 4 and 5.

**Section 7. Effective date.** This act is effective July 1, 1987.

**Section 8. Termination date.** This act shall terminate on July 1, 1989.

Approved April 15, 1987.

## CHAPTER NO. 475

[SB 226]

AN ACT REVISING PROCEDURES FOR YOUTH DETENTION; REQUIRING A PROBABLE CAUSE HEARING AFTER A YOUTH HAS BEEN TAKEN INTO CUSTODY; PROVIDING DETENTION PROCEDURES FOR A YOUTH BEFORE A PROBABLE CAUSE HEARING; ALLOWING RELEASE OF A YOUTH ON BAIL; ALLOWING ESTABLISHMENT OF REGIONAL DETENTION FACILITIES; GRANTING THE DEPARTMENT OF INSTITUTIONS RULE-MAKING AUTHORITY; AMENDING SECTIONS 7-32-2221, 41-5-103, 41-5-303, 41-5-305, 41-5-306, 41-5-502, 41-5-802, AND 53-30-229, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE FOR A PORTION OF THE ACT.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Hearing for probable cause — detention.** (1) A youth who has been taken into custody may not be held longer than 24 hours, excluding weekends and legal holidays, unless a hearing has been held by the court to determine whether there is probable cause to believe he is a delinquent youth or a youth in need of supervision.

(2) At the probable cause hearing, the court shall inform the youth of his constitutional rights and his rights under this chapter.

(3) A parent, guardian, or legal custodian of the youth may be held in contempt of court for failing to be present at the probable cause hearing, unless he:

(a) cannot be located through diligent efforts of the investigating peace officer or peace officers; or

(b) is excused by the court for good cause.

(4) At the probable cause hearing, the court may appoint a guardian ad litem as provided in 41-5-512.

(5) If the court determines that there is probable cause to believe the youth is delinquent or is a youth in need of supervision and if the youth meets the criteria in 41-5-305, the youth may be placed in a shelter care facility or detention facility as provided in 41-5-306 [but may not be placed

in a jail or other facility for adults]. If the court does not find probable cause, the youth must be immediately released.

**Section 2. Placement of youth before probable cause hearing.** (1) Before the probable cause hearing, a youth, except for a youth alleged to be a youth in need of care, may be held in a jail or other facility for adults only if:

(a) the facilities in 41-5-306 are not available or do not provide adequate security;

(b) the placement is in an area physically and visually separate from those of adults; and

(c) it appears that public safety and protection reasonably require the youth to be held.

(2) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with a crime shall inform the court immediately if a person who is or appears to be under the age of 18 years is received at the facility.

**Section 3. Bail.** A youth placed in a detention or shelter care facility may be released on bail. The court shall use the provisions of Title 46, chapter 9, as guidance. In determining the amount of bail, the court shall consider the financial ability of the youth and the parents or legal custodian of the youth.

**Section 4. Regional detention facility.** (1) A regional detention facility may be established and maintained through cooperation or by cooperative agreement of more than one county or city.

(2) Each regional detention facility must be licensed by the department of institutions.

(3) The county determined by the court as the residence of the youth is responsible for the cost of the detention of the youth, including medical expenses incurred during detention.

(4) Counties receiving detention services must be billed monthly for services provided during the preceding month and may be refused services if bills are not paid within 60 days of receipt of a statement.

**Section 5. Rules.** The department of institutions shall make rules governing the licensing procedures for regional and county detention facilities.

**Section 6.** Section 41-5-103, MCA, is amended to read:

**"41-5-103. Definitions.** For the purposes of the Montana Youth Court Act, unless otherwise stated the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Commit" means to transfer to legal custody.

(4) "Court", when used without further qualification, means the youth court of the district court.

(5) "Foster home" means a private residence approved by the court for placement of a youth.

(6) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(7) "Judge", when used without further qualification, means the judge of the youth court.

(8) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

- (i) have physical custody of the youth;
- (ii) determine with whom the youth shall live and for what period;
- (iii) protect, train, and discipline the youth; and
- (iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

(10) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(11) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court, the judge, and probation officers.

(12) "Delinquent youth" means a youth:

(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(13) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) habitually disobeys the reasonable and lawful demands of his parents or guardian or is ungovernable and beyond their control;

(c) being subject to compulsory school attendance, is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

(14) "Youth in need of care" means a youth as defined in 41-3-102.

(15) "Custodian" means a person other than a parent or guardian to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(16) "Necessary parties" include the youth, his parents, guardian, custodian, or spouse.

(17) "State youth correctional facility" means a residential facility for the rehabilitation of delinquent youth such as Pine Hills school in Miles City, and Mountain View school in Helena.

(18) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(19) "Detention" means the temporary substitute care of youth in physically restricting facilities.

(20) "*Detention facility*" means a physically restricting facility designed to prevent a youth from departing at will.

(21) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made under the jurisdiction of a youth court proceeding.

(22) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian. Nothing in this definition is intended to include juvenile correctional facilities, evaluation facilities, mental health facilities and services, and aftercare programs operated by the department of institutions."

Section 7. Section 41-5-303, MCA, is amended to read:

**"41-5-303. Rights of youth taken into custody.** When a youth is *taken into custody* for investigation or questioning upon a matter which could result in a petition alleging that the youth is either delinquent or in need of supervision, the following requirements must be met:

(1) The youth shall be immediately and effectively advised of his constitutional rights and his rights under this chapter.

(2) The youth may waive such rights under the following situations:

(a) when the youth is under the age of 12 years, the parents of the youth may make an effective waiver;

(b) when the youth is over the age of 12 years and the youth and his parents agree, they may make an effective waiver; and

(c) when the youth is over the age of 12 years and the youth and his parents do not agree, the youth may make an effective waiver only with advice of counsel.

*(3) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified."*

Section 8. Section 41-5-305, MCA, is amended to read:

**"41-5-305. Detention and shelter care of youth.** (1) *After a probable cause hearing provided for in [section 1], a youth may not be placed in a detention facility unless:*

(a) *he has allegedly committed one of the following acts which if committed by an adult would constitute a criminal offense:*

(i) *criminal homicide as defined in 45-5-101;*

(ii) *arson as defined in 45-6-103;*

(iii) *aggravated or felony assault as defined in 45-5-202;*

(iv) *robbery as defined in 45-5-401;*

(v) *burglary or aggravated burglary as defined in 45-6-204;*

(vi) *sexual intercourse without consent as defined in 45-5-503;*

(vii) *aggravated kidnapping as defined in 45-5-303;*

(viii) *possession of explosives as defined in 45-8-335;*

(ix) *criminal sale of dangerous drugs for profit as included in 45-9-101;*  
or

(x) *attempt as defined in 45-4-103 of any of the acts enumerated in subsections (1)(a)(i) through (1)(a)(ix);*

(b) *he has escaped from a correctional facility;*

(c) *he has violated a valid court order or an aftercare agreement;*

(d) *his detention is required to protect persons or property;*

(e) *there is good reason to believe the youth will not appear for court proceedings as ordered; or*

(f) *he meets the criteria for detention established by the youth court in the judicial district with jurisdiction over the youth.*

(2) *A youth may not be placed in a shelter care facility unless:*

(a) *the youth and his family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;*

(b) *the youth needs to be protected from physical or emotional harm;*

(c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior;

(d) shelter care is necessary to assess the youth and his environment;

(e) shelter care is necessary to provide adequate time for case planning and disposition; or

(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family."

Section 9. Section 41-5-306 MCA, is amended to read:

**"41-5-306. Place of shelter care or detention.** (1) *After a probable cause hearing provided for in [section 1], a youth alleged to be a youth in need of supervision may be placed only in:*

(a) a licensed youth foster home as defined in 41-3-1102;

(b) a facility operated by a licensed child welfare agency; or

(c) a licensed youth group home as defined in 41-3-1102.

(2) A youth alleged to be in need of care shall be placed only in the facilities stated in subsection (1) of this section and shall not be placed in a jail or other facility intended or used for the detention of adults charged with criminal offenses.

(3) *After a probable cause hearing provided for in [section 1], a youth alleged to be a delinquent youth may be placed only in the facilities described in subsection (1)[,] in a detention facility[, or in a jail or other facility for the detention of adults only if the facilities in subsection (1) are not available or do not provide adequate security and the detention is in an area physically and visually separate and removed from that of adults]."*

Section 10. Section 41-5-502, MCA, is amended to read:

**"41-5-502. Summons.** (1) After a petition has been filed, summons shall be served directly to:

(a) the youth;

(b) his parent or parents having actual custody of the youth or his guardian or custodian, as the case may be; and

(c) such other persons as the court may direct.

(2) The summons shall:

(a) require the parties to whom directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition;

(b) advise the parties of their right to counsel under the Montana Youth Court Act; and

(c) have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears from any sworn statement presented to the court that the youth needs to be placed in detention or shelter care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take him to the place of detention or shelter care designated by the court, subject to the rights of the youth and parent or person having *legal* custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and postdetention proceedings.

(5) If any youth is in shelter care or detained under any provision of this chapter pending an adjudication, the court, upon petition of the youth, his parents or guardian, or his counsel, shall, as soon as practicable, conduct a hearing in order to determine whether the circumstances of the case require such detention or shelter care and the form the detention or shelter care should take. All mentioned parties shall be notified of such petition process at the time of initial detention or shelter care."

Section 11. Section 41-5-802, MCA, is amended to read:

**"41-5-802. Shelter care and detention facilities.** (1) (a) In all counties the county commissioners may provide, by purchase, lease, or otherwise, a place to be known as the youth detention facility, which shall not be used for the confinement of adult persons charged with criminal offenses, where delinquent youths and youths in need of supervision may be detained until final disposition, which place shall be maintained by the county as in other like cases.

(b) The *county commissioners* may appoint such personnel as required, who shall have charge of said facility and of the youths detained therein.

(c) The compensation of such personnel shall be fixed by the *county commissioners*, and such compensation and the maintaining of such facility shall be paid out of the county treasury which may be supplemented by state appropriation and federal funds.

(d) *The county commissioners shall provide for inspection of any county detention facility every 3 months. Inspection must include but is not limited to health, fire safety, security, rehabilitation programs, recreation, treatment of youths, and personnel training.*

(e) *The judge of the district youth court for the county shall inspect any detention facility at least once a year.*

(2) (a) *Counties, cities, or nonprofit corporations may provide by purchase, lease, or otherwise, a place to be known as a shelter care facility.*

(b) Such facility shall be physically unrestricting and may be used to provide shelter care for youth alleged or adjudicated delinquent, in need of supervision, or in need of care.

(c) Such facility shall be separate and apart from any facility housing adults charged with criminal offenses.



(d) State appropriations and federal funds may be received by the county, cities, or nonprofit corporations for establishment, maintenance, or operation of such facility.

(e) Such facility shall be furnished in a comfortable manner and be as nearly as possible like a family home.

(f) *Such facility may be operated in conjunction with a youth detention facility."*

Section 12. Section 7-32-2221, MCA, is amended to read:

**"7-32-2221. Segregation of prisoners — confinement of juveniles.** (1) Each county jail must contain a sufficient number of rooms to allow the sheriff, jail administrator, or private party jailer to separately confine classes of prisoners as may be necessary to the security and safety of those prisoners and the jail.

(2) Persons who are violent, disturbed, or inebriated must not be kept or put into the same room with other prisoners, nor shall male and female prisoners (except husband and wife) be kept or put into the same room.

(3) Juveniles may be confined only under conditions that comply with [sections 1 and 2]."

Section 13. Section 53-30-229, MCA, is amended to read:

**"53-30-229. Hearing on alleged violation of aftercare agreement — right to appeal outcome.** (1) When it is alleged by an aftercare counselor that a youth has violated the terms of his aftercare agreement, the youth shall be granted a hearing at the site of the alleged violation or in the county where the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that he should be returned to the juvenile facility from which he was released or a different plan for treatment should be pursued by the department of institutions.

(2) The youth, upon advice of an attorney, may waive his right to a hearing.

(3) With regard to this hearing, the youth shall be given:

(a) written notice of the alleged violation of his aftercare agreement, including notice of the purpose of the hearing;

(b) disclosure of the evidence against him and the facts constituting the alleged violation;

(c) opportunity to be heard in person and to present witnesses and documentary evidence to controvert the evidence against him and to show that there are compelling reasons which justify or mitigate the violation;

(d) opportunity to have the referee subpoena witnesses;

(e) the right to confront and cross-examine adverse witnesses;

(f) the right to be represented by an attorney;

(g) a record of the hearing; and

(h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the referee.

(4) The department shall appoint a referee, who shall not be an employee of the department, to conduct the hearing. In the conduct of the hearing, the department may request the county attorney's assistance as necessary. The department shall adopt rules necessary to effect a prompt and full review.

(5) If the referee finds, by a preponderance of the evidence, that the youth did in fact commit the violation, he shall make a recommendation to the department for the placement of the youth. In making this recommendation, the referee may consider mitigating circumstances. Final approval rests with the department and must be made within 10 days of the referee's recommendation.

(6) The youth may appeal from the decision at the hearing to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the department's decision. The youth may obtain a written transcript of the hearing from the department by giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department shall not be altered except for abuse of discretion or manifest injustice.

(7) Pending the hearing on a violation and pending the department's decision, a youth may not be detained except when his detention or care is required to protect the person or property of the youth or of others or he may abscond or be removed from the community. Procedures for taking into custody and detention of a youth charged with violation of his after-care agreement shall be as provided in 41-3-1111, [section 1], [section 2], and 41-5-306.

(8) If the decision is made to return the youth to the institution from which he was released and the youth appeals that decision, he shall await the outcome of the appeal at such institution."

**Section 14. Codification instructions.** (1) Sections 1 through 3 are intended to be codified as an integral part of Title 41, chapter 5, part 3, and the provisions of Title 41, chapter 5, part 3, apply to sections 1 through 3.

(2) Sections 4 and 5 are intended to be codified as an integral part of Title 41, chapter 5, part 8, and the provisions of Title 41, chapter 5, part 8, apply to sections 4 and 5.

**Section 15. Coordination instruction.** If both this act and House Bill No. 325 are passed and approved, then the rulemaking authority delegated

to the department of institutions in [section 5] is transferred to the department of family services.

**Section 16. Effective dates — termination date.** (1) Except as provided in subsections (2) and (3), sections 1 through 13 are effective October 1, 1987.

(2) The bracketed language in subsection (5) of section (1) is effective July 1, 1989.

(3) The bracketed language in subsection (3) of section 9 terminates July 1, 1989.

Approved April 15, 1987.

## CHAPTER NO. 476

[SB 241]

AN ACT REVISING AND CLARIFYING WHAT ITEMS ARE SUBJECT TO FORFEITURE BECAUSE OF THEIR CONNECTION TO DANGEROUS DRUG OFFENSES; PROVIDING FOR DISPOSITION TO THE ATTORNEY GENERAL, FOR DRUG LAWS ENFORCEMENT PURPOSES, OF THE NET PROCEEDS OF THE SALE OF ITEMS SEIZED THROUGH THE EFFORTS OF STATE EMPLOYEES; AND AMENDING SECTIONS 44-12-102, 44-12-205, AND 44-12-206, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 44-12-102, MCA, is amended to read:

**“44-12-102. Things subject to forfeiture.** (1) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9, except items used or intended for use in connection with quantities of marijuana in amounts less than 250 grams;

(c) except as provided in subsection (2)(d), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels:

(i) which are used or intended for use in unlawfully transporting or in any manner facilitating the transportation of anything enumerated in subsection (1)(a) or (1)(b) for the purpose of sale or receipt of such thing;

(ii) in which a controlled substance is unlawfully kept, deposited, or concealed; or

(iii) in which a controlled substance is unlawfully possessed by an occupant;

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9;

(f) all drug paraphernalia as defined in 45-10-101;

(g) *everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of Title 45, chapter 9; all proceeds traceable to such an exchange; and all money, negotiable instruments, and securities used or intended to be used to facilitate a violation of Title 45, chapter 9; and*

(h) *any real or personal property constituting or derived from proceeds obtained directly or indirectly from sale of a controlled substance in violation of Title 45, chapter 9.*

(2) (a) No conveyance used by a person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) No conveyance is subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without his knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to any violation of Title 45, chapter 9.

(d) No conveyance or container is subject to forfeiture under this section if it was used or intended for use in transporting less than 250 grams of marijuana."

Section 2. Section 44-12-205, MCA, is amended to read:

**"44-12-205. Disposition of property following hearing.** (1) If the court finds that the property was not used for the purpose charged or that the property listed in 44-12-102(1)(g) was used without the knowledge or consent of the owner, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for the purpose charged and that the property listed in 44-12-102(1)(g) was used with the knowledge or consent of the owner, the property shall be disposed of as follows:

(a) If proper proof of his claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due him is equal to or in excess of the value of the property as of the date of seizure, it being the purpose of this chapter to forfeit only the right, title, or interest of the owner. If the amount due the holder of the security interest is less than the value of the property, the property must be sold at public auction by the sheriff of the county in which the seizure was made in the same manner provided by law for the sale of property under execution or the state may return the property to the holder of the security interest without proceeding with an auction.

(b) If no claimant exists and the confiscating agency wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold as provided in subsection (2)(a).

(c) If a claimant who has presented proper proof of his claim exists and the confiscating agency wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

*(3) In making a disposition of property under this chapter, the court may take any action to protect the rights of innocent persons."*

Section 3. Section 44-12-206, MCA, is amended to read:

**"44-12-206. Disposition of proceeds of sale.** (1) Whenever property is seized, forfeited, and sold under the provisions of this chapter, the net proceeds of the sale must be distributed as follows:

(a) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property;

(b) the remainder, if any, to the county treasurer of the county in which the property was seized, who shall establish and maintain a drug forfeiture account and deposit the remainder into the account, except as provided in subsections (1)(c) through (1)(e);

(c) if the property was seized within the corporate limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer, who shall establish and maintain a drug forfeiture account and deposit the remainder into the account, except as provided in subsections (1)(d) and (1)(e);

(d) if the property was seized by an employee of the state, the remainder, if any, to the account established in subsection (3), except as provided in subsection (1)(e); and

(e) if the property was seized as a result of the efforts of more than one law enforcement agency, the remainder, if any, to the accounts required by this subsection (1), pro rata in the proportions represented by the agencies' expenses of investigation, as determined by the attorney general.

(2) All proceeds from any source that are deposited into a county, city, or town drug forfeiture account must in each fiscal year be appropriated to,

and remain available until expended by, the confiscating agency for drug laws enforcement and education concerning drugs.

(3) *Net proceeds received by the state under subsections (1)(d) and (1)(e) must be deposited in an account in the state special revenue fund to the credit of the department of justice. The department may expend the money in the account, as appropriated by the legislature, only for purposes of enforcement of drug laws.*

**Section 4. Extension of authority.** Any existing authority of the department of justice to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 15, 1987.

## CHAPTER NO. 477

[SB 246]

AN ACT TO GENERALLY REVISE AND CLARIFY CERTIFICATE OF NEED REQUIREMENTS FOR HEALTH CARE FACILITIES; EXTENDING THE TIME THE CERTIFICATE OF NEED LAWS ARE IN EFFECT; AMENDING SECTIONS 50-5-101, 50-5-301, 50-5-302, 50-5-304 THROUGH 50-5-306, 50-5-309, MCA, AND SECTION 13, CHAPTER 329, LAWS OF 1983; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-5-101, MCA, is amended to read:

**"50-5-101. (Temporary) Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

- (1) "Accreditation" means a designation of approval.
- (2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.
- (3) "Affected person" means *an applicant for certificate of need, a member of the public who will be served by the proposal, a health care facility located in the geographic area affected by the application, an agency which establishes rates for health care facilities, a third-party payer who reimburses health care facilities in the area affected by the proposal, or an agency which plans or assists in planning for such facilities.*
- (4) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) "Batch" means those letters of intent *to seek approval for new beds or major medical equipment* that are accumulated during a single batching period.

(6) "Batching period" means a period, not exceeding 1 month, established by department rule during which letters of intent *to seek approval for new beds or major medical equipment* are accumulated pending further processing of all letters of intent within the batch.

(7) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) *a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.*

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Challenge period" means a period, not exceeding 1 month, established by department rule during which any person may apply for comparative review with an applicant whose letter of intent has been received during the preceding batching period.

(11) "*Chemical dependency facility*" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, which creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(12) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(13) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications which are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking, or remodeling, replacement, or renovation of an existing health care facility.

(16) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(17) "Federal acts" means federal statutes for the construction of health care facilities.

(18) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(19) "Health care facility" or "facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(20) "Health maintenance organization" means a public or private organization *which provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.*

(21) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(22) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and his family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component.

(23) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(24) "Infirmiry" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

- (a) an "infirmiry—"A" provides outpatient and inpatient care;



(b) an "infirmary—B" provides outpatient care only.

(25) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

(26) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(27) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more persons or personal care to more than four persons who are not related to the owner or administrator by blood or marriage. The term does not include adult foster care licensed under 53-5-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for physically disabled persons licensed under 53-19-111, boarding or foster homes for children licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of institutions.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or persons with related problems.

(e) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(28) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other health services *and costs a substantial sum of money*.

(29) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(30) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(31) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(32) "Offer" means the holding out by a health care facility that it can provide specific health services.

(33) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(34) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(35) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(36) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(37) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(38) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(39) "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor.

**50-5-101. (Effective July 1, 1989) Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(4) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(5) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobiassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(6) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(7) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(8) "Federal acts" means federal statutes for the construction of health care facilities.

(9) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(10) "Health care facility" or "facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(11) "Health maintenance organization" means a public or private organization *that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.*

(12) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(13) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and his family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component.

(14) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(15) "Infirmery" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

- (a) an "infirmery—A" provides outpatient and inpatient care;
- (b) an "infirmery—B" provides outpatient care only.

(16) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

(17) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(18) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more persons or personal care to more than four persons who are not related to the owner or administrator by blood or marriage. The term does not include adult foster care licensed under 53-5-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for physically disabled persons licensed under 53-19-111, boarding or foster homes for children licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of institutions.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or persons with related problems.

(e) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(19) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(20) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(21) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(22) "Offer" means the holding out by a health care facility that it can provide specific health services.

(23) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(24) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(25) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(26) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(27) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(28) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(29) "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor."

Section 2. Section 50-5-301, MCA, is amended to read:

**"50-5-301. (Temporary) When certificate of need is required — definitions.** (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, he may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure, other than to acquire an existing health care facility or to replace major medical equipment with equipment performing substantially the same function and in the same manner, that exceeds the expenditure thresholds established in subsection (4). The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made must be included in determining if the expenditure exceeds the expenditure thresholds.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds (if fractional, rounded down to the nearest whole number), whichever figure is smaller, in any 2-year period;

(ii) *a letter of intent is submitted to the department; and*

(iii) *the department determines the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health plan;*

(c) *the addition of a health service that is offered by or on behalf of a health care facility which was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and which will result in additional annual operating and amortization expenses of \$150,000 or more;*

(d) *the acquisition by any person of major medical equipment, provided such acquisition would have required a certificate of need pursuant to subsection (1)(a) or (1)(c) of this section if it had been made by or on behalf of a health care facility;*

(e) *the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:*

(i) *the person submits the letter of intent required by 50-5-302(2); and*

(ii) *the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;*

(f) *the construction, development, or other establishment of a health care facility which is being replaced or which did not previously exist, by any person, including another type of health care facility;*

(g) *the expansion of the geographical service area of a home health agency; or*

(h) *the use of hospital beds to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101.*

(2) *For purposes of subsection (1)(b), a change in bed capacity occurs on the date new or relocated beds are licensed pursuant to part 2 of this chapter and the date a final decision is made to grant a certificate of need for new or relocated beds, unless the certificate of need expires pursuant to 50-5-305.*

(3) *For purposes of this part, the following definitions apply:*

(a) *"Health care facility" or "facility" means a nonfederal ambulatory surgical facility, home health agency, hospital, long-term care facility, mental health center with inpatient services, inpatient chemical dependency facility, rehabilitation facility with inpatient services, or personal care facility.*

(b) (i) *"Long-term care facility" means an entity which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more persons.*

(ii) *The term does not include adult foster care licensed under 53-5-303; community homes for the developmentally disabled licensed under*

*53-20-305; community homes for physically disabled persons licensed under 53-19-111; boarding or foster homes for children licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of institutions.*

(c) "Obligation for capital expenditure" does not include the authorization of bond sales or the offering or sale of bonds pursuant to the state long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1.

(d) "Personal care facility" means an entity which provides services and care which do not require nursing skills to more than four persons who are not related to the owner or administrator by blood or marriage and who need some assistance in performing the activities of everyday living. The term does not include those entities excluded from the definition of "long-term care facility" in subsection (b).

(4) Expenditure thresholds for certificate of need review are established as follows:

(a) For acquisition of equipment and the construction of any building necessary to house the equipment, the expenditure threshold is \$750,000.

(b) For construction of health care facilities, the expenditure threshold is \$1,500,000."

Section 3. Section 50-5-302, MCA, is amended to read:

**"50-5-302. (Temporary) Notice of intent — application and review process.** (1) The department may adopt rules including but not limited to rules for:

- (a) the form and content of *letters* of intent and applications;
- (b) the scheduling and consolidation of reviews;
- (c) the abbreviated review of a proposal that:
  - (i) does not significantly affect the cost or use of health care;
  - (ii) is necessary to eliminate or prevent imminent safety hazards or to repair or replace a facility damaged or destroyed as a result of fire, storm, civil disturbance, or any act of God;
  - (iii) is necessary to comply with licensure or certification standards; or
  - (iv) *would add a health service that is subject to a certificate of need review under 50-5-301(1)(c);*
- (d) the format of public informational hearings and reconsideration hearings;
- (e) the establishment of batching periods for certificate of need applications for new beds and major medical equipment, challenge periods, and the circumstances under which applications from different batches may be comparatively reviewed; and

*(f) the circumstances under which a certificate of need may be approved for the use of hospital beds to provide skilled nursing care, intermediate nursing care, or intermediate developmental disability care to patients or residents needing only that level of care.*

*(2) At least 30 days before any person or persons acquire or enter into a contract to acquire 50% or more of an existing health care facility, they shall submit to the department a letter noting intent to acquire the facility and of the services to be offered in the facility and its bed capacity.*

*(3) Any person intending to initiate an activity for which a certificate of need is required shall submit a letter of intent to the department.*

*(4) If the proposal is for new beds or major medical equipment, the department shall place the letter of intent in the appropriate batch unless, in the case of beds, the proposal is determined to be exempt from review.*

*(5) Any person who desires comparative review with a proposal in a batch must submit a challenge letter of intent at least by the end of the challenge period following the batching period for that batch.*

*(6) The department shall give to each person submitting a letter of intent written notice of the deadline for submission of an application for certificate of need, which will be no less than 30 days after the notice is sent.*

*(7) Within 20 working days after receipt of an application, the department shall determine whether it is complete and if the application is found incomplete, shall send a written request to the applicant for the necessary additional information. Upon receipt of the additional information from the applicant, the department shall have 15 working days to determine if the application is complete and to send a notice to the applicant that the application is complete or incomplete. The request for added information may be repeated as long as the information submitted remains incomplete, and the department shall have 15 working days after each submission to send a notice that the application is complete or incomplete.*

*(8) If a proposal is to undergo comparative review with another proposal but the applicant fails to submit the necessary additional information requested by the department by the deadline prescribed by department rules, the application must be dropped from the current batch and assigned to the next batching period.*

*(9) If the department fails to send the notices within the periods prescribed in subsection (7), the application is considered to be complete on the last day of the time period during which the notice should have been sent.*

*(10) After an application is designated complete, immediate notification must be sent to the applicant and all other affected persons regarding the department's projected time schedule for review of the application. The review period for an application may be no longer than 90 calendar days after the notice is sent or, if a challenging application has been submitted as provided in subsection (5), within 90 days after the notice has been sent for all such challenging applications. A longer period is permitted with the consent of all affected applicants.*



*(11) During the review period a public hearing may be held if requested by an affected person or when considered appropriate by the department.*

*(12) Each completed application may be considered in relation to other applications pertaining to similar types of facilities or equipment affecting the same health service area.*

*(13) The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or deny the application. The department shall notify the applicant and affected persons of its decision within 5 working days after expiration of the review period.*

*(14) If the department fails to reach a decision and notify the applicant of its decision within the deadlines established in this section and if that delay constitutes an abuse of the department's discretion, the applicant may apply to district court for a writ of mandamus to force the department to render a decision."*

Section 4. Section 50-5-304, MCA, is amended to read:

**"50-5-304. (Temporary) Review criteria, required findings, and standards.** The department shall by rule promulgate and utilize, as appropriate, specific criteria for reviewing certificate of need applications under this chapter, including but not limited to the following considerations and required findings:

*(1) the degree to which the proposal being reviewed is consistent with the current state health plan;*

*(2) the need that the population served or to be served by the proposal has for the services;*

*(3) the availability of less costly quality-equivalent or more effective alternative methods of providing such services;*

*(4) the immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the health service;*

*(5) the relationship and financial impact of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided;*

*(6) the consistency of the proposal with joint planning efforts by health care providers in the area;*

*(7) the availability of resources, including health manpower, management personnel, and funds for capital and operating needs, for the provision of services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services;*

*(8) the relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;*

*(9) in the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision,*

and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project; and

(10) the distance, convenience, cost of transportation, and accessibility of health services for persons who live outside urban areas in relation to the proposal."

Section 5. Section 50-5-305, MCA, is amended to read:

**"50-5-305. (Temporary) Period of validity of approved application.** (1) Unless an extension is granted pursuant to subsection (3), a certificate of need shall expire:

(a) 1 year after *the decision to issue it is final* if the applicant has not commenced construction on a project requiring construction or has not incurred an enforceable capital expenditure commitment for a project not requiring construction;

(b) 1 year after *the date the project is commenced plus the estimated period of time for completion* shown in the application if the approved project is not complete; or

(c) when the department determines, after opportunity for a hearing, that the holder of the certificate of need has violated the provisions of this chapter, rules adopted hereunder, or the terms of the certificate of need.

(2) *For purposes of subsection (1)(a), if a reconsideration hearing is granted or an appeal filed under 50-5-306, the final decision will be that following the hearing or resolving the appeal.*

(3) The holder of an unexpired certificate of need may apply to the department to extend the term of the certificate of need for one additional period not to exceed 6 months. The department may grant such an extension upon the applicant's demonstrating good cause as defined by department rule.

(4) The holder of an unexpired certificate of need shall report to the department in writing on the status of his project at the end of each 6-month period after being granted a certificate of need until completion of the project for which the certificate of need was issued."

Section 6. Section 50-5-306, MCA, is amended to read:

**"50-5-306. (Temporary) Right to hearing and appeal.** (1) An affected person may request the department to hold a public hearing and to reconsider its decision. The department shall grant the request if the affected person submits the request in writing and if the request is received by the department within 30 calendar days after the initial decision is announced.

(2) The public hearing to reconsider *must* be held within 30 calendar days after *the request is received unless the requestor agrees to waive the time limit.*

(3) *The reconsideration hearing must be conducted pursuant to the provisions for informal proceedings of the Montana Administrative Procedure Act.*

(4) The department shall make its final decision and *serve the appellant with written findings of fact and conclusions of law in support of the decision* within 30 days after the conclusion of the reconsideration hearing.

(5) Any affected person may appeal the department's final decision to the district court as provided in Title 2, chapter 4, part 7.

(6) *If a petition to appeal the decision is filed, the decision must be stayed pending resolution of the appeal by the courts.*

(7) The department may by rule prescribe in greater detail the hearing and appellate procedures."

Section 7. Section 50-5-309, MCA, is amended to read:

**"50-5-309. (Temporary) Exemptions from certificate of need review.** A project proposed by an agency of state government that has been approved by the legislature pursuant to the long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1, *is exempt from certificate of need review.*"

Section 8. **Fees.** (1) There is no fee for filing a letter of intent.

(2) An application for certificate of need approval must be accompanied by a fee equaling 0.3% of the capital expenditure projected in the application, except that the fee may be no less than \$500.

(3) With the exception of the department and an applicant whose proposal is approved and who does not request the hearing, each affected person who is a party in a reconsideration hearing held pursuant to 50-5-306(1) shall pay the department \$500.

(4) Fees collected under this section must be deposited in the state general fund.

Section 9. Section 13, Chapter 329, Laws of 1983, is amended to read:

**"Section 13. Effective dates.** (1) This act is effective on passage and approval, with delayed effective dates.

(2) On July 1, 1989, 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, MCA, and *section 9* hereof are repealed unless reenacted by the legislature.

(3) On July 1, 1989, 50-5-101, MCA, is amended by deleting subsections (3), (5), (6), (8) *through* (10), (14), (15), and (28) unless reenacted by the legislature.

(4) On July 1, 1989, 50-5-106, MCA, is amended to read as follows, unless reenacted by the legislature:

**"50-5-106. Records and reports required of health care facilities — confidentiality.** Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients.

A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provision of 45-7-401, unless the disclosure was authorized in writing by the patient, his guardian, or his agent. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state.”

**Section 10. Codification instruction.** Section 8 is intended to be codified as an integral part of Title 50, chapter 5, part 3, and the provisions of Title 50, chapter 5, part 3, apply to section 8.

**Section 11. Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 12. Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

**Section 13. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 14. Effective date.** This act is effective June 30, 1987.

Approved April 15, 1987.

## CHAPTER NO. 478

[SB 261]

### AN ACT INCREASING THE PENALTY FOR AN ADULT CONVICTED OF SALE OF DANGEROUS DRUGS IF THE SALE WAS TO A MINOR; AND AMENDING SECTION 45-9-101, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-9-101, MCA, is amended to read:

**“45-9-101. Criminal sale of dangerous drugs.** (1) A person commits the offense of criminal sale of dangerous drugs if he sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away or manufactures, prepares, cultivates, compounds, or processes any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinols, who has a prior conviction for criminal

sale of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, he shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than \$50,000, or both.

(5) A person who was an adult at the time of sale and who is convicted of criminal sale of dangerous drugs to a minor shall be sentenced as follows:

(a) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for not less than 4 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222;

(b) If convicted of the sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a sale, the person shall be imprisoned in the state prison for not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222;

(c) If convicted of the sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such sales, the person shall be imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222; or

(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(6) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Approved April 15, 1987.

## CHAPTER NO. 479

[SB 275]

AN ACT REQUIRING THAT THE FINANCIAL RESOURCES OF A YOUTH AND THE PARENTS OF A YOUTH CHARGED WITH AN OFFENSE WHICH, IF COMMITTED BY AN ADULT, WOULD BE A FELONY BE CONSIDERED IN DETERMINING ELIGIBILITY FOR COURT-APPOINTED COUNSEL; AND AMENDING SECTION 46-8-111, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-8-111, MCA, is amended to read:

**"46-8-111. Eligibility for court-appointed counsel.** (1) Any defendant who desires counsel and is unable to employ counsel shall submit

under oath to the court at the time of his initial appearance a verified financial statement showing his financial inability to obtain counsel.

(2) *Except as provided in subsection (3), appointed counsel may not be denied to any person merely because his friends or relatives have the resources to retain counsel or because he has deposited or is capable of depositing security for his release. Counsel shall be provided to any person who is financially unable to obtain representation without substantial hardship in providing necessities to himself or his family.*

(3) *In determining whether a minor charged with an offense which, if committed by an adult, would be a felony is eligible for court-appointed counsel, the court shall consider the resources of the minor and his parents and may deny or appoint counsel accordingly. The minor and his parents shall submit under oath the verified financial statement required by subsection (1)."*

Approved April 15, 1987.

## CHAPTER NO. 480

[SB 295]

AN ACT EXEMPTING FROM EXAMINATION APPLICANTS FOR AN AGENT'S LICENSE TO SELL ALL-RISK FEDERAL CROP INSURANCE; ALLOWING ISSUANCE OF A RESTRICTED LICENSE TO AN AGENT WHO SELLS ONLY ALL-RISK FEDERAL CROP INSURANCE; AMENDING SECTIONS 33-17-201 AND 33-17-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-17-212, MCA, is amended to read:

**"33-17-212. Examination required.** (1) After completion and filing of the application for license as required under 33-17-211, the commissioner shall subject each applicant for license as agent or solicitor, unless exempted therefrom under subsection (5) below, to a personal written examination as to his competence to act as such agent or solicitor.

(2) If the applicant is a firm or corporation, the examination shall be so taken by each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license.

(3) Examination of an applicant for an agent's license shall cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

- (a) life insurance;
- (b) disability insurance;

(c) property insurance; for the purposes of this provision, "marine" insurance shall be deemed to be included in "property" insurance;

(d) casualty insurance;

(e) vehicle insurance;

(f) surety insurance;

(g) credit life and disability insurance;

(h) title insurance.

(4) Examination of an applicant for a solicitor's license shall cover all the kinds of insurance, other than life, as to which the appointing agent is licensed.

(5) This section shall not apply to, and no such examination shall be required of:

(a) any individual lawfully licensed as an agent or solicitor as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and thereafter continuing to be so licensed;

(b) any applicant for license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months next preceding date of application unless such previous license was suspended, revoked, or continuation thereof refused by the commissioner, except that the provisions of this subsection (5)(b) do not apply to title agents, as defined in 33-25-105;

(c) any applicant for license as nonresident agent, subject to reciprocal arrangements as provided for in this code;

(d) all applicants for license as agent for an insurer that confines its business in this state substantially to the insuring of the property, interests, and risks of farmers, if exempted from examination by the commissioner, in his discretion, upon written request of the insurer;

(e) *any applicant for an agent's license to sell all-risk federal crop insurance if the applicant provides certification from an appropriate governmental agency to the commissioner that he is qualified to sell such insurance;*

(f) transportation ticket agents of common carriers applying for license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on such common carrier, as incidental to their duties as such transportation ticket agents;

(g) agents' associations applying for license under 33-17-205;

(h) mechanical breakdown insurance agents."

Section 2. Section 33-17-201, MCA, is amended to read:

**"33-17-201. (Temporary) License required of agents, managing general agents, and solicitors — forms.** (1) No person shall in this

state act as or hold himself out to be an agent or solicitor as to subjects of insurance located, resident, or to be performed in this state unless then licensed as such agent or solicitor under this chapter.

(2) No person may act or hold himself out in this state to be a managing general agent unless licensed as an insurance agent under this chapter and appointed by the insurers represented.

(3) No agent or solicitor shall solicit or take application for, procure, or place for others any kind of insurance as to which he is not then licensed.

(4) No agent shall place any business, other than coverage of his own risks, with any insurer as to which he does not then hold an appointment or license as agent under this chapter, except as provided in 33-17-1104 as to life or disability insurance agents and in 33-8-213.

(5) The commissioner shall prescribe and furnish forms required in connection with application for, issuance, continuation, or termination of licenses and appointments.

(6) Unless licensed as a life insurance agent as required by this section, no person shall in this state solicit life insurance or annuities or procure applications therefor or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney at law, relative to such insurance or annuities for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of such employees.

(7) *A person licensed to sell coverage only for the all-risk federal crop insurance program shall receive a license restricted to that purpose. (Terminates July 1, 1989—sec. 22, Ch. 11, Sp. L. March 1986.)*

**33-17-201. (Effective July 1, 1989) License required of agents, managing general agents, and solicitors — forms.** (1) No person shall in this state act as or hold himself out to be an agent or solicitor as to subjects of insurance located, resident, or to be performed in this state unless then licensed as such agent or solicitor under this chapter.

(2) No person may act or hold himself out in this state to be a managing general agent unless licensed as an insurance agent under this chapter and appointed by the insurers represented.

(3) No agent or solicitor shall solicit or take application for, procure, or place for others any kind of insurance as to which he is not then licensed.

(4) No agent shall place any business, other than coverage of his own risks, with any insurer as to which he does not then hold an appointment or license as agent under this chapter, except as provided in 33-17-1104 as to life or disability insurance agents.



(5) The commissioner shall prescribe and furnish forms required in connection with application for, issuance, continuation, or termination of licenses and appointments.

(6) Unless licensed as a life insurance agent as required by this section, no person shall in this state solicit life insurance or annuities or procure applications therefor or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney at law, relative to such insurance or annuities for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of such employees.

(7) *A person licensed to sell coverage only for the all-risk federal crop insurance program shall receive a license restricted to that purpose.*

**Section 3. Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Effective date.** This act is effective on passage and approval.

Approved April 15, 1987.

## CHAPTER NO. 481

[SB 321]

AN ACT PROVIDING FOR MEDIATION OF AGRICULTURAL INDEBTEDNESS; AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO PROVIDE MEDIATION SERVICES; PROVIDING FOR PAYMENT OF FEES TO DEFRAY THE COSTS OF MEDIATION; AMENDING SECTION 80-13-102, MCA, AND SECTION 15, CHAPTER 9, SPECIAL LAWS OF MARCH 1986; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 80-13-102, MCA, is amended to read:

**"80-13-102. (Temporary) Definitions.** As used in this chapter, unless the context indicates otherwise, the following definitions apply:

(1) "Agricultural production" means the production of livestock, poultry, field crops, fruit, or other animal and vegetable matter for food or fiber.

(2) "Agricultural property" means:

- (a) real property that is principally used for agricultural production; and
- (b) personal property that is part of an agricultural production operation or used as security to finance such an operation, including equipment, crops, livestock, and the proceeds of any security.

(3) "Department" means the department of agriculture provided for in 2-15-3001.

(4) "Farmer" means a person who owns or operates a farm or ranch primarily for the purpose of agricultural production.

(5) "Mediator" means a person authorized under 80-13-202 to *assist in mediation* between a farmer and a creditor.

(6) (a) "Secured creditor" means:

- (i) the holder of a mortgage on agricultural property;
- (ii) a vendor of a contract for deed of agricultural property;
- (iii) a person with a statutory lien or a perfected security interest in agricultural property; or
- (iv) a judgment creditor with a judgment against a debtor engaged in agricultural production.

(b) *The term applies to creditors described in subsection (6)(a) who are:*

- (i) *the United States or an agency of the United States;*
- (ii) *corporations, partnerships, or other business entities; and*
- (iii) *individuals.*

(7) "Unsecured creditor" means a person who:

(a) *does not have a perfected security interest in agricultural property; and*

(b) *extends credit to a farmer for the purchase of goods or services used in agricultural production. (Terminates July 1, 1987—sec. 15, Ch. 9, Sp. L. March 1986.)*

**Section 2. Fees and expenses of mediation.** The department may assess and collect fees to defray the costs of providing mediation services under this chapter.

**Section 3. Codification instruction.** Section 2 is intended to be codified as an integral part of Title 80, chapter 13, part 2, and the provisions of Title 80, chapter 13, part 2, apply to section 2.

**Section 4.** Section 15, Chapter 9, Special Laws of March 1986, is amended to read:

**"Section 15. Effective date — termination.** (1) This act is effective on passage and approval.

(2) *Sections 1, 3 through 5, and 14 terminate July 1, 1987.*

(3) *Sections 2 and 6 through 13 terminate July 1, 1989."*

Section 5. **Effective date — termination.** This act is effective July 1, 1987, and terminates July 1, 1989.

Approved April 15, 1987.

## CHAPTER NO. 482

[SB 338]

### AN ACT REGULATING THE TESTING OF BLOOD AND URINE OF EMPLOYEES AND PROSPECTIVE EMPLOYEES; AND AMENDING SECTION 39-2-304, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-2-304, MCA, is amended to read:

**"39-2-304. Lie detector tests prohibited — regulation of blood and urine testing.** (1) No person, firm, corporation, or other business entity or representative thereof shall require:

(a) as a condition for employment or continuation of employment, any person to take a polygraph test or any form of a mechanical lie detector test;

(b) as a condition for employment, any person to submit to a blood or urine test, except for employment in hazardous work environments or in jobs the primary responsibility of which is security, public safety, or fiduciary responsibility; and

(c) as a condition for continuation of employment, any employee to submit to a blood or urine test unless the employer has reason to believe that the employee's faculties are impaired on the job as a result of alcohol consumption or illegal drug use.

(2) Prior to the administration of a drug or alcohol test, the person, firm, corporation, or other business entity or its representative shall adopt a written testing procedure and make it available to all persons subject to testing. A testing procedure must provide for the:

(a) collection of a blood or urine specimen in a manner that minimizes invasion of personal privacy while ensuring the integrity of the collection process;

(b) collection of a quantity of specimen sufficient to ensure the administration of several tests;

(c) collection, storage, and transportation of the specimen in tamper-proof containers;

(d) adoption of chain-of-custody documentation procedures identifying how the specimen was handled and tested;

(e) *verification of test results by two or more different testing procedures before judging a test positive; and*

(f) *prohibition of the release of test results, except as authorized by the person tested or as required by a court of law.*

(3) *The person, firm, corporation, or other business entity or its representative shall provide a copy of drug or alcohol test results to the person tested and provide him the opportunity, at the expense of the person requiring the test, to obtain a confirmatory test of the blood or urine by an independent laboratory selected by the person tested. The person tested must be given the opportunity to rebut or explain the results of either test or both tests.*

(4) *Adverse action may not be taken against a person tested under subsections (1)(b), (1)(c), (2), and (3) if the person tested presents a reasonable explanation or medical opinion indicating that the results of the test were not caused by alcohol consumption or illegal drug use.*

(5) *A person who violates this section is guilty of a misdemeanor."*

Approved April 15, 1987.

## CHAPTER NO. 483

[SB 341]

AN ACT TO GENERALLY REVISE THE EMPLOYMENT AGENCY ACT; TRANSFERRING REGULATION OF PRIVATE EMPLOYMENT AGENCIES TO THE DEPARTMENT OF COMMERCE; AMENDING SECTIONS 39-5-102, 39-5-308, AND 39-5-401, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-5-102, MCA, is amended to read:

**"39-5-102. Definitions.** Unless a different meaning is clearly required by the context, the following words and phrases, as used in this chapter, have the following meanings:

(1) (a) "Employment agency" is synonymous with "agency" and means any business in which any part of the business's gross or net income is derived from a fee received from applicants and in which any of the following activities are engaged in:

(i) the offering, promising, procuring, or attempting to procure employment for applicants; or

(ii) the giving of information regarding where and from whom employment may be obtained.

(b) In addition, the term "employment agency" means and includes any person, bureau, organization, or school which for profit, by advertisement

or otherwise, offers as one of its main objects or purposes to procure employment for any person who pays for its services or which collects tuition or charges for service of any nature where the main object of the person paying the same is to secure employment.

(c) The term "employment agency" does not include labor union organizations, temporary service contractors, proprietary schools, musical booking services, agents for professional athletes, or the Montana state employment agency.

(2) "Temporary service contractors" means any person, firm, association, or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary basis to others.

(3) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(4) "Applicant", except when used to describe an applicant for an employment agency license, means any person, whether employed or unemployed, seeking or entering into any arrangement for his employment or change of his employment through the medium or service of an employment agency.

(5) "*Department*" means the department of commerce provided for in 2-15-1801.

(6) "*Fee*" means a placement fee. A placement fee is a fee charged by an agency for placement that is the service of referring an applicant to an employer for employment and which results in employment of the applicant. A placement fee does not include a fee charged for a service offered in addition to a placement service.

(7) "Person" includes an individual, a firm, a corporation, a partnership, or an association.

(8) "Musical booking service" means any person, firm, association, or corporation conducting a business which consists solely of obtaining, obtaining offers of, and negotiating employment for individuals or groups of individuals for musical entertainment purposes.

(9) "Agents for professional athletes" means any person, firm, association, or corporation conducting a business that consists solely of obtaining, obtaining offers of, and negotiating contracts of employment of professional athletes."

Section 2. Section 39-5-308, MCA, is amended to read:

**"39-5-308. When agency may charge a fee.** (1) No employment agency shall charge or accept a fee from an applicant without complying with the terms of a written contract as specified in 39-5-302 and then only after such agency has been responsible for referring such job applicant to an employer or such employer to a job applicant and where as a result thereof such job applicant has been employed by such employer.

(2) No fee shall be solicited or accepted as an application or registration fee by any employment agency solely for the purpose of being registered as an applicant for employment.

(3) No fee shall be charged an applicant referred to a state employment office or any organization having exclusive hiring hall procedures as provided in the National Labor Relations Act."

Section 3. Section 39-5-401, MCA, is amended to read:

**"39-5-401. Complaints against employment agencies.** Upon receiving a complaint against any employment agency, the *department shall forward the complaint to the county attorney having jurisdiction in the matter. The county attorney may request or subpoena any documents related to the complaint.*"

**Section 4. Functions of commissioner of labor and industry transferred — name change.** (1) The functions of the commissioner of labor and industry contained in 39-5-103, 39-5-202 through 39-5-204, 39-5-206, 39-5-209, 39-5-301, 39-5-303, 39-5-311, and 39-5-403, which functions relate to administration and enforcement of The Employment Agency Act, are transferred to the department of commerce.

(2) In the provisions of the Montana Code Annotated listed in subsection (1) and in any legislation enacted by the 50th legislature relating to The Employment Agency Act, the term "director", meaning the commissioner of labor and industry, is changed to "department of commerce" or "department", meaning the department of commerce.

**Section 5. Functions of department of labor and industry transferred — name change.** (1) The functions of the department of labor and industry contained in 39-5-205 and 39-5-402, which functions relate to administration and enforcement of The Employment Agency Act, are transferred to the department of commerce.

(2) In the provisions of the Montana Code Annotated listed in subsection (1) and in any legislation enacted by the 50th legislature relating to The Employment Agency Act, the term "department of labor and industry" or "department", meaning the department of labor and industry, is changed to "department of commerce" or "department", meaning the department of commerce.

**Section 6. Effective date.** This act is effective July 1, 1987.

Approved April 15, 1987.

## CHAPTER NO. 484

[HB 73]

AN ACT TO REVISE THE MANNER IN WHICH THE MOTOR VEHICLE LAWS APPLY TO PERSONS UNDER AGE 18; AMENDING SECTIONS 61-8-401 AND 61-8-406, MCA; REPEALING SECTIONS 61-12-601 THROUGH 61-12-603 AND 61-12-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Offenses committed by persons under the age of eighteen.** A person under 18 years of age who is convicted of an offense under this title shall not be punished by incarceration, but shall be punished by:

(1) a fine not to exceed the fine that could be imposed on him if he were an adult, provided that such person may not be imprisoned for failure to pay such fine;

(2) revocation of his driver's license by the court or suspension of the license for a period set by the court;

(3) impoundment by a law enforcement officer designated by the court of the motor vehicle operated by the person for a period of time not exceeding 60 days if the court finds either that he owns the vehicle or is the only person who uses the vehicle; or

(4) any combination of subsections (1) through (3).

**Section 2. Suspending privileges of persons under age eighteen.** The privilege of driving a motor vehicle on the highways of this state given to a person under the age of 18 is subject to suspension or revocation by the department in like manner and for like causes as an adult.

**Section 3.** Section 61-8-401, MCA, is amended to read:

**"61-8-401. Persons under the influence of alcohol or drugs.** (1) It is unlawful and punishable as provided in 61-8-714 and [section 1] for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a narcotic drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to a degree which renders him incapable of safely driving a vehicle to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any drug to a degree that renders him incapable of safely driving a vehicle to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(a) If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that fact shall not give rise to any presumption that the person was or was not under the influence of alcohol but such fact may be

considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.10 or more, it shall be presumed that the person was under the influence of alcohol. Such presumption is rebuttable.

(4) The provisions of subsection (3) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol.

(5) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and subsections (1) through (4) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided."

Section 4. Section 61-8-406, MCA, is amended to read:

**"61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more.** It is unlawful and punishable as provided in 61-8-722 and [section 1] for any person to drive or be in actual physical control of a vehicle upon the ways of this state open to the public while the alcohol concentration in his blood, breath, or urine is 0.10 or more."

Section 5. **Repealer.** Sections 61-12-601 through 61-12-603 and 61-12-703, MCA, are repealed.

Section 6. **Codification instructions.** (1) Section 1 is intended to be codified as an integral part of Title 61, chapter 8, part 7, and the provisions of Title 61, chapter 8, part 7, apply to section 1.

(2) Section 2 is intended to be codified as an integral part of Title 61, chapter 5, part 2, and the provisions of Title 61, chapter 5, part 2, apply to section 2.

Section 7. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1987.

## CHAPTER NO. 485

[HB 78]

AN ACT TO PERMIT THE ATTACHMENT OR GARNISHMENT OF WORKERS' COMPENSATION BENEFITS FOR THE PAYMENT OF CERTAIN CHILD SUPPORT OBLIGATIONS; AND AMENDING SECTION 39-71-743, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-71-743, MCA, is amended to read:

**"39-71-743. Assignment or attachment of payments.** (1) No payments under this chapter shall be assignable, subject to attachment or garnishment, or be held liable in any way for debts, except:



(a) as provided in 71-3-1118; or

(b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state law.

(2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:

(a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated in supreme court Order No. 86-223, dated January 13, 1987; or

(b) for any lump-sum award, an amount up to that portion of the award that is approved for payment on the basis of a past-due child support obligation.

(3) After determination that the claim is covered under the Workers' Compensation Act or Occupational Disease Act of Montana, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. No fee or charge shall be payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer."

**Section 2. Extension of authority.** Any existing authority of the department of revenue or the department of labor to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 15, 1987.

## CHAPTER NO. 486

[HB 152]

AN ACT TO UPDATE THE PROPERTY TAX BILLING PROCESS FOR LAND OWNED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; TO CONTINUE THE TAX-EXEMPT STATUS OF STATE PARKS, RECREATION AREAS, HISTORIC SITES, AND MONUMENTS; AMENDING SECTION 87-1-603, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-1-603, MCA, is amended to read:

**"87-1-603. Payments to counties for department-owned land — exceptions.** Before November 30 of each year, the treasurer of each county in which the department owns any land shall describe the land, state the number of acres in each parcel, and request the drawing of a warrant to

the county in a sum equal to the amount of taxes which would be payable on county assessment of the property were it taxable to a private citizen. *The director shall approve or disapprove the request. The director may disapprove a request only if he finds it to be inconsistent with this section. If the director disapproves a request, he shall return it with an explanation detailing the reasons for the disapproval to the appropriate county treasurer for correction. If the director approves a request, he shall transmit it to the state auditor, who shall draw a warrant payable to the county in the amount shown on the request and shall send the warrant to the county treasurer. The warrant is payable out of any funds to the credit of the department of fish, wildlife, and parks. No payment may be made to a county in which the department owns less than 100 acres. No payment may be made to a county for lands owned by the department for game or bird farms or for fish hatchery purposes or lands acquired and managed for the purposes of Title 23, chapter 1.*

**Section 2. Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Applicability.** This act applies retroactively, within the meaning of 1-2-109, to tax liabilities arising after June 30, 1986.

**Section 4. Effective date.** This act is effective on passage and approval.

Approved April 15, 1987.

## CHAPTER NO. 487

[HB 166]

AN ACT TO PROVIDE THAT THE LIEN ON REAL OR PERSONAL PROPERTY CREATED BY THE ENTRANCE OF THE CERTIFICATE IS NOT VALID AGAINST ANY THIRD PARTY WHO RECEIVED AN AFFIDAVIT FROM THE MOST RECENT GRANTOR CONFIRMING THAT ALL CONTRIBUTIONS, ASSESSMENTS, PENALTIES, AND INTEREST DUE HAVE BEEN PAID; AMENDING SECTION 39-51-1304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-51-1304, MCA, is amended to read:

**“39-51-1304. Lien for payment of unpaid contributions — levy and execution.** (1) Unpaid contributions have the effect of a judgment against the employer, arising at the time the contributions are due. The department may issue a *certificate* setting forth the amount of contributions due and accrued interest and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. After the due process requirements of

39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment pursuant to Title 25, chapter 13, except that the department may enforce the judgment at any time within 10 years of the creation of the lien.

*(2) The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal property against which the judgment is enforced if:*

*(a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and*

*(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that all contributions, assessments, penalties, and interest due from the grantor have been paid.*

*(3) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed against the employer under this section or 39-51-1303, or both, to collect the delinquent contributions, assessments, penalties, and interest."*

**Section 2. Extension of authority.** Any existing authority of the department of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date — applicability.** This act is effective on passage and approval and applies to contributions due after the effective date of this act.

Approved April 15, 1987.

## CHAPTER NO. 488

[HB 167]

AN ACT ELIMINATING THE RIGHT TO RECOVER DAMAGES FOR EMOTIONAL OR MENTAL DISTRESS IN CONTRACT CASES EXCEPT THOSE CASES INVOLVING ACTUAL PHYSICAL INJURY TO THE PLAINTIFF; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Damages for emotional or mental distress prohibited in contract actions — exception.** In an action for breach of an obligation or duty arising from contract, recovery is prohibited for emotional or mental distress, except in those actions involving actual physical injury to the plaintiff. Emotional or mental distress, as used in this section,

includes mental anguish or suffering, sorrow, grief, fright, shame, embarrassment, humiliation, anger, chagrin, disappointment, or worry.

**Section 2. Applicability.** This act applies to claims arising after the effective date of this act.

Approved April 15, 1987.

## CHAPTER NO. 489

[HB 170]

AN ACT TO PROVIDE THAT THE LIEN ON REAL OR PERSONAL PROPERTY CREATED BY A WARRANT FOR DISTRRAINT IS NOT VALID AGAINST A THIRD PARTY WHO RECEIVED AN AFFIDAVIT FROM THE MOST RECENT GRANTOR CONFIRMING THAT ALL TAXES, ASSESSMENTS, PENALTIES, AND INTEREST DUE HAVE BEEN PAID; AMENDING SECTION 15-30-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-30-208, MCA, is amended to read:

**"15-30-208. Withheld taxes held in trust for state — warrants to collect.** (1) Every employer who deducts and withholds any amounts under the provisions of 15-30-201 through 15-30-209 shall hold the same in trust for the state of Montana.

(2) If any tax imposed by 15-30-201 through 15-30-209 or any portion of such tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.

(3) *The tax lien provided for in subsection (2) is not valid against any third party owning an interest in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if the third party receives from the most recent grantor of the interest an affidavit stating that all taxes, assessments, penalties, and interest due from the grantor have been paid.*

(4) *A grantor who signs and delivers to the third party an affidavit as provided in subsection (3) is subject to the penalties imposed by 15-30-321(3) if any part of the affidavit is untrue. Notwithstanding the provisions of 15-30-321(3), the department may bring an action as provided for in that subsection in the name of the state to recover the civil penalty and any delinquent taxes."*

**Section 2. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date — applicability.** This act is effective on passage and approval and applies to taxes due on and after the effective date of this act.

Approved April 15, 1987.

## CHAPTER NO. 490

[HB 171]

AN ACT REVISING THE QUALIFICATIONS OF THE ACTUARY DESIGNATED BY THE TEACHERS' RETIREMENT BOARD; AMENDING SECTION 19-4-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-4-203, MCA, is amended to read:

**"19-4-203. Officers and employees of retirement board.** It is the duty of the retirement board to:

- (1) elect a chairman from its membership;
- (2) appoint a secretary who may be one of its members;
- (3) employ technical or administrative employees who are necessary for the transaction of the business of the retirement system;
- (4) when the retirement board considers it necessary, designate a medical board to be composed of three physicians who are not eligible to participate in the retirement system to investigate and report to the retirement board on all medical matters related to the administration of the retirement system;
- (5) designate an actuary *who meets the qualifications established by the retirement board* to assist the retirement board with the technical actuarial aspects of the operation of the retirement system, which includes establishing mortality and service tables and making an actuarial investigation at least once every 5 years into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system."

**Section 2. Extension of authority.** Any existing authority of the teachers' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective July 1, 1987.

Approved April 15, 1987.

**CHAPTER NO. 491**

[HB 179]

**AN ACT PROHIBITING ACQUISITION OF INSURED BANKS THAT DO NOT ACCEPT DEMAND DEPOSITS AND MAKE COMMERCIAL LOANS BY BANK HOLDING COMPANIES OR OTHER COMPANIES; AND PROVIDING AN EXCEPTION.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Prohibition of acquisition — exception.** (1) Notwithstanding any other provision of law, a bank holding company or any other company may not acquire or control an institution in this state that is an "insured bank" as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) or any institution eligible to become an insured bank as defined therein if the institution does not both accept demand deposits and engage in the business of making commercial loans.

(2) Nothing in this section prohibits the continued control of a financial institution eligible for insurance under the Federal Deposit Insurance Act by a company that acquired the financial institution prior to March 1, 1987.

**Section 2. Extension of authority.** Any existing authority of the department of commerce or the state banking board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 32, chapter 1, part 3, and the provisions of Title 32, chapter 1, part 3, apply to section 1.

Approved April 15, 1987.

**CHAPTER NO. 492**

[HB 211]

**AN ACT TO PROHIBIT HARASSMENT OF HUNTERS AND TRAPPERS.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** As used in [this act], the following definitions apply:

(1) "Taking" means the pursuit, hunting, trapping, shooting, or killing of a wild animal on land upon which the affected person has the right or privilege to pursue, hunt, trap, shoot, or kill the wild animal.

(2) "Wild animal" means any game animal, fur-bearing animal, or predatory animal, as defined in 87-2-101.

**Section 2. Harassment prohibited.** (1) No person may intentionally interfere with the lawful taking of a wild animal by another.

(2) No person may, with intent to prevent or hinder its lawful taking, disturb a wild animal or engage in an activity or place in its way any object or substance that will tend to disturb or otherwise affect the behavior of a wild animal.

(3) No person may disturb an individual engaged in the lawful taking of a wild animal with intent to dissuade the individual or otherwise prevent the taking of the animal.

(4) Nothing in this section prohibits a landowner or lessee from taking reasonable measures to prevent imminent danger to domestic livestock and equipment.

**Section 3. Penalty.** A person convicted of a violation of [section 2] is guilty of a misdemeanor and is punishable by a fine not to exceed \$500 or imprisonment not to exceed 30 days, or both.

**Section 4. Injunction.** A court of general jurisdiction may enjoin conduct in violation of [section 2] upon petition by a person affected or who reasonably may be affected by such conduct and upon a showing that such conduct is threatened or that it has occurred on a particular premises in the past and that it is not unreasonable to expect that under similar circumstances it will be repeated.

Approved April 15, 1987.

## CHAPTER NO. 493

[HB 284]

### AN ACT DEFINING VISITATION INTERFERENCE AND AGGRAVATED VISITATION INTERFERENCE AS CRIMINAL OFFENSES; PROVIDING PENALTIES FOR AND DEFENSES TO VISITATION INTERFERENCE AND AGGRAVATED VISITATION INTERFERENCE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Visitation interference.** (1) A person who has legal custody of a minor child commits the offense of visitation interference if he knowingly or purposely prevents, obstructs, or frustrates the visitation rights of a person entitled to visitation under an existing court order.

(2) A person convicted of the offense of visitation interference shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 5 days, or both.

**Section 2. Aggravated visitation interference.** (1) A person who commits the offense of visitation interference, by changing the residence of the minor child over whom he has legal custody to another state without

giving written notice as required in 40-4-217 or without written consent of the person entitled to visitation pursuant to an existing court order, commits the offense of aggravated visitation interference.

(2) A person convicted of the offense of aggravated visitation interference shall be fined an amount not to exceed \$1,000 or be imprisoned in the state prison for a term not to exceed 18 months, or both.

**Section 3. Defenses to visitation interference and aggravated visitation interference.** (1) A person does not commit the offense of visitation interference or aggravated visitation interference if he acts:

- (a) with the consent of the person entitled to visitation;
- (b) under an existing court order; or
- (c) with reasonable cause.

(2) Return of the child prior to arrest is a defense only with respect to the first commission of visitation interference or aggravated visitation interference.

**Section 4. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 5. Codification instruction.** Sections 1 through 3 are intended to be codified as an integral part of Title 45, and the provisions of Title 45 apply to sections 1 through 3.

Approved April 15, 1987.

## CHAPTER NO. 494

[HB 300]

AN ACT AUTHORIZING AN OPTIONAL RETIREMENT PROGRAM FOR CERTAIN ADMINISTRATIVE OFFICERS AND MEMBERS OF THE INSTRUCTIONAL AND SCIENTIFIC STAFF OF THE MONTANA UNIVERSITY SYSTEM; AMENDING SECTIONS 15-30-111, 19-4-208, AND 19-4-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Authority to establish optional retirement program.** The board of regents may establish an optional retirement program, as provided in [sections 1 through 9], for the administrative officers and members of the instructional and scientific staff of the Montana university system. The program may be an independent plan or part of a larger plan with respect to some or all of the benefits provided. The benefits under the program must be provided through individual annuity contracts, either fixed



or variable, or a combination thereof, issued to and owned by the participants in the program.

**Section 2. Definition of teachers' retirement system.** In [sections 1 through 9], "teachers' retirement system" means the teachers' retirement system provided for in Title 19, chapter 4.

**Section 3. Participation in program.** (1) Academic and professional administrative personnel with individual contracts under the authority of the board of regents are eligible for and may elect to participate in the optional retirement program instead of the teachers' retirement system. This election must be exercised:

(a) before January 1, 1988, for an eligible person hired before July 1, 1987;

(b) within 90 days after entry into service or before January 1, 1988, whichever is later, for a person hired in an eligible position on or after July 1, 1987; and

(c) within 30 days after receiving written notice of eligibility or before January 1, 1988, whichever is later, for an employee who becomes eligible to participate in the optional retirement program by reason of appointment, promotion, transfer, or reclassification to an eligible position.

(2) The election must be exercised by filing a written notice with the teachers' retirement system and the disbursing officer of the employer. The election is effective as of the date the notice is filed or January 1, 1988, whichever is later.

(3) If an eligible officer or staff member fails to exercise the election, as provided by this section, that person must remain or become a member of the teachers' retirement system.

(4) An election under this section is not effective unless the notice filed with the disbursing officer of the employer is accompanied by an appropriate application, if one is required, for the issuance of a contract or contracts under the program.

**Section 4. Effect on rights under teachers' retirement system.** (1) An election under [section 3] to participate in the optional retirement program is a waiver of all rights and benefits under the teachers' retirement system except as provided in this section.

(2) A member of the teachers' retirement system who elects to participate in the optional retirement program is considered, for the purpose of determining eligibility for rights and benefits under that system, to be no longer employed in a capacity that allows active membership in that system as of the effective date of the election. Thereafter, the member is considered an inactive member of the retirement system if qualified under 19-4-303, with the rights and privileges provided under 19-4-603(1). A member who elects to participate in the optional retirement program who does not qualify as an inactive member under 19-4-303 is considered a terminated member of the retirement system under 19-4-304(4).

(3) A person who elects to participate in the optional retirement program is ineligible to be an active member of the teachers' retirement system

while continuously employed in a position eligible to participate in the optional retirement program.

**Section 5. Duties of board of regents.** The board of regents shall:

- (1) provide for the administration of the program;
- (2) designate the company or companies from which the contracts are to be purchased and approve the form and content of the contracts, taking into consideration the:
  - (a) nature and extent of the rights and benefits to be provided by the contracts for participants and their beneficiaries;
  - (b) relation of these rights and benefits to the amount of contributions to be made;
  - (c) suitability of these rights and benefits to the needs of the participants and the interests of the Montana university system in the recruitment and retention of administrative officers and members of the instructional and scientific staff; and
  - (d) ability of the designated company or companies to provide these rights and benefits.

**Section 6. Contributions.** (1) Each optional retirement program participant shall contribute an amount equal to the member's contribution required under 19-4-602. The board of regents shall contribute an amount equal to the employer contribution required under 19-4-605.

(2) The board of regents' contribution must be apportioned and paid as follows:

(a) to the designated company or companies, an amount equal to the greater of:

(i) the employer contribution to the teachers' retirement system not used to amortize past service unfunded liability as that unfunded liability is limited by [section 9]; or

(ii) an amount that, when added to the participant's contribution, is equal to 10% of the participant's earned compensation; and

(b) to the teachers' retirement system, the balance of the board of regents' contribution.

(3) The board of regents shall determine whether the participant's contribution is to be made by salary reduction under section 403(b) of the Internal Revenue Code of 1954 or by employer pick-up under section 414(h)(2) of that code.

(4) The disbursing officer of the employer or other official designated by the board of regents shall pay both the participant's contribution and the appropriate portion of the regents' contribution to the designated company or companies for the benefit of the participant.

**Section 7. Payment of benefits.** No retirement, death, or other benefit may be paid by the state or the board of regents under the optional

retirement program. Benefits are payable to a participant and his beneficiaries only by the designated company or companies in accordance with the terms of the contracts.

**Section 8. Exemption from taxation, legal process, and assessments.** All contracts, benefits, and contributions under the optional retirement program and the earnings thereon are:

- (1) exempt from any state, county, or municipal tax;
- (2) not subject to execution, garnishment, attachment, or other process;
- (3) not covered or assessable by an insurance guaranty association; and
- (4) unassignable except as specifically provided in the contracts.

**Section 9. Actuarial investigation to determine unfunded liability.** (1) On June 30, 1990, the teachers' retirement board shall make an actuarial investigation of the teachers' retirement system to determine the past service unfunded liability of active, inactive, and retired members of the Montana university system. The valuation must determine the effect on the amortization of the unfunded liability of the teachers' retirement system caused by persons electing to participate in the optional retirement program. The board shall report its findings to the 52nd legislature.

(2) If the valuation determines that the percentage contribution established in [section 6(2)(b)] has an adverse effect on the amortization of the unfunded liability, then the board of regents shall pay an additional sum over a period of 40 years to rectify the adverse effect.

(3) Changes in the teachers' retirement system occurring after July 1, 1987, that create additional unfunded liabilities may not be considered in the valuation, and the board of regents may not be required to pay any additional sum on that account except to the extent that those changes benefit members of the teachers' retirement system who are employees of the Montana university system.

(4) If the valuation determines that the board of regents is paying an amount in excess of that needed to amortize the unfunded liability, the teachers' retirement board shall credit the board of regents for the excess payments. The board of regents shall credit the active participants in the optional retirement program with the excess payments.

**Section 10.** Section 15-30-111, MCA, is amended to read:

**"15-30-111. Adjusted gross income.** (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability; and

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954 as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) all benefits received under the Federal Employees' Retirement Act not in excess of \$3,600;

(d) all benefits, not in excess of \$360, received as an annuity, pension, or endowment under any private or corporate retirement plan or system;

(e) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;

(f) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

(g) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;

(h) all Montana income tax refunds or credits thereof;

(i) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans;

(j) all benefits paid under the municipal police officers' retirement system that are specified as exempt from taxation by 19-9-1005;

(k) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(l) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(m) all benefits received under the workers' compensation laws;

(n) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law; and

*(o) all benefits paid under an optional retirement program that are specified as exempt from taxation by [section 8].*

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross

income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect.

(4) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(5) A taxpayer who, in determining federal adjusted gross income, has reduced his business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of such wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(6) Married taxpayers filing a joint federal return who must include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(7) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months. (Subsection (2)(l) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"

Section 11. Section 19-4-208, MCA, is amended to read:

**"19-4-208. Duties of employer.** Each employer shall:

(1) pick up the contribution of each member employed by him at the rate prescribed by 19-4-602 and transmit the contribution each month to the secretary of the retirement board;

(2) pay to the secretary of the retirement board the employer's contribution prescribed by 19-4-605, at the time that the employee contributions are transmitted to the secretary;

(3) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(4) upon the employment of a person who is required to become a member of the retirement system, inform him of his rights and obligations relating to the retirement system;

(5) *whenever applicable, inform an employee of his right to elect to participate in the optional retirement program under [sections 1 through 9];*

(6) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system; and

(7) notify the retirement board of the employment of a person eligible for membership and forward his membership application to the board."

Section 12. Section 19-4-302, MCA, is amended to read:

**"19-4-302. Active membership.** (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system, with the exception that those persons who became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members:

(a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) any person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system *and who has not elected to participate in the optional retirement program under [sections 1 through 9];*

(c) any person employed in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) any person who has elected not to become a member of the retirement system and is reentering service in a capacity prescribed by (a), (b), or (c) of this subsection (1);

(e) any person who has elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by (a), (b), or (c) of this subsection (1) since the time of such election, and who may thereafter elect to become a member of the retirement system.

(2) In order to be eligible for active membership, any person described in subsection (1) must:

(a) be employed in the capacity prescribed for his eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for his creditable service totally paid by an employer as defined herein.

(3) At any time a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine his eligibility for membership. All persons in similar circumstances shall be treated alike."

**Section 13. Extension of authority.** Any existing authority of the teachers' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 14. Coordination instruction.** If any act of this legislature is passed and approved which amends 15-30-111 providing for the taxation of all or a portion of previously exempt retirement benefits, sections 8 and 10 of this act providing an exemption for retirement benefits of certain university system employees are void.

**Section 15. Effective date.** This act is effective July 1, 1987.

Approved April 15, 1987.

## CHAPTER NO. 495

[HB 302]

AN ACT GRANTING AUTHORITY TO THE PUBLIC SERVICE COMMISSION TO ALLOW CLOSURE OF CERTAIN RAILROAD FACILITIES NOT REQUIRED BY PUBLIC CONVENIENCE AND NECESSITY; AND AMENDING SECTION 69-14-202, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 69-14-202, MCA, is amended to read:

**"69-14-202. Duty to furnish shipping and passenger facilities.**

(1) Every person, corporation, or association operating a railroad in the state on January 1, 1987, or a successor thereto, shall maintain and staff facilities for shipment and delivery of freight and shall ship and deliver freight and accommodate passengers in such facilities as were maintained and staffed on January 1, 1987.

(2) However, if a person, corporation, or association operating a railroad demonstrates to the public service commission, following an opportunity for a public hearing in the community where the facility is situated, that a facility is not required for public convenience and necessity, the commission shall authorize the closure, consolidation, or centralization of the facility."

Section 2. **Extension of authority.** Any existing authority of the public service commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 15, 1987.

## CHAPTER NO. 496

[HB 309]

AN ACT REVISING THE CRIME VICTIMS COMPENSATION ACT OF MONTANA; TRANSFERRING ADMINISTRATION OF THE ACT TO THE CRIME CONTROL DIVISION OF THE DEPARTMENT OF JUSTICE; REQUIRING AN APPEAL FROM A DEPARTMENT DETERMINATION CONCERNING A CLAIM TO BE MADE TO DISTRICT COURT; PROVIDING FOR CONFIDENTIALITY OF CERTAIN RECORDS; INCREASING CERTAIN BENEFITS; EXPANDING THE SUBROGATION RIGHTS OF THE FUND; AMENDING SECTIONS 53-9-103, 53-9-106, 53-9-107, 53-9-128, 53-9-131, AND 59-9-132, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-9-103, MCA, is amended to read:

**"53-9-103. Definitions.** As used in this part, the following definitions apply:

(1) "Claimant" means any of the following claiming compensation under this part:

- (a) a victim;
- (b) a dependent of a deceased victim; or
- (c) an authorized person acting on behalf of any of them.

(2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this part which the claimant has received or which is readily available to him from:

- (a) the offender;
- (b) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this part;
- (c) social security, medicare, and medicaid;
- (d) workers' compensation;
- (e) wage continuation programs of any employer;



(f) proceeds of a contract of insurance payable to the claimant for loss which was sustained because of the criminally injurious conduct; or

(g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. Any such contract in this state may not provide that benefits under this part shall be a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are a primary source.

(3) "Criminally injurious conduct" means conduct that:

(a) occurs or is attempted in this state;

(b) results in bodily injury or death; and

(c) is punishable by fine, imprisonment, or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle as described in Title 61.

(4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

(5) "Division" means the division of *crime control of the department of justice*.

(6) "Victim" means a person who suffers bodily injury or death as a result of:

(a) criminally injurious conduct;

(b) his good faith effort to prevent criminally injurious conduct; or

(c) his good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct."

Section 2. Section 53-9-106, MCA, is amended to read:

**"53-9-106. Attorneys' fees.** (1) The division may grant attorneys' fees to attorneys for representing claimants before the division. Any attorney's fee granted by the division shall be in addition to compensation awarded the claimant under this part.

(2) The division may regulate the amount of the attorney's fee in any claim under this part when an attorney is representing a claimant.

(3) In cases under this part that go before a *district court*, the judge may grant, in addition to compensation benefits granted, attorneys' fees to attorneys for representing claimants before the *court*.

(4) In no claim or case may attorney fees in excess of 5% of the amount paid to a claimant or on his behalf be paid directly or indirectly to a claimant's attorney."

Section 3. Section 53-9-107, MCA, is amended to read:

**"53-9-107. Public inspection and disclosure of division's records.** (1) *Except as provided in subsections (2) and (3), the records the division maintains in its possession in the administration of this part are open to public inspection and disclosure.*

(2) *Confidential criminal justice information obtained by the division is subject to the confidentiality provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5. Information regarding youth court proceedings obtained by the division is subject to the confidentiality provisions of Title 41, chapter 5, part 6.*

(3) *In assuring that the right of individual privacy so essential to the well-being of a free society may not be infringed without the showing of a compelling state interest, the following public records of the division are exempt from disclosure:*

(a) *information of a personal nature, such as personal, medical, or similar information, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.*

(b) *any public records or information, the disclosure of which is prohibited by federal law or regulations.*

(4) *If any public record of the division contains material which is not exempt under subsection (3), as well as material which is exempt from disclosure, the division shall separate the exempt and nonexempt and make the nonexempt material available for examination."*

Section 4. Section 53-9-128, MCA, is amended to read:

**"53-9-128. Compensation benefits.** (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks such weekly benefits, the claimant, as a result of such injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is 66 ⅔% of the wages received at the time of the criminally injurious conduct, subject to a maximum of *one-half the state's average weekly wage as determined in 39-51-2201*. Weekly compensation payments shall be made at the end of each 2-week period. No weekly compensation payments may be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1 week, weekly compensation payments shall be paid from the date the wage loss began. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon, reasonable hospital services and medicines, and such other treatment as may be approved by the division for the injuries suffered due to criminally injurious conduct.

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66 ⅔% of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of *one-half the state's average weekly wage as determined in 39-51-2201*. Weekly compensator payments shall be made at the end of each 2-week period.

(b) Benefits under subsection (3)(a) of this section shall be paid to the spouse for the benefit of the spouse and other dependents unless the division determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) shall cease to be paid to the spouse but shall continue to be paid to the other dependents so long as their dependent status continues.

(4) Reasonable funeral and burial expenses of the victim, not exceeding \$2,000, shall be paid if all other collateral sources have properly paid such expenses but have not covered all such expenses.

(5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death, because of injuries suffered due to an act of criminally injurious conduct may not exceed \$25,000 in the aggregate.

(6) Compensation benefits are not payable for pain and suffering, inconvenience, physical impairment, or nonbodily damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of such injury has no reasonable prospect of being regularly employed in the normal labor market, who was employable but was not employed at the time of such injury, may in the discretion of the division be awarded weekly compensation benefits in an amount determined by the division not to exceed \$100 per week. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market or for a shorter period as determined by the division. The claimant shall be awarded benefits as provided in subsection (2) of this section.

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death may in the discretion of the division be awarded, in a gross single amount payable to all dependents, a sum not to exceed \$100 per week which shall be payable in the manner and for the period provided by subsection (3)(b) of this section or for such shorter period as determined by the division. The claimant shall be awarded benefits as provided in subsection (4) of this section.

(8) Amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every 2 weeks."

Section 5. Section 53-9-131, MCA, is amended to read:

**"53-9-131. Appeals.** After the division has made final determination concerning any matter relating to a claim, if the claimant disputes the division's determination, he may appeal to the *district court for the county in*

*which he resides or Lewis and Clark County for review. Review on appeal must be in conformity with 2-4-701 through 2-4-704 of the Montana Administrative Procedure Act. The judge, after a hearing, shall make a final determination concerning the dispute and issue an appropriate order affirming, reversing, or modifying the division's determination."*

Section 6. Section 53-9-132, MCA, is amended to read:

**"53-9-132. Subrogation.** (1) If a claimant seeks compensation under this part and compensation is awarded, the division is entitled to full subrogation against a judgment or recovery received by the claimant against the offender *or a collateral source arising from the criminally injurious conduct committed by the offender* for all compensation paid under this part. The division's right of subrogation shall be a first lien on the judgment or recovery. If the claimant does not institute the action against the offender *or collateral source* within 1 year from the date the criminally injurious conduct occurred, the division may institute the action in the name of the claimant or the claimant's personal representative.

(2) If the claimant institutes the action, the division shall pay a proportional share of costs and attorneys' fees if it recovers under its subrogation interest.

(3) If the division institutes the action in the name of the claimant or the claimant's personal representative and the recovery is in excess of the amount of compensation paid to the claimant and costs incurred by the division in pursuit of the action, the excess shall be paid to the claimant.

(4) If a judgment or recovery includes both damages for bodily injury or death for which the division has paid compensation under this part and damages for which the division has not paid compensation, then the division's subrogation interest shall apply only to that proportion of the judgment or recovery for which it has paid compensation. In a civil action in a court of this state arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict indicating separately the amounts of the various items of damages awarded. A claimant may not make recoveries against the offender *or collateral source* in such a way as to avoid and preclude the division from receiving its proper subrogation share as provided in this section. The division shall release its lien provided for in subsection (1) above upon receipt of its subrogation share."

Section 7. **Extension of authority.** Any existing authority of the workers' compensation division to make rules on the subject of the provisions of this act is extended to the division of crime control to make rules on the subject of the provisions of this act.

Section 8. **Effective date.** This act is effective July 1, 1987.

Approved April 15, 1987.

**CHAPTER NO. 497**

[HB 322]

AN ACT TO ESTABLISH BLOOD ALCOHOL STANDARDS FOR PERSONS WHO OPERATE MOTORBOATS, INCLUDING A SAILBOAT PROPELLED BY A MOTOR OF ANY KIND, OR ARE MANIPULATING WATER SKIS, SURFBOARDS, OR SIMILAR DEVICES ATTACHED TO MOTORBOATS WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AMENDING SECTION 23-2-523, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-2-523, MCA, is amended to read:

**"23-2-523. Prohibited operation and mooring — enforcement.**

(1) No person may operate or knowingly permit any person to operate any motorboat or vessel or manipulate any water skis, surfboard, or similar device or other contrivance in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(2) No person may operate any motorboat, *including a sailboat propelled by a motor of any kind*, or manipulate any water skis, surfboard, or similar device attached to a motorboat while under the influence of alcohol or drugs.

(3) It is unlawful for the owner of any motorboat or vessel or any person having such in charge or in control to authorize or knowingly permit the same to be operated by any person who by reason of physical or mental disability is incapable of operating such watercraft under the prevailing circumstances.

(4) No person may operate or knowingly permit any person to operate any motorboat or vessel at a rate of speed greater than will permit such person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. However, nothing in this part is intended to prevent the operator of a vessel actually competing in a regatta which is sanctioned by an appropriate governmental unit from attempting to attain high speeds on a marked racing course.

(5) No person may make a reckless approach to, departure from, or passage by a dock, ramp, diving board, or float.

(6) Skiers being pulled by motorboats must have on their person a life preserver, buoyant vest, or ski belt.

(7) No person may moor a vessel to any of the buoys or beacons placed in any waters of this state by the authority of the United States, an agency of the United States, or the department or in any manner hang on with a vessel to such buoy or beacon, except in the act of maintenance work on such buoy or beacon, nor may any person deface, remove, or destroy any such buoy, beacon, or other authorized navigational marker maintained in the waters of this state.

(8) If an officer whose duty it is to enforce the sections of this law observes a vessel being used without sufficient lifesaving or firefighting

devices or in an overloaded or other unsafe condition and in his judgment such use creates an especially hazardous condition, he may direct the operator to take whatever immediate and reasonable steps would be necessary for the safety of those aboard the vessel, including directing the operator to return to mooring or launching site and to remain there until the situation creating the hazard is corrected or ended."

**Section 2. Blood alcohol concentration standards — evidence admissible — administration of tests.** (1) The presumptions contained in 61-8-401(3) apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of the amount of alcohol in a person's blood at the time of the act alleged and any other competent evidence bearing on the question of whether the person was under the influence of alcohol at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-405 and the definition of blood alcohol concentration provided in 61-8-407 apply to any testing done to determine the blood alcohol concentration of a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" shall have the meaning provided in 61-8-401(3).

**Section 3. Codification instruction.** Section 2 is intended to be codified as an integral part of Title 23, chapter 2, part 5, and the provisions of Title 23, chapter 2, part 5, apply to section 2.

**Section 4. Coordination instruction.** If House Bill No. 163, including the section defining the phrase "under the influence", is not passed and approved, section 2(5) of this act is void.

**Section 5. Effective date.** This act is effective on passage and approval.

Approved April 15, 1987.

## CHAPTER NO. 498

[HB 340]

AN ACT TO REVISE THE METHOD OF CALCULATING THE AVERAGE NUMBER BELONGING OF A SCHOOL DISTRICT FOR SCHOOL FUNDING PURPOSES; AMENDING SECTION 20-9-311, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-9-311, MCA, is amended to read:

**"20-9-311. Calculation of average number belonging (ANB).** (1) Average number belonging shall be computed by determining the total of

the aggregate days of attendance by regularly enrolled, full-time pupils during the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the current school fiscal year and by dividing such total by 180. However, when a school district has approval to operate less than 180 school days under 20-9-804, such total shall be calculated in accordance with the provisions of 20-9-805. Attendance for a part of a morning session or a part of an afternoon session by a pupil shall be counted as attendance for one-half day. In calculating the ANB for pupils enrolled in a program established under 20-7-117 prior to January 1, 1974, or pursuant to 20-7-117(1), attendance at or absence from a regular session of the program for at least 2 hours of either a morning or an afternoon session will be counted as one-half of a day attended or absent as the case may be. If a variance has been granted as provided in 20-1-302, ANB will be computed in a manner prescribed by the superintendent of public instruction, but in no case shall the ANB exceed one-half for each kindergarten pupil. When any pupil has been absent, with or without excuse, for more than 10 consecutive school days, including pupil-instruction-related days, his absence after the 10th day of absence shall not be included in the aggregate days of absence and his enrollment in the school shall not be considered in the calculation of the average number belonging until he resumes attendance at school.

(2) If a student spends less than half his time in the regular program and the balance of his time in school in the special education program, he shall be considered a full-time special pupil but shall not be considered regularly enrolled for ANB purposes. If a student spends half or more of his time in school in the regular program and the balance of his time in the special education program, he shall be considered regularly enrolled for ANB purposes.

(3) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district *must* be based on the aggregate of all the regularly enrolled, full-time pupils attending *the schools of the district, except that when:*

(a) *a school of the district is located more than 3 miles beyond the incorporated limits of a city or town or from another school of the district, all of the regularly enrolled, full-time pupils of the school must be calculated individually for ANB purposes;*

(b) *a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school shall be considered as high school district pupils for ANB purposes;*

(c) *a middle school has been approved and accredited, in which case pupils below the 7th grade shall be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils shall be considered high school pupils for ANB purposes; or*

(d) *a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school shall not be eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the foundation program for such district.*

(4) When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB shall be determined in a manner prescribed by the superintendent of public instruction."

**Section 2. Extension of authority.** Any existing authority of the superintendent of public instruction to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Applicability.** This act is applicable to the ANB calculated on the attendance during the school fiscal year 1988-89, and used for budgeting for the school fiscal year 1989-90, and thereafter.

Approved April 15, 1987.

## CHAPTER NO. 499

[HB 344]

AN ACT REVISING THE TIME LIMITS FOR COMMENCING A MEDICAL MALPRACTICE ACTION; AMENDING SECTION 27-2-205, MCA; AND PROVIDING FOR RETROACTIVE APPLICABILITY.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 27-2-205, MCA, is amended to read:

**"27-2-205. Actions for medical malpractice.** (1) Action in tort or contract for injury or death against a physician or surgeon, dentist, registered nurse, nursing home or hospital administrator, dispensing optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital or long-term care facility, or licensed medical professional corporation, based upon alleged professional negligence or for rendering professional services without consent or for an act, error, or omission, shall, *except as provided in subsection (2)*, be commenced within 3 years after the date of injury or 3 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs last, but in no case may such action be commenced after 5 years from the date of injury. However, this time limitation shall be tolled for any period during which *there has been a failure to disclose any act, error, or omission upon which such action is based and which is known to him or through the use of reasonable diligence subsequent to said act, error, or omission would have been known to him.*

(2) *Notwithstanding the provisions of 27-2-401, in an action for death or injury of a minor who was under the age of 4 on the date of his injury, the period of limitations in subsection (1) begins to run when the minor reaches his eighth birthday or dies, whichever occurs first, and the time for commencement of the action is tolled during any period during which the minor does not reside with a parent or guardian."*



**Section 2. Applicability.** (1) An action referred to in 27-2-205(2) for injury or death occurring prior to October 1, 1987, must be commenced within 2 years after the effective date of this act or within the time limits in 27-2-205(2), whichever expires last.

(2) This act applies retroactively, within the meaning of 1-2-109, to causes of action that arose prior to October 1, 1987.

Approved April 15, 1987.

## CHAPTER NO. 500

[HB 387]

AN ACT TO REQUIRE THE DEPARTMENT OF REVENUE TO INCLUDE ADDITIONAL INFORMATION IN ITS BIENNIAL REPORT; AND AMENDING SECTION 15-1-205, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-1-205, MCA, is amended to read:

**"15-1-205. Biennial report — contents.** (1) The department shall transmit to the governor and upon request to each member of the legislature 20 days before the meeting of the legislature a report of the department showing all the taxable property of the state, counties, and cities and its value, in tabulated form, with recommendations for improvements in the system of taxation, together with *alternative* measures as may be formulated for the consideration of the legislature.

(2) *The report or supplements to the report may also include:*

(a) *the gross dollar amount of revenue loss attributable to:*

(i) *personal income and corporation license tax exemptions;*

(ii) *property tax exemptions for which application to the department or its agent is necessary;*

(iii) *deferral of income;*

(iv) *credits allowed against Montana personal income tax or Montana corporation license tax, reported separately;*

(v) *deductions from income; and*

(vi) *any other identifiable preferential treatment of income or property;*

(b) *any change in tax revenue of the state or any unit of local government attributable to a change in federal tax law; and*

(c) *any change in the revenue of any unit of local government attributable to a change in state tax law.*

(3) *The data described in subsection (2), if reported, must be related to the income and age of the taxpayer whenever such information is available.*

(4) (a) *When reporting the data described in subsection (2)(a), the department shall identify any known purpose of the preferential treatment.*

(b) *Based upon the purpose of the preferential treatment, the department shall outline the available data necessary to determine the effectiveness of the preferential treatment.*

(5) *In reporting the data described in subsection (2), the department shall report any comparable data, if available, from Wyoming, Idaho, North Dakota, and South Dakota and from any other state the department may choose.*

(6) *The department must identify in a separate section of the report any changes that have been made or that are contemplated in property appraisal or assessment.*

(7) *The department may include a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures."*

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 15, 1987.

## CHAPTER NO. 501

[HB 409]

AN ACT REVISING THE MONTANA INDIVIDUAL INCOME TAX DEDUCTION FOR HOUSEHOLD AND DEPENDENT CARE EXPENSES TO EXTEND THE DEDUCTION TO LESS THAN FULL-TIME EMPLOYMENT; AMENDING SECTION 15-30-121, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-30-121, MCA, is amended to read:

**"15-30-121. Deductions allowed in computing net income.** In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, subject to the following exceptions which are not deductible:

- (a) items provided for in 15-30-123;
- (b) state income tax paid;
- (2) federal income tax paid within the taxable year;

(3) expenses of household and dependent care services as outlined in subsections (3)(a) through (3)(c) and subject to the limitations and rules as set out in subsections (3)(d) through (3)(f) as follows:

(a) expenses for household and dependent care services necessary for gainful employment incurred for:

(i) a dependent under 15 years of age for whom an exemption can be claimed;

(ii) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to care for himself because of physical or mental illness; and

(iii) a spouse who is unable to care for himself because of physical or mental illness;

(b) employment-related expenses incurred for the following services, but only if such expenses are incurred to enable the taxpayer to be gainfully employed:

(i) household services which are attributable to the care of the qualifying individual; and

(ii) care of an individual who qualifies under subsection (3)(a);

(c) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and his spouse;

(d) the amounts deductible in subsection (3)(a) through (3)(c) are subject to the following limitations:

(i) a deduction is allowed under subsection (3)(a) for employment-related expenses incurred during the year only to the extent such expenses do not exceed \$4,800;

(ii) expenses for services in the household are deductible under subsection (3)(a) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (3)(a)(i) and only to the extent such expenses incurred during the year do not exceed:

(A) \$2,400 in the case of one qualifying individual;

(B) \$3,600 in the case of two qualifying individuals; and

(C) \$4,800 in the case of three or more qualifying individuals;

(e) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the taxable year during which the expenses are incurred, the amount of the employment-related expenses incurred must be reduced by one-half of the excess of the combined adjusted gross income over \$18,000;

(f) for purposes of this subsection (3):

(i) married couples shall file a joint return or file separately on the same form;

(ii) if the taxpayer is married during any period of the taxable year, employment-related expenses incurred are deductible only if:

(A) both spouses are gainfully employed, *in which case the expenses are deductible only to the extent that they are a direct result of the employment*; or

(B) the spouse is a qualifying individual described in subsection (3)(a)(iii);

(iii) an individual legally separated from his spouse under a decree of divorce or of separate maintenance may not be considered as married;

(iv) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(4) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the taxable year ended December 31, 1978;

(5) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 which was not otherwise deducted in computing taxable income;

(6) light vehicle license fees, as provided by 61-3-532, paid during the taxable year;

(7) fees in lieu of taxes on motorcycles and quadricycles, as provided by 61-3-541, paid during the taxable year; and

(8) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156. **(Subsection (8) terminates January 1, 1990—sec. 13, Ch. 610, L. 1985.)**"

**Section 2. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Applicability.** Section 1 is applicable to taxable years beginning after December 31, 1986.

**Section 4. Coordination instruction.** If House Bill No. 842, Senate Bill No. 307, or any other bill repealing 15-30-121 is enacted, this act is void.

Approved April 15, 1987.

**CHAPTER NO. 502**

[HB 426]

AN ACT TO GENERALLY REVISE THE INSURANCE LAWS OF THE STATE OF MONTANA RELATING TO THE REGULATION OF GOVERNMENTAL INSURANCE PROGRAMS; AND AMENDING SECTION 33-1-102, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-1-102, MCA, is amended to read:

**“33-1-102. Compliance required — exceptions — health service corporations.** (1) No person shall transact a business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) No provision of this code shall apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code shall not apply to health service corporations to the extent that the existence and operations of such corporations are authorized by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) *This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.*

(5) *This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.*

(6) *This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.*

(7) (a) *This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state whereby the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.*

(b) *This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state whereby the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.”*

Section 2. **Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 15, 1987.

## CHAPTER NO. 503

[HB 795]

AN ACT TO GENERALLY REVISE THE OIL AND GAS CONSERVATION LAWS TO INCORPORATE REGULATION OF CLASS II INJECTION WELLS AS DEFINED BY THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY; ESTABLISHING AN INJECTION WELL OPERATING FEE; APPROPRIATING FUNDS; AMENDING SECTIONS 82-11-101, 82-11-111, 82-11-123, 82-11-141, 82-11-142, 82-11-147, AND 82-11-148, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82-11-101, MCA, is amended to read:

**"82-11-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) *"Administrator" means the administrator of the division of oil and gas conservation.*

(2) *"Board" means the board of oil and gas conservation provided for in 2-15-3303.*

(3) *"Class II injection well" means a well, as defined by the federal environmental protection agency or any successor agency, that injects fluids:*

(a) *that have been brought to the surface in connection with oil or natural gas production;*

(b) *for purposes of enhancing the ultimate recovery of oil or natural gas;*  
*or*

(c) *for purposes of storing liquid hydrocarbons.*

(4) *"Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.*

(5) *"Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.*

(6) *"Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; such artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of*

energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

(7) "Field" means the general area underlaid by one or more pools.

(8) "*Fluid*" means any material or substance that flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.

(9) "Gas" means all natural gases and all other fluid hydrocarbons as produced at the wellhead and not defined as oil in subsection (10) of this section.

(10) "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form by ordinary production methods and which are not the result of condensation of gas before or after it leaves the reservoir.

(11) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others, and the term includes all persons holding such authority by or through him.

(12) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision thereof.

(13) "*Pollution*" means contamination or other alteration of the physical, chemical, or biological properties of any state waters that exceeds that permitted by state water quality standards or standards adopted by the board, including but not limited to the disposal, discharge, seepage, drainage, infiltration, flow, or injection of any liquid, gaseous, solid, or other substance into any state waters that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A disposal, discharge, seepage, drainage, infiltration, flow, or injection of fluid that is authorized under a rule, permit, or order of the board is not pollution under this chapter.

(14) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.

(15) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

(16) "*State waters*" means any body of water, either surface or underground.

(17) "Waste" means:

(a) physical waste, as that term is generally understood in the oil and gas industry;

(b) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

(c) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

(d) the inefficient storing of oil or gas. (The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of this definition.)"

Section 2. Section 82-11-111, MCA, is amended to read:

**"82-11-111. Powers and duties of board.** (1) The board shall make such investigations as it considers proper to determine whether waste exists or is imminent or whether other facts exist which justify any action by the board under the authority granted by this chapter with respect thereto.

(2) Subject to the administrative control of the department under 2-15-121, the board shall:

(a) require measures to be taken to prevent contamination of or damage to surrounding land or underground strata caused by drilling operations and production, including but not limited to regulating the disposal or *injection* of water and *disposal* of oil field wastes;

(b) classify wells as oil or gas wells or *class II injection wells* for purposes material to the interpretation or enforcement of this chapter;

(c) adopt and enforce rules and orders to effectuate the purposes and the intent of this chapter.

(3) The board shall determine and prescribe what producing wells shall be defined as "stripper wells" and what wells shall be defined as "wildcat wells" and make such orders as in its judgment are required to protect those wells and provide that stripper wells may be produced to capacity if it is considered necessary in the interest of conservation to do so.

(4) With respect to any pool from which gas was being produced by a gas well on or prior to April 1, 1953, this chapter does not authorize the board to limit or restrain the rate (daily or otherwise) of production of gas from that pool by any well then or thereafter drilled and producing from that pool to less than the rate at which the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the well.

(5) *The board has exclusive jurisdiction over all class II injection wells and all pits and ponds in relation to those injection wells. The board may:*

(a) *issue, suspend, revoke, modify, or deny permits to operate class II injection wells, consistent with rules made by it;*

(b) *examine plans and other information needed to determine whether a permit should be issued or require changes in plans as a condition to the issuance of a permit;*



*(c) clearly specify in a permit any limitations imposed as to the volume and characteristics of the fluids to be injected and the operation of the well;*

*(d) authorize its staff to enter upon any public or private property at reasonable times to:*

*(i) investigate conditions relating to violations of permit conditions;*

*(ii) have access to and copy records required under this chapter;*

*(iii) inspect monitoring equipment or methods; and*

*(iv) sample fluids which the operator is required to sample; and*

*(e) adopt standards for the design, construction, testing, and operation of class II injection wells."*

**Section 3. Confidentiality of records.** (1) Any information that is furnished to the board or the board's staff or that is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by the board.

(2) If an owner or operator disagrees with a determination by the board that certain material will not be maintained as confidential, the owner or operator may file a declaratory judgment action in a court of competent jurisdiction to establish the existence of a trade secret if he wishes such information to enjoy confidential status. The department must be served in any such action and may intervene as a party.

(3) Any information not intended to be public when submitted to the board or the board's staff must be submitted in writing and clearly marked as confidential.

(4) Data describing physical and chemical characteristics of a liquid, gaseous, solid, or other substance injected or discharged into state waters may not be considered confidential.

(5) The board may use any information in compiling or publishing analyses or summaries relating to water pollution if such analyses or summaries do not identify the owner or operator or reveal any information that is otherwise made confidential by this section.

**Section 4.** Section 82-11-123, MCA, is amended to read:

**"82-11-123. Requirements for oil and gas operations.** Subject to the administrative control of the department under 2-15-121, the board shall require:

(1) identification of ownership of oil or gas wells, producing properties, and tanks;

(2) the making and filing of acceptable well logs, including bottom-hole temperatures, to facilitate the discovery of potential geothermal energy sources, reports on well locations, and the filing of directional surveys, if made; however, logs of exploratory or wildcat wells need not be filed for a period of 6 months following completion of those wells;

(3) the drilling, casing, producing, and plugging of wells *and class II injection wells* in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas stratum, blowouts, cavings, seepages, and fires and the pollution of fresh water supplies by oil, gas, salt, or brackish water;

(4) the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized and necessary measures to prevent adverse hydrological effects from such well or hole, unless the surface owner agrees in writing, with the approval of the board or its representatives, to a different plan of restoration;

(5) the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well;

(6) proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality thereof;

(7) that every person who produces, transports, or stores oil or gas *or injects or disposes of water* in this state shall make available within this state for a period of 5 years complete and accurate records of the quantities thereof, which records shall be available for examination by the board or its employees at all reasonable times, and that that person file with the board such reports as it may prescribe with respect to quantities, transportations, and storages of the oil or gas *or water*; and

(8) *the installation, use, and maintenance of monitoring equipment or methods in the operation of class II injection wells."*

Section 5. Section 82-11-141, MCA, is amended to read:

**"82-11-141. Administrative procedure.** (1) Unless otherwise provided, the Montana Administrative Procedure Act applies to this chapter.

(2) An order or amendment thereof, except in an emergency, may not be made by the board without a public hearing upon at least 10 days' notice. The public hearing shall be held at such time and place as may be prescribed by the board, and any interested person is entitled to be heard.

(3) When an emergency requiring immediate action is found to exist, the board may issue an emergency order without advance notice or hearing which shall be effective upon promulgation. An emergency order may not remain in effect *beyond the next regular meeting of the board.*

(4) If notice is required by the chapter and the Montana Administrative Procedure Act does not apply, the notice shall be made by publication in one or more issues of a newspaper in general circulation in Helena and a newspaper of general circulation in the county where the land or some part thereon is situated, and the board may also cause publication to be made in a trade journal or bulletin of general circulation in the oil and gas industry in the state.

(5) Proof of service by publication under subsection (4) shall be made by the affidavit of the printer or publisher of the newspaper, trade journal,

or bulletin in which the notice is published or by a foreman or principal clerk of the newspaper, bulletin, or trade journal.

(6) Except as provided otherwise in this chapter, the board may act upon its own motion or upon the petition of an interested person. On the filing of a petition concerning a matter within the jurisdiction of the board, the board shall promptly fix a date for a hearing thereon and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The board shall enter its order within 30 days after the hearing."

Section 6. Section 82-11-142, MCA, is amended to read:

**"82-11-142. Subpoena power — civil actions.** (1) If the Montana Administrative Procedure Act does not apply, the board may subpoena witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted by it. Witnesses subpoenaed under this subsection shall be paid the same per diem and mileage as is provided to be paid to witnesses attending the district courts of this state.

(2) This chapter, a suit by or against the board, a violation charged or asserted against a person under this chapter, or a rule or order issued under this chapter does not impair, abridge, or delay a cause of action for damages or other civil remedy which a person may have or assert against a person violating this chapter or a rule or order issued under it. A person so aggrieved by the violation may sue for and recover such damages or relief as he otherwise may be entitled to receive.

(3) *A person, association, corporation, or agency of the state or federal government may apply to the board protesting a violation or a threatened violation of this chapter. The board shall make an investigation and make a written report to the person, association, corporation, or agency that made the protest. If a violation is established by the investigation of the board, the board shall take appropriate enforcement action. If the board fails to take appropriate enforcement action or to bring suit to enjoin a threatened violation of this chapter or a rule or order of the board within 10 days after receipt of written request to do so by a person who is or will be adversely affected, the person making the request may bring the suit in his own behalf to restrain the threatened violation in a court in which the board might have brought suit. The board shall be made a party defendant in the suit in addition to the person threatening to violate this chapter or a rule or order of the board, and the action shall proceed and injunctive relief may be granted without bond in the same manner as if suit had been brought by the board.*

(4) If a person fails or refuses to comply with the subpoena issued by the board or if a witness refuses to testify as to any material matter regarding which he may be interrogated, any district court in the state, upon good cause shown by the application of the board, may issue a warrant of attachment for the person and, if after hearing the court finds his failure or refusal to be unjustified, compel him to comply with the subpoena and to attend before the board and produce any subpoenaed records, books, and documents for examination and to give his testimony. The court may

punish for contempt as in the case of disobedience to a like subpoena issued by the court or for refusal to testify therein."

**Section 7. Prohibited activity.** (1) No person may:

(a) cause pollution of any state waters or place or cause to be placed any liquid, gaseous, solid, or other substance in a location where the substance is likely to cause pollution of any state waters;

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained in it;

(c) violate an order issued pursuant to this chapter; or

(d) violate a provision of this chapter.

(2) No person may drill, construct, convert, or operate a class II injection well or drill an oil or gas well or stratigraphic test well or core hole as described under 82-11-134 without a valid permit or order from the board.

**Section 8. Legal assistance.** When requested by the board, the attorney general or the county attorneys within their respective counties shall perform legal services and conduct legal proceedings necessary to carry out the purposes of this chapter. The board may also employ legal counsel to enforce this chapter and to conduct proceedings under it.

**Section 9. Emergencies — notice and hearing.** (1) Notwithstanding any other provisions of this chapter, if the administrator or a board member finds that a person is committing or about to commit an act in violation of this chapter or any order or rule issued under it which, if it occurs or continues, will cause substantial pollution, the administrator under order of the board or the board member is authorized to order the person to stop, avoid, or moderate the act, including immediate closure or shutdown of any well. This authority is limited to acts the harmful effects of which will not be remedied immediately after the commission or cessation of the act or will represent an immediate threat to public health, safety, or welfare.

(2) When any emergency requiring immediate action is found pursuant to subsection (1), the board is authorized to issue an emergency order without notice or hearing, which is effective upon issuance as provided in 82-11-141(3).

(3) The board may have written notice served, personally or by mail, on the alleged violator or his agent. The notice must state the provision alleged to be violated, the facts alleged to constitute the violation, the nature of corrective action the board requires, and the time within which the action is to be taken. For the purposes of this section, service by mail is complete on the date of mailing.

(4) The notice must indicate that the order is an emergency order.

(5) Pursuant to 82-11-141(3), the board may consider the emergency order at its next regular meeting, without compliance with the notice requirements of this chapter if they cannot be accomplished within the time available, and enter a second emergency order.

(6) Upon issuing an order under subsection (2), the board may fix a place and time for a hearing, not later than 5 days thereafter unless the person to whom the order is directed requests a later time. The board may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. If the board considers it practicable, the hearing must be held in the county where the violation is alleged to have occurred. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order.

(7) If the order of the board is affirmed, it must be accompanied by a statement specifying the date or dates by which a violation must cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution. An action for review of the order of the board may be initiated in the manner specified in 82-11-144. The initiation of such an action or taking of an appeal may not stay the effectiveness of the order unless the court finds that the board did not have reasonable cause to issue an order under this section.

Section 10. Section 82-11-147, MCA, is amended to read:

**"82-11-147. Violations.** *(1) Notwithstanding any other provisions of this chapter, if the board finds upon receipt of evidence:*

*(a) that a person is violating or threatening to violate this chapter or a rule or order of the board, the board may bring suit against that person in the district court of any county where the violation occurs or is threatened to restrain the person from continuing the violation or from carrying out the threat of violation; or*

*(b) that a person is violating this chapter or a rule or order of the board in a manner for which the board is authorized to institute proceedings pursuant to [section 11], the board may issue an order either assessing a civil penalty in the amount prescribed in [section 11], up to a maximum administrative penalty of \$125,000, or requiring compliance with this chapter or a rule or order, or both.*

*(2) In a suit under (1)(a), the court may grant to the board, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant, including temporary restraining orders."*

Section 11. **Civil penalties.** (1) A person is guilty of a misdemeanor and is subject to a civil penalty of at least \$5,000 if that person violates any rule or order of the board or a provision of this chapter. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

(3) The board, or the attorney general upon request of the board, shall institute and maintain any enforcement proceedings in the name of the state.

Section 12. Section 82-11-148, MCA, is amended to read:

**"82-11-148. Criminal penalties.** A person is guilty of a misdemeanor and shall be subject to a fine of not more than \$10,000 per day

*of violation* or imprisonment in a county jail for a term not exceeding 6 months or to both the fine and imprisonment if that person willfully violates any lawful rule or order of the board or if that person, for the purpose of evading this chapter or any rule or order of the board, knowingly and willfully:

(1) makes or causes to be made a false entry or statement in a report required by this chapter or by a rule or order of the board or a false entry in a record, account, or memorandum required by this chapter or by a rule or order;

(2) omits or causes to be omitted from the record, account, or memorandum full, true, and correct entries as required by this chapter or by a rule or order; or

(3) removes from this state or destroys, mutilates, alters, or falsifies the record, account, or memorandum."

**Section 13. Class II injection well operating fee.** (1) For the purpose of providing funds for defraying the expenses of operating and enforcing the class II injection well regulatory program, as defined by the federal environmental protection agency or any successor agency, each operator of a class II injection well may be required to pay an annual operating fee not to exceed \$300 per injection well.

(2) The department shall collect the operating fee at such time as the board may prescribe by rule. All money collected under this section must be forwarded to the state treasurer for deposit in the state special revenue fund and must be used for the purpose prescribed in subsection (1).

(3) The board shall, by rule adopted pursuant to the provisions of the Montana Administrative Procedure Act, fix the amount of the fee described in subsection (1) and may from time to time reduce or increase the amount thereof as the expenses chargeable against the state special revenue fund may require. However, the assessment fixed by the board may not exceed the limits prescribed in subsection (1). The amount of the fee must be expressed in dollars.

**Section 14. Appropriation.** There is appropriated from the state special revenue fund to the board of oil and gas conservation \$45,000 for fiscal year 1988 and \$280,000 for fiscal year 1989 for purposes of administering this act.

**Section 15. Extension of authority.** Any existing authority of the board of oil and gas conservation and the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 16. Codification instruction.** Sections 3, 7 through 9, 11, and 13 are intended to be codified as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to sections 3, 7 through 9, 11, and 13.

**Section 17. Effective date.** This act is effective on passage and approval.

Approved April 15, 1987.

**CHAPTER NO. 504**

[HB 534]

AN ACT DIRECTING THE AMENDMENT OF RULE 16.8.820, ADMINISTRATIVE RULES OF MONTANA, TO MAINTAIN EXISTING AIR QUALITY THROUGH ADOPTION OF THE FEDERAL ANNUAL AVERAGE AND 24-HOUR AVERAGE STANDARDS FOR AMBIENT AIR QUALITY FOR SULFUR DIOXIDE IN AREAS CURRENTLY EXCEEDING THE STATE ANNUAL AVERAGE AND 24-HOUR AVERAGE STANDARDS; REQUIRING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO STUDY THE HEALTH EFFECTS OF SULFUR DIOXIDE IN AREAS WITH MAJOR INDUSTRIAL SOURCES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. The Board of Health and Environmental Sciences shall amend Rule 16.8.820, Administrative Rules of Montana, to read:

**"16.8.820 AMBIENT AIR QUALITY STANDARDS FOR SULFUR DIOXIDE**

(1) No person shall cause or contribute to concentrations of sulfur dioxide in the ambient air which exceed any of the following standards:

(a) Hourly average: 0.50 parts per million, 1-hour average, not to be exceeded more than 18 times in any twelve consecutive months;

(b) Twenty-four hour average: 0.10 parts per million, 24-hour average, not to be exceeded more than once per year, *except that persons causing or contributing to ambient 24-hour average concentrations of sulfur dioxide that exceeded more than once 0.10 parts per million during 1985 must be considered in compliance with this rule if ambient concentrations do not exceed 0.14 parts per million more than once per year;*

(c) Annual average: 0.02 parts per million, annual average, not to be exceeded, *except that persons causing or contributing to ambient annual concentrations of sulfur dioxide that exceeded 0.02 parts per million during 1985 must be considered in compliance with this rule if ambient concentrations do not exceed 0.03 parts per million.*

(2) Measurement method: For determining compliance with this rule, sulfur dioxide shall be measured by the pararosaniline method as more fully described in Title 40, Part 50 (Appendix A) Code of Federal Regulations (1979), or by an approved equivalent method."

Section 2. **Study of effects of sulfur dioxide on health and environment.** (1) To the extent that funds are available, the board shall conduct an ongoing study in areas of Montana where there are major industrial sources of sulfur dioxide. The study shall concentrate on the effects on human health and the environment of ambient sulfur dioxide concentrations separately and in conjunction with particulates.

(2) Notwithstanding other funding sources to pay for the study, the board may accept funds and grants from private and public sources.

**Section 3. Codification instruction.** Section 2 is intended to be codified as an integral part of Title 75, chapter 2, part 2, and the provisions of Title 75, chapter 2, part 2, apply to section 2.

**Section 4. Extension of authority.** Any existing authority of the board of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 5. Effective date.** This act is effective on passage and approval.

Approved April 15, 1987.

## CHAPTER NO. 505

[SB 51]

AN ACT GENERALLY REVISING THE LAWS RELATING TO LIABILITY; ELIMINATING JOINT LIABILITY IN CERTAIN CASES; AMENDING SECTIONS 27-1-702 AND 27-1-703, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 27-1-702, MCA, is amended to read:

**"27-1-702. Comparative negligence — extent to which contributory negligence bars recovery in action for damages.** Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or injury to person or property if such negligence was not greater than the negligence of the person *or the combined negligence of all persons* against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributable to the person recovering."

**Section 2.** Section 27-1-703, MCA, is amended to read:

**"27-1-703. Multiple defendants — determination of liability. (1)** *Except as provided in subsections (2) and (3), whenever the negligence of any party in any action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.*



(2) *Any party whose negligence is determined to be 50% or less of the combined negligence of all persons described in subsection (4) is severally liable only and is responsible only for the amount of negligence attributable to him, except as provided in subsection (3). The remaining parties are jointly and severally liable for the total less the amount attributable to the claimant.*

(3) *A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other.*

(4) *On motion of any party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants, third-party defendants, persons released from liability by the claimant, persons immune from liability to the claimant, and any other persons who have a defense against the claimant. The trier of fact shall apportion the percentage of negligence of all such persons. However, in attributing negligence among persons, the trier of fact may not consider or determine any amount of negligence on the part of any injured person's employer or coemployee to the extent that such employer or coemployee has tort immunity under the Workers' Compensation Act or the Occupational Disease Act of this state, of any other state, or of the federal government. Contribution shall be proportional to the liability of the parties against whom recovery is allowed. Nothing contained in this section shall make any party indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.*

(5) *If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties shall contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party. A party found to be 50% or less negligent for the injury complained of is liable for contribution under this section only up to the percentage of negligence attributed to him."*

**Section 3. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 4. Effective date — applicability.** (1) This act is effective July 1, 1987.

(2) This act applies to causes of actions arising on or after July 1, 1987.

Approved April 16, 1987.

**CHAPTER NO. 506****[SB 335]**

AN ACT TO PROVIDE FOR SPEEDY RESOLUTION OF QUESTIONS OF LAW AND PROCEDURE PRESENTED IN TAX CASES APPEALED TO THE STATE TAX APPEAL BOARD FROM COUNTY TAX APPEAL BOARDS OR THE DEPARTMENT OF REVENUE; AMENDING SECTION 15-2-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION.

WHEREAS, many questions arise in tax cases with respect to the validity of a constitutional provision, statute, or rule of the Department of Revenue or the State Tax Appeal Board prior to the time when the parties are ready for a hearing on the merits before the State Tax Appeal Board; and

WHEREAS, the section that allows for a petition for interlocutory adjudication of questions of law, section 15-2-304, MCA, provides for determination of legal questions by the District Court only in the event that both parties to the controversy, namely the taxpayer and the Department of Revenue, agree, and experience has shown that such agreement is rarely achieved in practice; and

WHEREAS, failure to determine questions of law and procedure at an early date often compels the taxpayer to submit to a costly, lengthy, and avoidable procedure before the State Tax Appeal Board, which also adds to the burden of cases pending before the State Tax Appeal Board, and early resolution of these issues might reduce the costs, save time, and reduce the burden on the State Tax Appeal Board.

THEREFORE, the Legislature of the State of Montana finds it appropriate to amend the procedure for petitions involving interlocutory adjudication of questions of law and procedure by the District Court to reduce the expense and delay suffered by taxpayers, increase economy, and clarify the procedures now existing for the resolution of tax disputes.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-2-304, MCA, is amended to read:

**"15-2-304. Petition for interlocutory adjudication.** (1) (a) *Either party, within 30 days of the filing of an answer to an appeal before the state tax appeal board, may file a petition for an interlocutory adjudication under 15-2-305. The petition may be filed with the district court:*

- (i) *in the first judicial district;*
  - (ii) *in the county in which the taxable property is located; or*
  - (iii) *in cases not involving property taxes, in the county where the taxpayer resides or has his principal place of business in the state.*
- (b) *The petition must raise all questions raised by the pleadings involving the interpretation of a constitutional provision, a statute, or a rule*

*within 30 days of filing an answer to the appeal with the state tax appeal board.*

(2) After a proceeding has commenced before the state tax appeal board but before arguments have been heard, the parties to the proceeding may petition a district court to make an interlocutory adjudication as provided under 15-2-305. A petition for such adjudication shall be signed by each party to the proceeding.

(3) *In a petition under subsection (1) or (2), one party shall be designated as the petitioner and every other party shall be designated a respondent. The court may in its discretion grant such a petition if it appears that the issues presented involve the interpretation of a constitutional provision, a statute, or a rule and do not require the hearing of evidence to be resolved and that the controversy would be more expeditiously resolved by such adjudication.*

Section 2. **Effective date.** This act is effective on passage and approval.

Section 3. **Applicability to pending actions — notice.** The right to petition for interlocutory adjudication applies to all actions pending before the state tax appeal board on [the effective date of this act], where there has been no previous district court action. Petitions under this section must be filed within 90 days after notice from the state tax appeal board of the right to petition. The state tax appeal board shall give notice of the right to petition for interlocutory adjudication to the parties in pending cases, as soon as practicable after [the effective date of this act].

Approved April 16, 1987.

## CHAPTER NO. 507

[HB 207]

AN ACT PROVIDING THAT DISPOSITION BY THE DEPARTMENT OF ADMINISTRATION OF TORT CLAIMS AGAINST THE STATE IS A PREREQUISITE TO FILING AN ACTION AGAINST THE STATE IN DISTRICT COURT; AMENDING SECTION 2-9-301, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-9-301, MCA, is amended to read:

**"2-9-301. Filing of claims against state and political subdivisions — disposition by state agency as prerequisite.** (1) All claims against the state arising under the provisions of parts 1 through 3 of this chapter *must be presented in writing* to the department of administration.

(2) *A complaint based on a claim subject to the provisions of subsection (1) may not be filed in district court unless the claimant has first presented the claim to the department of administration and the department has*

*finally denied the claim. The department must grant or deny the claim in writing sent by certified mail within 120 days after the claim is presented to the department. The failure of the department to make final disposition of a claim within 120 days after it is presented to the department must be considered a final denial of the claim for purposes of this subsection. Upon the department's receipt of the claim, the statute of limitations on the claim is tolled for 120 days. The provisions of this subsection do not apply to claims that may be asserted under Title 25, chapter 20, by third-party complaint, cross-claim, or counterclaim.*

(3) All claims against a political subdivision arising under the provisions of parts 1 through 3 shall be presented to and filed with the clerk or secretary of the political subdivision."

Section 2. **Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Applicability.** This act applies to causes of action filed in district court after the effective date of this act.

Approved April 16, 1987.

## CHAPTER NO. 508

[HB 219]

AN ACT TO LIMIT THE CIVIL LIABILITY OF NONPROFIT ORGANIZATIONS AND THEIR EMPLOYEES FOR INJURIES SUFFERED BY CONTESTANTS IN SPONSORED RODEO, COWBOY POLO, CUTTING HORSE, O-MOK-SEE, TRAIL RIDING, HORSE PACKING, HORSE SHOW, AND JACKPOT ROPING EVENTS; AMENDING SECTION 27-1-701, MCA; AND PROVIDING APPLICABILITY AND EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Liability of nonprofit organizations and their employees for injuries suffered in sponsored rodeo and similar events.** (1) No nonprofit organization sponsoring a rodeo, cowboy polo, cutting horse, O-Mok-See, trail riding, horse packing, horse show, or jackpot roping event, or employee of the organization, is liable for injuries suffered by a contestant as a result of his voluntary participation in the event except for injuries caused by a willful or wanton act of the sponsoring organization or its employees.

(2) For purposes of this section, a minor is considered to be in voluntary participation in an event if:

(a) he has provided written consent to participate in the event; and

(b) the consent is approved by one of the minor's parents or by his legal guardian.

Section 2. Section 27-1-701, MCA, is amended to read:

**"27-1-701. Liability for negligence as well as willful acts.** *Except as otherwise provided by law, everyone* is responsible not only for the results of his willful acts but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person except so far as the latter has willfully or by want of ordinary care brought the injury upon himself."

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, part 7, apply to section 1.

Section 4. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. **Effective and applicability dates.** This act is effective June 1, 1987, and applies to claims accruing after June 1, 1987.

Approved April 16, 1987.

## CHAPTER NO. 509

[HB 283]

AN ACT TO REQUIRE WRITTEN NOTICE IN CERTAIN CASES WHEN A CUSTODIAL PARENT MOVES A CHILD'S RESIDENCE FROM THE STATE; TO MAKE CHANGE OF A CHILD'S RESIDENCE TO ANOTHER STATE AND A CUSTODIAL PARENT'S ATTEMPTS TO PREVENT CONTACT OR VISITATION BETWEEN THE CHILD AND THE NONCUSTODIAL PARENT BASIS FOR MODIFICATION OF THE CUSTODY DECREE; AND AMENDING SECTIONS 40-4-217 AND 40-4-219, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-4-217, MCA, is amended to read:

**"40-4-217. Visitation.** (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the

visitation would endanger seriously the child's physical, mental, moral, or emotional health.

*(4) So long as a noncustodial parent who has visitation rights under a decree or a custody agreement remains a resident of this state, a resident custodial parent shall, before changing the child's residence to another state and unless the noncustodial parent has given written consent, give written notice to the noncustodial parent, as provided in subsection (5).*

*(5) The written notice required by subsection (4) must be served personally or given by certified mail not less than 30 days before the proposed change in residence. Proof of service must be filed with the court that issued the custody order. The purpose of the notice is to allow the noncustodial parent to seek a modification of his visitation schedule."*

Section 2. Section 40-4-219, MCA, is amended to read:

**"40-4-219. Modification.** (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child and if it further finds that:

- (a) the custodian agrees to the modification;
- (b) the child has been integrated into the family of the petitioner with consent of the custodian;
- (c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him;
- (d) the child is 14 years of age or older and desires the modification;
- (e) the custodian willfully and consistently:
  - (i) refuses to allow the child to have any contact with the noncustodial parent; or
  - (ii) attempts to frustrate or deny the noncustodial parent's exercise of visitation rights; or
- (f) the custodial parent has changed or intends to change the child's residence to another state.

(2) The court shall presume the custodian is not acting in the child's best interest if the custodian does any of the acts specified in subsection (1)(e).

(3) The court may modify the prior decree based on subsection (1)(f) to provide a new visitation schedule and to apportion transportation costs between the parents.

(4) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(5) A custody decree may be modified upon the death of the custodial parent pursuant to 40-4-221."

Approved April 16, 1987.

## CHAPTER NO. 510

[HB 356]

AN ACT TO CHANGE THE DATE BY WHICH THE TRUSTEES OF A SCHOOL DISTRICT SHALL NOTIFY A TEACHER OF HIS TERMINATION OR REELECTION; AND AMENDING SECTIONS 20-4-204 AND 20-4-206, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-4-204, MCA, is amended to read:

**"20-4-204. Termination of tenure teacher services.** (1) (a) The following persons may make a recommendation in writing to the trustees of the district for termination of the services of a tenure teacher:

- (i) a district superintendent;
- (ii) in a district without a district superintendent, a principal;
- (iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) The recommendation must state clearly and explicitly the specific reason or reasons leading to the recommendation for termination.

(2) Whenever the trustees of a district receive a recommendation for termination, the trustees shall, before *May* 1 of the current school fiscal year, notify the teacher of the recommendation for termination and of the teacher's right to a hearing on the recommendation. The notification must be delivered by certified letter or by personal notification for which a signed receipt is returned. The notification must include:

(a) the statement of the reason or reasons that led to the recommendation for termination; and

(b) a printed copy of this section for the teacher's information.

(3) The teacher may, in writing, waive the right to a hearing. Unless the teacher waives the right to a hearing, the trustees shall set a hearing date, giving consideration to the convenience of the teacher, not less than 10 days or more than 20 days from receipt of the notice of recommendation for termination.

(4) The trustees shall:

(a) conduct the hearing on the recommendation at a regularly scheduled or special meeting of the board of trustees and in accordance with 2-3-203; and

(b) resolve at the conclusion of the hearing to terminate the teacher or to reject the recommendation for termination.

(5) The tenure teacher may appeal a decision to terminate to the county superintendent who may appoint a qualified attorney at law as legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law.

(6) Subsequently, either the teacher or the trustees may appeal to the superintendent of public instruction under the provision for the appeal of controversies in this title."

Section 2. Section 20-4-206, MCA, is amended to read:

**"20-4-206. Notification of nontenure teacher reelection — acceptance — termination and statement of reason.** (1) The trustees shall provide written notice by *May 1* to all nontenure teachers who have been reelected. Any nontenure teacher who does not receive notice of reelection or termination shall be automatically reelected for the ensuing school fiscal year.

(2) Any nontenure teacher who receives notification of his reelection for the ensuing school fiscal year shall provide the trustees with his written acceptance of the conditions of such reelection within 20 days after the receipt of the notice of reelection. Failure to so notify the trustees within 20 days may be considered nonacceptance of the tendered position.

(3) When the trustees notify a nontenure teacher of termination, the teacher may within 10 days after receipt of such notice make written request of the trustees for a statement in writing of the reasons for termination of employment. Within 10 days after receipt of the request, the trustees shall furnish such statement to the teacher.

(4) The provisions of this section shall not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed."

Approved April 16, 1987.

## CHAPTER NO. 511

[HB 393]

AN ACT TO REVISE PROCEDURES FOR REMOVAL OF HUMAN RIGHTS COMMISSION CASES TO DISTRICT COURT; TO CLARIFY THE EXCLUSIVE NATURE OF REMEDIES AVAILABLE FOR DISCRIMINATION; AMENDING SECTIONS 49-2-509 AND 49-3-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 49-2-509, MCA, is amended to read:

**"49-2-509. Filing a complaint in district court.** (1) *Except as provided in subsection (2), the commission staff shall, at the request of either*



party, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-2-505; and

(b) 12 months have elapsed since the complaint was filed.

(2) The commission staff may refuse to permit removal of a case to district court if:

(a) the party requesting removal fails to comply with the terms of a lawful subpoena issued in the investigative process;

(b) the party requesting removal has waived the right to request removal to the district court;

(c) more than 30 days have elapsed since service of notice of hearing under 49-2-505, unless the commission fails to schedule a hearing to be held within 90 days of service of notice of hearing; or

(d) the party requesting removal has unsuccessfully attempted through court litigation to prevent the commission staff from investigating the complaint.

(3) The commission staff may dismiss a complaint filed under 49-2-501 and allow the complainant to file a discrimination action in district court if:

(a) the commission staff determines that the commission lacks jurisdiction over the complaint;

(b) the complainant fails to cooperate in the staff's investigation of the complaint or fails to keep the commission advised of changes of address; or

(c) the commission staff determines that the allegations of the complaint are not supported by substantial evidence.

(4) A decision of the commission staff to dismiss a complaint or to refuse to permit removal to the district court is final unless a party seeks review by filing objections within 14 days after the decision is served on him. The commission shall review the decision in informal proceedings under 2-4-604, except that 2-4-604(5) applies only to review of a refusal to permit removal.

(5) Within 90 days after receipt of a notice of dismissal under subsection (3) or an order under subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued under subsection (1), the complainant may petition the district court in the district in which the alleged violation occurred for appropriate relief. If the claimant fails to petition the district court within 90 days after receipt of the letter, notice, or order issued by the commission staff, the claim shall be barred.

(6) If the district court finds, in an action under this section, that a person, institution, entity, or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-2-506

for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

*(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court other than by the procedures specified in this chapter."*

Section 2. Section 49-3-312, MCA, is amended to read:

**"49-3-312. Filing a complaint in district court.** (1) *Except as provided in subsection (2), the commission staff shall, at the request of either party, issue a letter entitling the complainant to file a discrimination action in district court if:*

*(a) the commission has not yet held a contested case hearing pursuant to 49-3-308; and*

*(b) 12 months have elapsed since the complaint was filed.*

*(2) The commission staff may refuse to permit removal of a case to district court if:*

*(a) the party requesting removal fails to comply with the terms of a lawful subpoena issued in the investigative process;*

*(b) the party requesting removal has waived the right to request removal to the district court;*

*(c) more than 30 days have elapsed since service of notice of hearing under 49-3-308, unless the commission fails to schedule a hearing to be held within 90 days of service of notice of hearing; or*

*(d) the party requesting removal has unsuccessfully attempted through court litigation to prevent the commission staff from investigating the complaint.*

*(3) The commission staff may dismiss a complaint filed under 49-3-304 and allow the complainant to file a discrimination action in district court if:*

*(a) the commission staff determines that the commission lacks jurisdiction over the complaint;*

*(b) the complainant fails to cooperate in the staff's investigation of the complaint or fails to keep the commission advised of changes of address; or*

*(c) the commission staff determines that the allegations of the complaint are not supported by substantial evidence.*

*(4) A decision of the commission staff to dismiss a complaint or to refuse to permit removal to the district court is final unless a party seeks review by filing objections within 14 days after the decision is served on him. The commission shall review the decision in informal proceedings under 2-4-604, except that 2-4-604(5) applies only to review of a refusal to permit removal.*

*(5) Within 90 days after receipt of a notice of dismissal under subsection (3) or an order under subsection (4) of affirmance of a dismissal,*

*whichever occurs later, or of a letter issued under subsection (1), the complainant may petition the district court in the district in which the alleged violation occurred for appropriate relief. If the claimant fails to petition the district court within 90 days after receipt of the letter, notice, or order issued by the commission staff, the complaint shall be barred.*

(6) If the district court finds, in an action under this section, that a state or local governmental agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-3-309 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

(7) *The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court other than by the procedures specified in this chapter."*

**Section 3. Extension of authority.** Any existing authority of the commission for human rights to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Effective date — applicability.** (1) This act is effective on passage and approval.

(2) This act applies to cases pending before the commission for human rights on the effective date of this act and to cases filed with the commission for human rights on or after the effective date of this act.

Approved April 16, 1987.

## CHAPTER NO. 512

[HB 417]

AN ACT REVISING THE PROVISIONS CONCERNING PREFERENCES FOR RESIDENT BIDDERS IN AWARDING PUBLIC CONTRACTS; PROVIDING A 5 PERCENT PREFERENCE FOR A RESIDENT BIDDER WHOSE GOODS ARE MONTANA-MADE WHEN COMPETING AGAINST A NONRESIDENT BIDDER; REQUIRING CERTAIN BIDDERS TO SUBMIT AN AFFIDAVIT SPECIFYING THE BASIS FOR CLAIMING A PREFERENCE; PROVIDING A PENALTY FOR SUBMITTING A FALSE AFFIDAVIT; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ADOPT RULES FOR ADMINISTERING THE PREFERENCES; AND AMENDING SECTIONS 18-1-101 THROUGH 18-1-103, 18-1-112, AND 20-15-403, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 18-1-101, MCA, is amended to read:

**"18-1-101. Definitions.** (1) Unless the context requires otherwise, in this title "department" means the department of administration provided for in Title 2, chapter 15, part 10.

(2) *Unless the context requires otherwise, in this part the following definitions apply:*

(a) *"Goods" means supplies, equipment, materials, commodities, and specially manufactured products.*

(b) *"Montana-made" means manufactured or produced in this state and made with the:*

(i) *use of parts, material, or supplies of which 50% or more were manufactured or produced in this state; or*

(ii) *employment of persons of whom 50% or more are bona fide residents of Montana as defined in 18-2-401.*

(c) *"Nonresident bidder" means a bidder whose residence is not in this state as determined under 18-1-103.*

(d) *"Public agency" means a department, commission, council, board, bureau, committee, institution, agency, government corporation, or other entity, instrumentality, or official of the legislative, executive, or judicial branch of this state and its political subdivisions, including the board of regents and the Montana university system.*

(e) *"Resident bidder" means a bidder whose residence is in this state as determined under 18-1-103."*

Section 2. Section 18-1-102, MCA, is amended to read:

**"18-1-102. State contracts to lowest resident bidder.** (1) (a) In order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and for construction, repair, and public works of all kinds, a public agency shall award:

(i) *a public contract for construction, repair, or public works to the lowest responsible resident bidder whose bid does not exceed the applicable percentage when compared to the lowest responsible nonresident bidder. The applicable percentage is the greater of:*

(A) *3%; or*

(B) *the percentage that applies to a resident bidder in the award of a public contract for construction, repair, or public works in the nonresident bidder's state of residence.*

(ii) *a public contract for the purchase of goods, if the goods are comparable in quality and performance, to the lowest responsible resident bidder whose:*

(A) *bid is not more than 3% higher than that of the lowest responsible nonresident bidder;*

(B) *offered goods are Montana-made and whose bid is not more than 5% higher than that of the lowest responsible nonresident bidder; or*

(C) *offered goods are Montana-made and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered goods are not Montana-made.*

(b) (i) *If both subsections (1)(a)(ii)(B) and (1)(a)(ii)(C) are applicable to bids for a contract, the contract must be awarded to the resident bidder whose offered goods are Montana-made if the bid is:*

(A) *not more than 3% higher than that of a resident bidder whose offered goods are not Montana-made; and*

(B) *not more than 5% higher than that of the nonresident bidder.*

(ii) *However, no combination of preferences under this subsection may exceed 5%.*

(2) *The preferences in this section apply:*

(a) *whether the law requires advertisement for bids or does not require advertisement for bids; and*

(b) *to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto."*

Section 3. Section 18-1-103, MCA, is amended to read:

**"18-1-103. Residence defined.** (1) For the purpose of 18-1-102, 18-1-103, and 18-1-112, the word "resident" shall include actual residence of an individual within this state for a period of more than 1 year immediately prior to bidding.

(2) In a partnership enterprise or an association, the majority of all partners or association members shall have been actual residents of the state of Montana for more than 1 year immediately prior to bidding.

(3) Domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents, but this qualification may be set aside and a successful bid disallowed where it is shown to the satisfaction of the board, commission, officer, or individual charged with the responsibility for the execution of such contract that said corporation is a wholly owned subsidiary of a foreign corporation or that said corporation was formed for the purpose of circumventing the provisions relating to residence.

(4) Notwithstanding the foregoing, any bidder on a contract for the purchase of *goods*, whether an individual, partnership, or corporation, foreign or domestic and regardless of ownership thereof, whose offered *goods* are *Montana-made* is a resident for the purpose of 18-1-102, 18-1-103, and 18-1-112."

Section 4. Section 18-1-112, MCA, is amended to read:

**"18-1-112. Montana product preference provisions.** (1) Each contract awarded by a *public agency* must contain among its provisions a requirement that in all instances *Montana-made goods* must be preferred for use in all projects if such *goods* are comparable in price and quality.

(2) It is the intent of 18-1-102, 18-1-103, and this section that, whenever possible, *Montana-made goods* that are suitable substitutes for *goods*

manufactured or produced outside the state and comparable in price, quality, and performance are preferred for use in all projects and in all state institutions.

(3) Failure to comply with the law in this respect *disqualifies* such contractor as a qualified bidder for future contracts with the public agency for a period of 2 years.

(4) The preference given to *Montana-made goods applies* to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto."

Section 5. Section 20-15-403, MCA, is amended to read:

**"20-15-403. Applications of other school district provisions.** (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2215, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-18-108, 15-55-106, 15-70-301, 15-70-322, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

Section 6. **Bidder to submit affidavit — penalty.** (1) A bidder on a public contract for goods who is claiming a preference under this part shall either have on file with or submit to the public agency with its bid, an affidavit specifying in detail, as determined by rule by the department, the basis on which the bidder claims the preference.

(2) If the public agency determines that the bidder has submitted a false affidavit under subsection (1), the bidder is disqualified as a bidder for future public contracts for goods with any public agency for a period of 5 years from the date of the determination.

Section 7. **Rules.** The department shall adopt rules necessary to administer the preferences provided in this part. The department's rules apply to all public agencies.

Section 8. **Codification instruction.** Sections 6 and 7 are intended to be codified as an integral part of Title 18, chapter 1, part 1, and the provisions of Title 18, chapter 1, part 1, apply to sections 6 and 7.

Approved April 16, 1987.

**CHAPTER NO. 513**

[HB 437]

**AN ACT TO CREATE CEASE AND DESIST AUTHORITY FOR THE COMMISSIONER OF INSURANCE.***Be it enacted by the Legislature of the State of Montana:*

**Section 1. Injunctions and other remedies.** (1) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or practice constituting a violation of 33-1-501; 33-14-201; chapters 2, 16 through 18, and 30 of this title; or part 4 of chapter 25 of this title; or any rule or order issued under this code, he may:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing;

(b) issue a temporary cease and desist order that must remain in effect until 10 days after the hearing is held. If the commissioner issues a temporary cease and desist order, the respondent has 15 days from receipt of the order to make a written request for a hearing on the allegations contained in the order. The hearing must be held within 20 days of the commissioner's receipt of the hearing request unless the time is extended by agreement of the parties. If the respondent does not request a hearing within 15 days of receipt of the order and the commissioner does not order a hearing, the order becomes final.

(c) without the issuance of a cease and desist order, bring an action in a court of competent jurisdiction to enjoin such acts or practices and to enforce compliance with this code or any rule or order issued under this code. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond.

(2) If a hearing is held on a cease and desist order, both parties have 20 days from the date the hearing is concluded or from the date a transcript of the hearing is filed if one is requested, to submit proposed findings of fact, conclusions of law, orders, and supporting briefs to the hearing examiner. The parties have an additional 10 days within which to submit comments on the opposing party's proposed findings of fact, conclusions of law, order, and briefs. A final order must issue within 30 days of the submission of the comments.

(3) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed \$5,000 per violation upon a person found to have engaged in an act or practice constituting a violation of a provision of this code or any rule or order issued under this code. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general

fund. Imposition of a fine under this subsection is an order from which an appeal may be taken pursuant to 33-1-711. If a person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of that person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of his right to do business in this state under this code.

**Section 2. Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 33, chapter 1, part 3, and the provisions of Title 33, chapter 1, part 3, apply to section 1.

Approved April 16, 1987.

## CHAPTER NO. 514

[HB 462]

AN ACT TO CLARIFY THE ELIGIBILITY AND THE SCOPE OF SERVICES FOR SEVERELY DISABLED PERSONS; TO SUBSTITUTE PROVISIONAL LICENSING FOR PROBATIONARY LICENSING OF COMMUNITY HOMES FOR SEVERELY DISABLED PERSONS; AMENDING SECTIONS 53-19-101 THROUGH 53-19-104, 53-19-111, 53-19-112, AND 76-2-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Eligibility for services.** (1) The department, in its discretion and in accordance with this part and Title VII, Part A, of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, as amended), may determine eligibility of persons for services under this part.

(2) To be eligible for services under this part, a person must have a disability of such severity that, to secure and maintain employment or to function independently, he requires more intensive vocational or comprehensive rehabilitation services than are available through other state and federal programs.

(3) Disabled persons not receiving other vocational and rehabilitation services provided by the department have priority for services provided under this part.

**Section 2. Eligibility for residential services in a community home.** (1) The department, in its discretion and in accordance with this part, may determine eligibility for residential services in a community home for the severely disabled, based on the residential needs of the person and on the availability of residential services. Any severely disabled person may



be considered for placement in a community home, regardless of the source of funding for his residential services.

(2) A person who has a primary diagnosis of mental illness or who receives mental health services under Title 53, chapter 21, is not eligible for placement in residential services unless he is eligible for and receiving services under this part and Title VII, Part A, of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, as amended).

Section 3. Section 53-19-101, MCA, is amended to read:

**"53-19-101. Purpose.** The legislature, in recognition of needs of severely disabled persons and of the desirability of meeting those needs on a community level to the extent of available funding and in order to reduce the need for institutional care settings, establishes by this part a community program to assist severely disabled persons in living and functioning independently. This program implements Title VII, Part A, of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, as amended) for disabled persons in Montana. The legislature further recognizes the need to provide for the licensing of current community homes for severely disabled persons."

Section 4. Section 53-19-102, MCA, is amended to read:

**"53-19-102. Definitions.** As used in this part, the following definitions apply:

(1) "Community home for severely disabled persons" means a family-oriented residence that is designed to provide residential services for two to eight severely disabled persons and that does not provide skilled or intermediate nursing care. This definition does not preclude the provision of skilled or intermediate nursing care by third-person providers.

(2) "Department" means the department of social and rehabilitation services established in 2-15-2201.

(3) "Disability" means a permanent physical or mental condition recognized as a disability by Title VII, Part A, of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, as amended).

(4) "Severely disabled person" means a person with a permanent disability that substantially limits major life activity, such as walking, self-care, seeing, hearing, speaking, learning, reasoning, judgment, or memory, and that can be diagnosed by a physician."

Section 5. Section 53-19-103, MCA, is amended to read:

**"53-19-103. Department authorized to provide services.** (1) Subject to available appropriated funds, services provided under this part include:

(a) vocational and other rehabilitation services that enhance the ability of a severely disabled person to live and function independently and to secure and maintain appropriate employment; and

(b) any services specified in Title VII, Part A, of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, as amended).

(2) *To the extent that funds are appropriated and allocated for the purpose of providing services to severely disabled persons, the department may establish the facilities and services it determines are in the best interest of severely disabled persons.*

(3) *The scope, amount, and duration of services made available to severely disabled persons under this part are within the discretion of the department to determine."*

Section 6. Section 53-19-104, MCA, is amended to read:

**"53-19-104. Department contracts for services — governmental units providing for community homes.** (1) The department may expend money appropriated or available for the purposes of this part and may contract for services for eligible *severely disabled persons* with any person or entity providing such services.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, may at their own expense provide services, funds, materials, and facilities for services to community homes for *severely disabled persons*."

Section 7. Section 53-19-111, MCA, is amended to read:

**"53-19-111. Departmental licensing.** (1) A community home for *severely disabled persons* must be licensed annually by the department.

(2) In accordance with rules established for such purposes, the department *also* may issue temporary and *provisional* licenses."

Section 8. Section 53-19-112, MCA, is amended to read:

**"53-19-112. Rulemaking.** (1) For the purposes of providing services to *severely disabled persons*, the department may adopt rules necessary for the administration of the services provided to *severely disabled persons* under this part. Rules adopted may include but are not limited to eligibility for services, *licensing*, facility design and acquisition, program staffing, staff training, service goals and design, quality of services, client placement procedures, client rights and privileges, client grievance procedures, provider grievance procedures, and accounting procedures which include accounting of client financial resources.

(2) (a) The department shall, for the purpose of licensing, adopt rules to govern administration, operation, and health and safety *requirements* for community homes for *severely disabled persons* in order to protect residents' rights. The department shall provide for temporary and *provisional* licensing.

(b) The department of health and environmental sciences shall provide advice and recommendations to the department concerning *licensing requirements* for health and safety.

(3) The department shall, in cooperation with the board of nursing, adopt rules under which a properly trained staff member of a facility providing services to *severely disabled persons* under this part may supervise and assist a client of a facility in taking a medication if the medication is usually self-administered and if a physician has prescribed the assistance."

Section 9. Section 76-2-411, MCA, is amended to read:

**"76-2-411. Definition of community residential facility.** "Community residential facility" means:

(1) a community group home for developmentally, mentally, or *severely* disabled persons which does not provide skilled or intermediate nursing care;

(2) a youth foster home or youth group home as defined in 41-3-1102;

(3) a halfway house operated in accordance with regulations of the department of health and environmental sciences for the rehabilitation of alcoholics or drug dependent persons; or

(4) a licensed adult foster family care home."

Section 10. **Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 53, chapter 19, part 1, and the provisions of Title 53, chapter 19, apply to sections 1 and 2.

Section 11. **Extension of authority.** Any existing authority of the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 12. **Effective date.** This act is effective on passage and approval.

Approved April 16, 1987.

## CHAPTER NO. 515

[HB 470]

AN ACT TO GENERALLY REVISE YOUTH COURT PROCEDURES; REVISING TRANSFER TO DISTRICT COURT PROVISIONS; ALLOWING WIDER INVESTIGATORY AUTHORITY FOR LAW ENFORCEMENT PERSONNEL; REVISING PUBLICITY, RECORD RETENTION, AND ACCESS TO RECORDS; ALLOWING A WIDER RANGE OF SENTENCES FOR DELINQUENT YOUTH; AMENDING SECTIONS 41-5-103, 41-5-202, 41-5-206, 41-5-301, 41-5-303 THROUGH 41-5-305, 41-5-402, 41-5-502, 41-5-522, 41-5-523, 41-5-601, 41-5-603, AND 41-5-604, MCA; AND REPEALING SECTION 41-5-516, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 41-5-103, MCA, is amended to read:

**"41-5-103. Definitions.** For the purposes of the Montana Youth Court Act, unless otherwise stated the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Commit" means to transfer to legal custody.

(4) "Court", when used without further qualification, means the youth court of the district court.

(5) "Foster home" means a private residence approved by the court for placement of a youth.

(6) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(7) "Judge", when used without further qualification, means the judge of the youth court.

(8) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

(10) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(11) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court, the judge, and probation officers.

(12) "Delinquent youth" means a youth:

(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(13) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) habitually disobeys the reasonable and lawful demands of his parents, *foster parents*, *physical custodian*, or guardian or is ungovernable and beyond their control;

(c) being subject to compulsory school attendance, is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

(14) "Youth in need of care" means a youth as defined in 41-3-102.

(15) "Custodian" means a person other than a parent or guardian to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(16) "Necessary parties" include the youth, his parents, guardian, custodian, or spouse.

(17) "State youth correctional facility" means a residential facility for the rehabilitation of delinquent youth, such as Pine Hills school in Miles City and Mountain View school in Helena.

(18) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(19) "Detention" means the temporary substitute care of youth in physically restricting facilities.

(20) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made under the jurisdiction of a youth court proceeding.

(21) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian. Nothing in this definition is intended to include juvenile correctional facilities, evaluation facilities, mental health facilities and services, and aftercare programs operated by the department of institutions."

Section 2. Section 41-5-202, MCA, is amended to read:

**"41-5-202. Disqualification of judges.** The statutes of the state of Montana relating to disqualification of judges in *criminal* proceedings shall apply to all proceedings under this chapter."

Section 3. Section 41-5-206, MCA, is amended to read:

**"41-5-206. Transfer to criminal court.** (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute

sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, or mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

- (A) negligent homicide as defined in 45-5-104;
- (B) arson as defined in 45-6-103;
- (C) aggravated or *felony* assault as defined in 45-5-202;
- (D) robbery as defined in 45-5-401;
- (E) burglary or aggravated burglary as defined in 45-6-204;
- (F) aggravated kidnapping as defined in 45-5-303;
- (G) possession of explosives as defined in 45-8-335;
- (H) criminal sale of dangerous drugs as included in 45-9-101;

(I) attempt as defined in 45-4-103 of any of the acts enumerated in subsections (1)(a)(ii)(A) through (1)(a)(ii)(H);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be to the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there is *probable cause* to believe that:

(i) the youth committed the delinquent act alleged;

(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to

juvenile institutions. However, lack of a prior juvenile history with youth courts will not of itself be grounds for denying the transfer.

(3) *The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.*

(4) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the youth court was waived and the case transferred to district court.

(5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the petition. No youth may be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(6) Upon order of the youth court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(7) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county attorney and order of the youth court judge.

(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it considers proper; however, no youth under 16 years of age may be confined in the state prison."

Section 4. Section 41-5-301, MCA, is amended to read:

**"41-5-301. Preliminary investigation and disposition.** (1) Whenever the court receives information from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the terms thereof, the probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall be immediately referred to the department of social and rehabilitation services.

(4) (a) The probation officer in the conduct of the preliminary inquiry shall:

(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(ii) determine whether the matter is within the jurisdiction of the court;

(iii) determine, if the youth is in detention or shelter care, whether such detention or shelter care should be continued based upon criteria set forth in 41-5-305.

(b) Once relevant information is secured, the probation officer shall:

(i) determine whether the interest of the public or the youth requires that further action be taken;

(ii) terminate the inquiry upon the determination that no further action be taken;

(iii) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling, refer the youth and his parents to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403, provided such treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, and provided further that said matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney;

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) *The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision. The application must be supported by such evidence as the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.*

(7) A petition charging a youth held in detention must be filed within 5 working days from the date the youth was first *taken into custody* or the petition shall be dismissed and the youth released unless good cause is shown to further detain such youth.

(8) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the



reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall or shall not be filed."

Section 5. Section 41-5-303, MCA, is amended to read:

**"41-5-303. Rights of youth upon questioning.** When a youth is detained for questioning upon a matter which could result in a petition alleging that the youth is either delinquent or in need of supervision, the following requirements must be met:

(1) The youth shall be advised of his *right against self-incrimination and his right to counsel.*

(2) The youth may waive such rights under the following situations:

(a) when the youth is *16 years of age or older*, the youth may make an effective waiver;

(b) when the youth is *under* the age of 16 years and the youth and a *parent or guardian* agree, they may make an effective waiver; and

(c) when the youth is *under* the age of 16 years and the youth and his *parent or guardian* do not agree, the youth may make an effective waiver only with advice of counsel."

Section 6. Section 41-5-304, MCA, is amended to read:

**"41-5-304. Investigation, fingerprints, and photographs.** (1) *All law enforcement investigations relating to a delinquent youth or youth in need of supervision must be conducted in accordance with this chapter and Title 46.*

(2) A youth may be fingerprinted or photographed for criminal identification purposes:

(a) *if arrested for conduct alleged to be unlawful that would be a felony if committed by an adult;*

(b) *pursuant to a search warrant, supported by probable cause, issued by a judge, justice of the peace, or magistrate; or*

(c) *upon the order of the youth court judge, after a petition alleging delinquency has been filed in which the unlawful act alleged would constitute a felony if the act had been committed by an adult.*

(3) Fingerprint records and photographs may be used by the originating agency for comparison and identification purposes in any other investigation."

Section 7. Section 41-5-305, MCA, is amended to read:

**"41-5-305. Detention and shelter care of youth.** (1) A youth taken into custody may not be detained in a jail or other facility for detention purposes unless:

(a) he has allegedly committed an act which if committed by an adult would constitute a criminal offense and the alleged offense is one specified in 41-5-206;

(b) he has escaped from a correctional or detention facility;

(c) he has violated a valid court order or an aftercare agreement;

(d) his detention is required to protect persons or property;

(e) he has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(f) there are not adequate assurances that he will appear for court when required; or

(g) he meets additional criteria for detention established by the youth court in the judicial district that has current jurisdiction over him.

(2) A youth taken into custody may not be sheltered prior to the hearing on the petition except when:

(a) the youth and his family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;

(b) the youth needs to be protected from physical or emotional harm;

(c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior;

(d) shelter care is necessary to assess the youth and his environment;

(e) shelter care is necessary to provide adequate time for case planning and disposition; or

(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family."

Section 8. Section 41-5-402, MCA, is amended to read:

**"41-5-402. Communications privileged.** An incriminating statement relating to any act or omission constituting delinquency or need of supervision made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto may not be used against the declarant in any proceeding under this chapter, nor may the incriminating statement be admissible in any criminal proceeding against the declarant. *This section does not apply to the use of voluntary and reliable statements that are offered for impeachment purposes.*"

Section 9. Section 41-5-502, MCA, is amended to read:

**"41-5-502. Summons.** (1) After a petition has been filed, summons shall be served directly to:

(a) the youth;

(b) his parent or parents having actual custody of the youth or his guardian or custodian, as the case may be; and

(c) such other persons as the court may direct.

(2) The summons shall:

(a) require the parties to whom directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition;

(b) advise the parties of their right to counsel under the Montana Youth Court Act; and

(c) have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears to the court that the youth needs to be placed in detention or shelter care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take him to the place of detention or shelter care designated by the court, subject to the rights of the youth and parent or person having custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and postdetention proceedings.

(5) If any youth is in shelter care or detained under any provision of this chapter pending an adjudication, the court, upon petition of the youth, his parents or guardian, or his counsel, shall, as soon as practicable, conduct a hearing in order to determine whether the circumstances of the case require such detention or shelter care and the form the detention or shelter care should take. All mentioned parties shall be notified of such petition process at the time of initial detention or shelter care.

(6) *The youth court judge may also admit the youth to bail in accordance with Title 46, chapter 9."*

Section 10. Section 41-5-522, MCA, is amended to read:

**"41-5-522. Dispositional hearing.** (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of financial liability as provided in 41-3-1123 and 41-3-1124.

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian whose ability to care for or supervise a youth is at

issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

(3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. Such evidence shall include but not be limited to the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

(6) In determining whether restitution, as authorized by 41-5-523, is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

- (a) age of the youth;
- (b) ability of the youth to pay;
- (c) ability of the parents or legal guardian to pay;
- (d) amount of damage to the victim; and
- (e) legal remedies of the victim, however the ability of the victim or his insurer to stand any loss may not be considered in any case."

Section 11. Section 41-5-523, MCA, is amended to read:

**"41-5-523. Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision, the youth court may enter its judgment making the following disposition:

- (a) place the youth on probation;
- (b) place the youth for substitute care into a youth care facility as defined in 41-3-1102 or a home approved by the court;
- (c) place the youth in a private agency responsible for the care and rehabilitation of such a youth;
- (d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

- (e) order restitution by the youth or his parents;
- (f) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;
- (g) require the performance of community service;
- (h) require the youth, his parents, his guardians, or the persons having legal custody of the youth to receive counseling services;
- (i) require the medical and psychological evaluation of the youth, his parents, his guardians, or the persons having legal custody of the youth;
- (j) require the parents, guardians, or other persons having legal custody of the youth to furnish such services as the court may designate; or
- (k) such further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department of institutions for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths.

(3) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(4) If the court finds that placement in a youth care facility other than a youth group home or youth foster home is necessary and in the best interests of the youth and the community, the court shall determine if the youth can receive appropriate treatment in a youth care facility located in Montana as follows:

(a) If the court finds the youth can receive appropriate treatment in a youth care facility located in Montana that will accept the youth, the court may not place the youth in a youth care facility located outside this state unless an out-of-state facility can provide appropriate treatment that:

(i) can be obtained at a cost less than that offered by any available facility in this state; and

(ii) is available in closer proximity to the youth's place of residence than any facility located in this state.

(b) When the department of social and rehabilitation services is ordered to pay the costs of caring for the child in a youth care facility other than a youth foster home or youth group home, the court shall provide the department at least 5 days' written notice and opportunity to be heard before ordering the placement of the youth.

(5) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes.

(6) Any order of the court may be modified at any time. In the case of a youth committed to the department of institutions, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(7) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(8) The order of commitment to the department of institutions shall read as follows:

#### ORDER OF COMMITMENT

State of Montana )  
                               ) ss.  
 County of ..... )

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ...., a minor of this county, .... years of age, was brought before me charged with .... Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

It is ordered that .... be committed to the department of institutions until .....

The names, addresses, and occupations of the parents are:

| Name  | Address | Occupation |
|-------|---------|------------|
| ..... | .....   | .....      |
| ..... | .....   | .....      |

The names and addresses of their nearest relatives are:

.....  
 .....

Witness my hand this .... day of ...., A.D. 19...

.....  
 Judge"

Section 12. Section 41-5-601, MCA, is amended to read:

**"41-5-601. Confidentiality.** (1) No *information* shall be given *concerning* a youth or any matter or proceeding in the youth court involving a youth proceeded against as, or found to be, a youth in need of supervision.

(2) When a petition is filed under 41-5-501, publicity may not be withheld *regarding* any youth formally charged with or proceeded against as or found to be a delinquent youth as a result of the commission of any offense that would be punishable as a felony if the youth were an adult. *All court proceedings must be open to the public with the exception of the transfer hearing specified in 41-5-206 if the youth court finds that a failure to close the hearing would jeopardize the right of the youth to a fair trial.*

(3) *In all cases the victim is entitled to all information concerning the identity and disposition of the youth.*"

Section 13. Section 41-5-603, MCA, is amended to read:

**"41-5-603. Youth court records.** (1) Youth court records, including social, medical, and psychological records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers, are open to inspection prior to the sealing of the records only to the following:

- (a) the youth court and its professional staff;
- (b) representatives of any agency providing supervision and having legal custody of a youth;
- (c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;
- (d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon such party;
- (e) the county attorney;
- (f) the youth who is the subject of the report or record, after he has been emancipated or reaches the age of majority.

(2) All or any part of records information secured from records listed in subsection (1) of this section, when presented to and used by the court in a proceeding under this chapter, shall also be made available to the counsel for the parties to the proceedings.

(3) *Petitions, motions, and other pleadings filed in a case, including findings, verdicts, orders, and decrees, shall be open to public inspection only when related to an offense for which access must be allowed under 41-5-601.*

(4) All information obtained in discharge of an official duty by any officer or other employee of the youth court shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this chapter to receive such information, unless otherwise ordered by the judge.

(5) After youth court records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:

- (a) those persons and agencies listed in subsection (1); and
- (b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority."

Section 14. Section 41-5-604, MCA, is amended to read:

**"41-5-604. Disposition of records.** (1) All youth court records and law enforcement records except fingerprints and photographs pertaining to a youth coming under this chapter shall be physically sealed when the youth reaches the age of 18 years.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the above records and files shall be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any agency or department that has in its possession copies of the records so sealed shall also seal or destroy such copies of records. Anyone violating the provisions of this subsection shall be subject to contempt of court.

(4) Nothing herein contained, shall prohibit the destruction of such records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(5) *The requirements for sealed records in this section shall not apply to youth traffic records or to records directly related to an offense to which access must be allowed under 41-5-601."*

**Section 15. Youth court hearings — priority.** All hearings and other court appearances required under Title 41, chapter 5, must be given priority by the court and must be scheduled to be heard as expeditiously as possible.

**Section 16. Repealer.** Section 41-5-516, MCA, is repealed.

**Section 17. Codification instruction.** Section 15 is intended to be codified as an integral part of Title 41, chapter 5, and the provisions of Title 41, chapter 5, apply to section 15.

Approved April 16, 1987.

## CHAPTER NO. 516

[HB 478]

AN ACT GRANTING WEED DISTRICTS IMMUNITY FROM LIABILITY FOR NEGLIGENT ACTS IN THE USE OF HERBICIDES; REQUIRING WEED DISTRICTS TO MAKE INFORMATION ON HERBICIDES AVAILABLE TO THE PUBLIC AND TO PERSONS USING HERBICIDES; AMENDING SECTION 27-1-701, MCA; AND PROVIDING APPLICABILITY AND EFFECTIVE DATES AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Liability restrictions.** A district, as defined in 7-22-2101, is liable for damages caused by its use of herbicides only for an act or omission that constitutes gross negligence. The provisions of 2-9-305 apply to board members, supervisors, and employees of a district.

**Section 2. Information on herbicide use.** The district must provide information on protective clothing, health hazards, and proper application techniques to mixers, loaders, and applicators of herbicides and make the information available for review by the public at the district office.



Section 3. Section 27-1-701, MCA, is amended to read:

**"27-1-701. Liability for negligence as well as willful acts.** *Except as otherwise provided by law, everyone is responsible not only for the results of his willful acts but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person except so far as the latter has willfully or by want of ordinary care brought the injury upon himself.*"

Section 4. **Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 7, chapter 22, part 21, and the provisions of Title 7, chapter 22, part 21, apply to sections 1 and 2.

Section 5. **Two-thirds vote.** Because section 1 grants limited immunity from suit for weed districts, a two-thirds vote of the members of each house of the legislature is required for passage under Article II, section 18, of the Montana constitution.

Section 6. **Effective date — applicability.** This act is effective July 1, 1987, and applies to claims accruing after July 1, 1987.

Section 7. **Termination.** This act terminates July 1, 1991.

Approved April 16, 1987.

## CHAPTER NO. 517

[HB 486]

AN ACT TO REVISE THE AUTHORITY OF THE FISH AND GAME COMMISSION IN REGULATING SHOTGUN AND MUZZLELOADER HUNTING OF DEER AND ELK; AND AMENDING SECTIONS 87-3-301 AND 87-1-304, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-1-304, MCA, is amended to read:

**"87-1-304. Fixing of seasons and bag and possession limits.** (1) The commission may fix seasons, bag limits, possession limits, and season limits; open or close or shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animal as defined by 87-2-101; and declare areas open to the hunting of deer, antelope, elk, moose, sheep, and goat by bow and arrow permit holders and designate times when only bows and arrows may be used to hunt deer, antelope, elk, moose, sheep, and goat in those areas. It may declare areas open to deer or elk or both deer and elk hunting where only bow and arrow or shotguns or both may be used to hunt or kill deer or elk. In areas where deer or elk or both deer and elk hunting is open to the use of shotguns, the commission shall authorize the use of muzzleloaders with restrictions as necessary for safety. It may declare areas open to special license holders only and issue special licenses in a limited

number when it determines, after proper investigation, that such a season is necessary to assure the maintenance of an adequate supply of game birds, fish, or animals or fur-bearing animals. It may declare a special season and issue special licenses when game birds or animals or fur-bearing animals are causing damage to private property or when written complaint of such damage has been filed with the commission by the owner of that property. In determining to whom those licenses shall be issued, it may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system shall be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles by archers during special archery seasons.

(3) It may divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state. It may declare closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to hunting, fishing, or trapping.

(4) It may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. It may close any area or district of any stream, public lake, or public water or portions thereof to hunting, trapping, or fishing for limited periods of time, when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations or to prevent the undue depletion of fish, game and fur-bearing animals, and game and nongame birds. It later may open the area or district upon consent of a majority of the property owners affected.

(5) The commission may authorize the director to open or close any special season upon 12 hours' notice to the public.

(6) It may declare certain fishing waters closed to fishing except by persons under 13 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under 13 years of age, at times and in areas the commission in its discretion considers advisable and consistent with its policies relating to fishing."

Section 2. Section 87-3-301, MCA, is amended to read:

**"87-3-301. Shotgun loads regulated by department.** No person may use a shotgun to hunt, kill, or shoot deer or elk except with *weapon type and loads* as specified by the department."

Section 3. **Extension of authority.** Any existing authority of the fish and game commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 16, 1987.

**CHAPTER NO. 518**

[HB 495]

AN ACT TO EXPAND THE COVERAGE OF THE OFFENSE OF CUSTODIAL INTERFERENCE; AND AMENDING SECTION 45-5-304, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-5-304, MCA, is amended to read:

**"45-5-304. Custodial interference.** (1) A person commits the offense of custodial interference if, knowing that he has no legal right to do so:

(a) he takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution;

(b) *prior to the entry of a court order determining custodial rights, he takes, entices, or withholds any child from the other parent where the action manifests a purpose to substantially deprive that parent of parental rights; or*

(c) *he is one of two persons who has joint custody of a child under a court order and he takes, entices, or withholds the child from the other where the action manifests a purpose to substantially deprive the other parent of parental rights.*

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

(3) A person who has not left the state does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to arraignment. A person who has left the state does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to arrest."

Approved April 16, 1987.

**CHAPTER NO. 519**

[HB 851]

AN ACT TRANSFERRING ELECTROLYTIC REDUCTION FACILITIES MACHINERY AND EQUIPMENT FROM CLASS EIGHT TO CLASS FIVE PROPERTY; AMENDING SECTION 15-6-135, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-6-135, MCA, is amended to read:

**"15-6-135. Class five property — description — taxable percentage.** (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in subsection (1)(c) of 15-6-137;

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasoline during construction and for the first 3 years of its operation;

(e) *machinery and equipment used in electrolytic reduction facilities.*

(2) (a) "Air and water pollution equipment" means facilities, machinery, or equipment used to reduce or control water or atmospheric pollution or contamination by removing, reducing, altering, disposing, or storing pollutants, contaminants, wastes, or heat. The department of health and environmental sciences shall determine if such utilization is being made.

(b) The department of health and environmental sciences' determination as to air and water pollution equipment may be appealed to the board of health and environmental sciences and may not be appealed to either a county tax appeal board or the state tax appeal board. However, the appraised value of the equipment as determined by the department of revenue may be appealed to the county tax appeal board and the state tax appeal board.

(3) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials; or

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget.

(5) New industrial property does not include:

(a) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions;

(b) a plant that will create adverse impact on existing state, county, or municipal services; or

(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

(6) Class five property is taxed at 3% of its market value."

**Section 2. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date — applicability.** This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1986.

Approved April 16, 1987.

## CHAPTER NO. 520

[HB 876]

AN ACT PROVIDING FOR VALUATION FOR TAX PURPOSES OF NEW AIRCRAFT AND SUPPORTING EQUIPMENT ACQUIRED BY CERTAIN SCHEDULED AIRLINES; AMENDING SECTION 15-23-403, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-23-403, MCA, is amended to read:

**"15-23-403. Determination of value — exception for new aircraft and supporting equipment — notice.** (1) The department of revenue shall determine the full and true valuation of all property of all airlines operating in this state or used by every scheduled airline company in air commerce. *Except as provided in subsection (2), this valuation may be ascertained by:*

(a) determining the full and true valuation of all property owned and operated by every scheduled airline company; and

(b) allocating to the state of Montana from this total valuation a valuation which represents this state's proper share of the valuation of the property, through the application of ratios which are indicated in subsections (8), (9), (10), and (11) of 15-23-402 against the total valuation.

(2) *For a scheduled airline company operating within this state whose allocation of valuation within this state, as determined under subsection (1) b), is 50% or more, the department shall determine the valuation of a new aircraft acquired and new equipment acquired to support that aircraft at 28% of full and true valuation for the first year after acquisition. For each succeeding year, the department shall increase the valuation by 8%*

*over the previous year's valuation until the valuation equals full and true valuation.*

(3) After making the assessment as provided in subsection (1) or (2), the department shall give written notice thereof to the person or persons to whom the assessment is made."

**Section 2. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Applicability.** This act applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 1986.

**Section 4. Effective date.** This act is effective on passage and approval.

Approved April 16, 1987.

## CHAPTER NO. 521

[HB 896]

AN ACT PROVIDING AN IMMEDIATE INCREASE IN THE FUEL CONSERVATION SPEED LIMIT ON RURAL FEDERAL-AID INTERSTATE HIGHWAYS; AMENDING SECTION 61-8-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-8-304, MCA, is amended to read:

**"61-8-304. Fuel conservation speed limit — exception to the basic rule.** (1) In order to insure conservation of a resource, the speed limit for vehicles traveling on a *federal-aid interstate highway outside an urbanized area of 50,000 population or more* is 65 miles an hour and the speed limit for vehicles traveling on *federal-aid interstate highways within an urbanized area of 50,000 population or more or on any other public highway of this state* is 55 miles an hour, except as provided under 61-8-309.

(2) A speed limit imposed pursuant to this section is an exception to the requirements of 61-8-303 and 61-8-312, and a speed in excess of the speed limit established pursuant to this section is unlawful notwithstanding any provision of 61-8-303 and 61-8-312."

**Section 2. Effective date.** This act is effective on passage and approval.

Approved April 16, 1987.

**CHAPTER NO. 522**

[HB 20]

**AN ACT CREATING A LEGISLATIVE COMMITTEE ON INDIAN AFFAIRS; PROVIDING FOR THE COMMITTEE'S TERMINATION IN 1989; APPROPRIATING FUNDS FOR THE COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the 1985 Montana Legislature, through adoption of House Bill No. 14, provided for appointment of a four-member, equally bipartisan Committee on Indian Affairs; and

WHEREAS, House Bill No. 14 directed the Committee to perform a variety of tasks, including holding hearings to promote better understanding between the tribes and public agencies, acting as a liaison between the Indian people and the Legislature, and promoting amicable Indian/non-Indian relations; and

WHEREAS, the Legislature appropriated \$6,000 to the Committee to fulfill the mandates of its enabling legislation; and

WHEREAS, within this limited budget, the Committee held seven meetings and addressed such topics as alcoholism and the Indian Child Welfare Act of 1978; and

WHEREAS, these meetings were well attended by both tribal representatives and state agency personnel; and

WHEREAS, these meetings provided a forum for both Indian and non-Indian people to discuss their concerns before a legislative body; and

WHEREAS, the Committee succeeded in developing good rapport with many tribal representatives; and

WHEREAS, the Indian people in Montana have indicated support for appointment of a legislative committee to continue the work of the 1984-85 Committee on Indian Affairs; and

WHEREAS, it is in the interest of all Montanans that Indian/non-Indian communications and relations be enhanced; and

WHEREAS, appointment of a legislative committee on Indian affairs would enhance Indian/non-Indian communications, relations, and cooperation.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definition.** As used in [sections 1 through 9], "committee" means the committee on Indian affairs created in [section 2].

**Section 2. Committee on Indian affairs — appointment and composition.** (1) There is a committee on Indian affairs.

(2) The committee consists of two members of the senate, appointed by the president of the senate, and two members of the house of representatives, appointed by the speaker of the house. No more than one member from either house may be members of the same party.

(3) Appointments must be made before final adjournment of a regular session.

**Section 3. Term of office.** Appointments to the committee are for 2 years. A member of the committee serves until his term of office as a legislator is ended or his successor is appointed, whichever occurs first.

**Section 4. Vacancies.** (1) A vacancy occurring during a legislative session must be filled in the same manner as the original appointment.

(2) A vacancy occurring when the legislature is not in session must be filled by the selection of a member of the appropriate house and political party by the remaining members of the committee.

(3) An appointment to the committee under this section is for the unexpired term of the original member.

**Section 5. Officers.** The committee shall elect one of its members as chairman and may elect other officers it considers necessary.

**Section 6. Meetings and compensation.** (1) The committee shall meet as often as the chairman considers it necessary during and between legislative sessions.

(2) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

**Section 7. Staff assistance.** The legislative council shall provide staff assistance to the committee. The legislative council has the same authority of investigation and examination and the same authority to hold hearings on behalf of the committee as it has for other committees under 5-11-106 and 5-11-107.

**Section 8. Duties of the committee.** The committee shall:

(1) seek opinions of and information from Indian tribes, Indian tribal organizations, state agencies, local governments, non-Indians living on or near Indian reservations, and other interested persons and agencies to gain insight into Indian/non-Indian relations;

(2) hold hearings both on and off reservations to promote better understanding between the tribes and public agencies and to improve both the Indian people's knowledge of the structure of state agencies and the legislative process and the non-Indian people's knowledge of tribal government and institutions;

(3) encourage and foster participation of Indian people at its meetings;

(4) act as an available liaison between the Indian people and the legislature;

(5) encourage tribal-state and tribal-local government cooperation and otherwise promote amicable Indian/non-Indian relations; and



(6) report its activities, findings, recommendations, and any proposed legislation to the 51st legislature.

**Section 9. Termination date.** The committee shall terminate upon the convening of the 51st legislature in regular session in 1989.

**Section 10. Appropriation.** There is appropriated for the biennium ending June 30, 1989, \$4,500 from the general fund to the legislative council for use by the committee on Indian affairs.

**Section 11. Effective date.** This act is effective July 1, 1987.

Approved April 17, 1987.

## CHAPTER NO. 523

[HB 329]

### AN ACT REQUIRING RESTITUTION FOR CERTAIN ILLEGAL KILLING OR POSSESSION OF WILDLIFE; PROVIDING A PENALTY; AND PROVIDING FOR DISPOSITION OF RESTITUTION MONEY.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Restitution for illegal killing or possession of certain wildlife.** In addition to other penalties provided by law, a person convicted of the illegal killing or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for each such bird, mammal, or fish according to the following schedule:

(1) bighorn sheep, mountain goat, caribou, buffalo, grizzly bear, moose, and endangered species, \$1,000;

(2) elk, mountain lion, black bear, lynx, and wolverine, \$500;

(3) deer, antelope, fisher, raptor, swan, bobcat, and pallid and white sturgeon, \$300;

(4) paddlefish, grayling, and furbearers not listed in subsection (1), (2), or (3), \$100;

(5) game bird (except swan), \$25;

(6) game fish, \$10.

**Section 2. Finding required.** Before restitution may be ordered pursuant to [section 1], the finder of fact at trial or the court upon entry of a guilty plea must find that such illegal killing or possession was done knowingly or purposely as defined in 45-2-101.

**Section 3. Payment — penalty for nonpayment.** (1) In each case of conviction, the court before which the conviction is obtained shall order payment of the sum stated in [section 1].

(2) Failure to make payment in the time and manner prescribed by the court constitutes civil contempt of court and is punishable as provided in Title 3, chapter 1, part 5.

Section 4. **Disposition of proceeds.** All money collected by a court pursuant to [this act] must be remitted to the state treasurer for deposit in the state special revenue fund as provided in 87-1-601(1).

Approved April 17, 1987.

## CHAPTER NO. 524

[HB 364]

AN ACT MERGING THE BOARD OF DENTURITRY AND THE BOARD OF DENTISTRY; PROVIDING FOR THE TRANSFER OF ASSETS AND PAYMENT OF CLAIMS; AMENDING SECTIONS 2-15-1842, 37-4-202, 37-29-102, AND 37-29-404, MCA; REPEALING SECTIONS 2-15-1855, 37-29-202, AND 37-29-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Montana Initiative No. 97 created the Board of Denturistry; and

WHEREAS, Chapter 548, Laws of 1985, required the Legislative Audit Committee to conduct a review of the Board of Denturistry and to propose a bill to the 50th Legislature merging the Board of Denturistry and the Board of Dentistry if the Board of Denturistry has not licensed 30 denturists; and

WHEREAS, the Legislative Audit Committee has determined that the Board of Denturistry has not licensed 30 denturists.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-1842, MCA, is amended to read:

**"2-15-1842. Board of dentistry.** (1) There is a board of dentistry.

(2) (a) The board consists of *four dentists, one denturist, one dental hygienist, and two public members, one of whom must be a senior citizen. All members are appointed by the governor with the consent of the senate. Each licensed member shall be licensed to practice as a dentist, denturist, or dental hygienist in this state, shall have actively practiced in this state for at least 5 continuous years immediately before his appointment, except as provided in subsection (2)(b), and shall be actively engaged in practice while serving on the board. Each member shall be a resident of this state.*

(b) *The provision in subsection (2)(a) requiring a licensed member to have actively practiced in this state for at least 5 continuous years immediately before his appointment does not apply to the first denturist appointed to the board.*

(3) Each member shall serve for a term of 5 years. The governor may remove a member only for neglect or cause.

(4) The governor shall fill any vacancy within 30 days.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 37-4-202, MCA, is amended to read:

**"37-4-202. Meetings — notice — quorum — records.** (1) The board shall meet at least once each year in this state at the call of the president and secretary-treasurer. Five days' notice must be given by the department to board members of the time and place of the meeting of the board.

(2) Meetings held for the purpose of examining candidates for a license to practice dentistry in this state may not exceed 6 days.

(3) *Five* members of the board constitute a quorum for the transaction of business. Its proceedings are open to public inspection in cases of public interest.

(4) Money collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(5) The department shall keep a complete record of meetings and proceedings of the board and shall keep a complete account of moneys received and disbursements made by the department."

Section 3. Section 37-29-102, MCA, is amended to read:

**"37-29-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the state board of *dentistry* provided for in 2-15-1842.

(2) "Denture" means any removable full or partial upper or lower prosthetic dental appliance to be worn in the mouth.

(3) "Denturist" means a person licensed under this chapter to engage in the practice of denturistry.

(4) "Department" means department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Immediate denture" means a denture constructed prior to and inserted immediately after extraction of teeth.

(6) "Practice of denturistry" means:

(a) the making, fitting, constructing, altering, reproducing, or repairing of a denture and furnishing or supplying of a denture directly to a person or advising the use of a denture; or

(b) the taking or making or the giving of advice, assistance, or facilities respecting the taking or making of any impression, bite, cast, or design preparatory to or for the purpose of making, constructing, fitting, furnishing, supplying, altering, repairing, or reproducing a denture."

Section 4. Section 37-29-404, MCA, is amended to read:

**"37-29-404. Notice of board address — guarantee.** (1) A notice must be posted in a conspicuous area on any premises where the practice of dentistry is conducted, with lettering of a size easily read by the average person and in substantially the following form:

ANY CONSUMER WHO HAS A COMPLAINT RELATING TO PRACTICES OF THIS ESTABLISHMENT MAY CONTACT THE MONTANA BOARD OF DENTISTRY, DEPARTMENT OF COMMERCE, 1424 NINTH AVENUE, HELENA, MONTANA 59620.

(2) All denturist services must be unconditionally guaranteed for a period of not less than 90 days."

Section 5. **Repealer.** Sections 2-15-1855, 37-29-202, and 37-29-203, MCA, are repealed.

Section 6. **Transfer of assets and payment of claims.** All assets of the board of dentistry are transferred to the board on [the effective date of this act]. After [the effective date of this act], all valid claims against the board of dentistry must be paid by the board.

Section 7. **Extension of authority.** Any existing authority of the board of dentistry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 8. **Effective date.** This act is effective July 1, 1987.

Approved April 17, 1987.

## CHAPTER NO. 525

[HB 373]

AN ACT AUTHORIZING THE DIVISION OF WORKERS' COMPENSATION TO EMPLOY NECESSARY STAFF TO ENSURE TIMELY PROCESSING OF CLAIMS; PROVIDING GUIDELINES FOR DETERMINING STAFFING NEEDS; AMENDING SECTIONS 39-71-203 AND 39-71-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-71-203, MCA, is amended to read:

**"39-71-203. Powers of division — staffing.** (1) The division is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition

thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

(2) *The division shall employ sufficient personnel to allow it to meet the claims processing goals contained in 39-71-604. The division shall implement staffing patterns that are supported by indicators of workload. The open file is the workload indicator for claims processing, and the number of open claims per claims examiner may not be less than 300. The claims support staff, including the file, medical pay, and new claims units, may not exceed two FTEs per claims examiner. The administrative and underwriting staffing must be based on the number of premium paying policyholders and may not exceed 1.4 FTEs per 1,000 policyholders.*

(3) *The division administrator shall submit a revised operation plan to the budget office for review and approval and to the legislative finance committee for review whenever increases or decreases of staff are necessary to implement the provisions of subsection (2).*

(4) *Funds from the state special revenue fund shall be used to implement subsection (2)."*

Section 2. Section 39-71-604, MCA, is amended to read:

**"39-71-604. Application for compensation.** (1) Where a worker is entitled to benefits under this chapter, the worker shall file with the insurer or the division all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the division without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) Where death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer or the division. The claim must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the division.

(3) *The goal of the division is to process all claims for compensation within 14 days after initial acceptance of liability for a claim."*

Section 3. **Extension of authority.** Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 17, 1987.

**CHAPTER NO. 526**

[HB 381]

AN ACT EXEMPTING FROM COVERAGE UNDER THE UNEMPLOYMENT INSURANCE LAW AND THE WORKERS' COMPENSATION ACT SELF-EMPLOYED COSMETOLOGISTS AND BARBERS WHO RENT SPACE, FURNITURE, OR FIXTURES IN A SHOP; AND AMENDING SECTIONS 39-51-204 AND 39-71-401, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-51-204, MCA, is amended to read:

**"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not include:

- (a) agricultural labor, except as provided in 39-51-203(8);
- (b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-203(9);
- (c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;
- (d) service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of 21 in the employ of his father or mother;
- (e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;
- (f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;
- (g) services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;

(h) services performed by real estate, securities, and insurance salesmen paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital;

*(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and who has acknowledged in writing that he is not covered by unemployment insurance and workers' compensation and who contracts with a cosmetological establishment as defined in 37-31-101 or a barbershop as defined in 37-30-101, which contract shall show the cosmetologist or barber is free from all control and direction of the owner in the contract and in fact; receives payment for services from his or her individual clientele; leases, rents, or furnishes all of his or her own equipment, skills, or knowledges; and whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the cosmetological establishment or barbershop shall not be construed as a lack of freedom from control or direction under this subsection); or*

(m) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. "Regularly employed" means the services are performed during at least 24 days in the same quarter.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and

which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in the employ of a school which is not an institution of higher education, prior to December 31, 1977;

(d) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(e) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(f) for a state prison or other state correctional or custodial institution by an inmate of that institution."

Section 2. Section 39-71-401, MCA, is amended to read:

**"39-71-401. Employments covered and employments exempted.**

(1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116(3) except employment of a volunteer under 67-2-105;

(c) employment of members of an employer's family dwelling in the employer's household;

(d) employment of sole proprietors or working members of a partnership other than those who consider themselves or hold themselves out as independent contractors and who are not contracting for agricultural services to be performed on a farm or ranch, or for broker or salesman services performed under a license issued by the board of realty regulation, or



for services as a direct seller engaged in the sale of consumer products to customers primarily in the home;

(e) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(f) any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(g) employment with any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter;

(h) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district.

(3) A sole proprietor or working member of a partnership who holds himself out or considers himself an independent contractor and who is not contracting for agricultural services to be performed on a farm or ranch, or for broker or salesman services performed under a license issued by the board of realty regulation, or for services as a direct seller engaged in the sale of consumer products to customers primarily in the home, *or for cosmetologist's services or barber's services as defined in 39-51-204(1)(l)* must elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3, but he may apply to the division for an exemption from the Workers' Compensation Act for himself. The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor. When an application is approved by the division, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(4) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the division, distributed through insurers or directly by the division, and posted by employers in accordance with rules adopted by the division. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

**Section 3. Extension of authority.** Any existing authority of the department of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 17, 1987.

**CHAPTER NO. 527**

[HB 400]

AN ACT REPEALING THE ADMINISTRATIVE RULE THAT PROHIBITED AN OWNER, LESSEE, MANAGER, OR OTHER PERSON HAVING THE RIGHT TO SELL, LEASE, OR RENT A HOUSING ACCOMMODATION OR IMPROVED OR UNIMPROVED PROPERTY FROM REFUSING TO MAKE THE HOUSING ACCOMMODATION OR PROPERTY AVAILABLE TO A PERSON OR PERSONS WITH A CHILD OR CHILDREN; REPEALING RULE 24.9.1107, ADMINISTRATIVE RULES OF MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature finds that Rule 24.9.1107, Administrative Rules of Montana, directly conflicts with the public policy expressed by the Legislature because the rule fails to incorporate the application of reasonable grounds exceptions as provided for in the statute.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Repealer.** Rule 24.9.1107, Administrative Rules of Montana, is repealed.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 17, 1987.

**CHAPTER NO. 528**

[HB 406]

AN ACT TO CHANGE THE NAME OF THE MONTANA OUTFITTERS' COUNCIL TO THE BOARD OF OUTFITTERS; TO REVISE THE METHOD OF SELECTION OF MEMBERS; TO TRANSFER THE COUNCIL TO THE DEPARTMENT OF COMMERCE; TO TRANSFER LICENSING AUTHORITY FOR OUTFITTERS AND GUIDES FROM THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO THE BOARD OF OUTFITTERS; TO PROVIDE PENALTIES FOR VIOLATIONS; AMENDING SECTIONS 2-15-3403, 87-4-101, 87-4-102, 87-4-104, 87-4-127, 87-4-128, AND 87-4-142, MCA; REPEALING SECTIONS 87-4-105, 87-4-106, AND 87-4-144, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE FOR A PORTION OF THE ACT AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-3403, MCA, is amended to read:

**"2-15-3403. Board of outfitters.** (1) There is a *board of outfitters*.

(2) (a) The *board* consists of seven members *to be appointed by the governor*.

(b) *Five members must be licensed outfitters who are actively involved in the outfitting business. Each outfitter member shall represent one of the five districts designated in 2-15-3402(2). Two qualified persons in each district must be nominated for appointment by the licensed outfitters residing in that district at an annual meeting of the outfitters in that district to be held on a Saturday during March or April. A licensed outfitter who does not attend the annual meeting may assign his vote to an attending outfitter by a written and signed proxy. Only one such proxy vote may be cast by an attending outfitter. Names of nominees must be submitted to the governor, who will select one outfitter from each district to be a board member.*

(c) *The governor shall also appoint one member who is an employee of the department of fish, wildlife, and parks and one member from the general public.*

(3) *A vacancy on the board must be filled in the same manner as the original appointment.*

(4) *The members shall serve staggered 3-year terms and take office on the day they are elected.*

(5) *The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.*

(6) *Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133."*

Section 2. Section 87-4-101, MCA, is amended to read:

**"87-4-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) *"Board" means the board of outfitters provided for in 2-15-3403.*

(2) *"Department" means the department of commerce provided for in Title 2, chapter 15, part 18.*

(3) *"License year" means that period commencing January 1 and ending December 31 of the same year.*

(4) *"Nonresident" means a person other than a resident.*

(5) *"Outfitter" means any person, except a person providing services on real property that he owns for the primary pursuit of bona fide agricultural interests, who:*

(a) *engages in the business of outfitting for hunting or fishing parties, as the term is commonly understood;*

(b) *for consideration provides any saddle or pack animal or personal service for hunting or fishing parties or camping equipment, vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill any game and accompanies such a party or person on an expedition for any of these purposes;*

(c) *for consideration furnishes a boat or other floating craft and accompanies any person for the purpose of catching fish; or*

(d) for consideration aids or assists any person in locating or pursuing any game animal.

(6) "Professional guide" means a person who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment.

(7) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102.

(8) "Participant" means a person using the services offered by a licensed outfitter or professional guide."

Section 3. Section 87-4-102, MCA, is amended to read:

**"87-4-102. Determination of what constitutes consideration.** The providing of the services, property, or equipment mentioned in 87-4-101(5) or the advertising of services to assist persons to hunt, pursue, or take wildlife or to fish shall be presumed to have been for consideration for the purposes of this chapter."

Section 4. Section 87-4-104, MCA, is amended to read:

**"87-4-104. Powers and duties of board relating to outfitters and guides.** The board shall:

(1) prepare and publish an information pamphlet which contains the names and addresses of all licensed outfitters. This pamphlet shall be available for free distribution as early as possible during each calendar year but not later than the second Friday in March. The pamphlet shall contain the names and addresses of only those outfitters who have a valid license for the current license year.

(2) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(3) *enforce the provisions of this chapter and rules adopted pursuant to this chapter;*

(4) *establish outfitter standards and professional guide standards;*

(5) *adopt:*

(a) *rules of procedure;*

(b) *rules to administer and enforce this chapter, including but not limited to rules prescribing all requisite qualifications for licensure. These qualifications must include training, experience, knowledge of rules of governmental bodies pertaining to outfitting, and condition and type of gear and equipment; and*

(c) *any reasonable rules, not in conflict with this chapter, necessary for safeguarding the health, safety, and welfare of those persons using the services of outfitters and for the protection of landowners and the general public;*

(6) *hold hearings and proceedings to suspend or revoke licenses of outfitters and professional guides for due cause."*

Section 5. Section 87-4-127, MCA, is amended to read:

**"87-4-127. Fees.** (1) The *board* shall establish fees commensurate with costs as provided in 37-1-134.

(2) Applications shall be accompanied by a license fee as specified by the *board*.

(3) If a nonresident resides in a state requiring residents of the state of Montana to pay in excess of the amount established by the *board* for a similar license, the fee for such nonresident outfitter's or professional guide's license shall be the same amount as the higher fee charged in the state where the nonresident resides.

(4) The license fees must be deposited in the state special revenue fund and must be used by the *board* to investigate the applicant, to enforce this part, and for administrative costs, subject to 37-1-101(6)."

Section 6. Section 87-4-128, MCA, is amended to read:

**"87-4-128. Investigation of applicant — issuance or denial of license.** (1) The *board* shall investigate each applicant for an outfitter's or professional guide's license and determine his qualifications.

(2) The *board* may deny or refuse to issue any new license or to renew any previous license if the applicant does not meet the qualifications herein stated. In the event that any application for license is denied or refused, the *board* shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) Final decision as to issuance of renewal licenses shall be made not later than 30 days from the date of receipt of the completed application for renewal and not later than 90 days from the date of receipt of a completed application for a new license.

(4) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this chapter, completing an application for license renewal on a form provided by the *board*, and payment of the renewal fee, but is exempt from having to retake the written examination.

(5) An outfitter licensee must make an application for license renewal by January 1 of the license year. A penalty fee of \$50 will be charged in addition to the regular resident or nonresident outfitter's license fee if the application for such license is not completed and made by January 1 of the license year. This subsection does not apply to a new applicant for an outfitter's license."

Section 7. Section 87-4-142, MCA, is amended to read:

**"87-4-142. Procedure for suspension or revocation of license — reissuance.** (1) Proceedings for the revocation or suspension of a license issued hereunder may be taken upon charge or recommendation of any person. All such charges or recommendations must be made in writing, must state the facts upon which such charge or recommendation is based, and must be signed and sworn to by the person making the charge or

recommendation. Any such charge or recommendation shall be filed with the *board*. Thereupon, the *board* shall initiate a preliminary investigation of all facts in connection with the charge.

(2) If the accusation be deemed to be unfounded or trivial, the *board* shall dismiss the same and will advise the licensee charged and the complaining party of the action. *If the board determines the charge or recommendation to have good cause and to be sufficiently founded, it shall appoint a hearing officer who shall conduct a hearing on such charges in accordance with the Montana Administrative Procedure Act.*

(3) The *board* thereupon shall cause a copy of the charge and a record of the investigation to be served upon the licensee involved not less than 20 days prior to the day set for hearing thereon, which hearing shall be before an appointed hearing officer at a time and place set by such officer. At the hearing, the licensee involved may be represented by counsel. After full, fair, and impartial hearing, the *board* may suspend the accused's license or his right to hold a license for a period not to exceed 3 years, may order the license revoked, or may dismiss the charge or recommendation based upon the facts shown at the hearing.

(4) A revoked or suspended license may be reissued or reinstated at the discretion of the *board*."

**Section 8. Penalties — disposition of fines.** (1) A person who violates any provision of this chapter or rule adopted under this chapter is guilty of a misdemeanor and is punishable by a fine not exceeding \$500.

(2) A person who represents himself as an outfitter or purposely engages in outfitting without a license as required by this chapter is guilty of a misdemeanor and is punishable by a fine of not less than \$200 and not more than \$500. In addition, the person must be assessed the amount of all costs incurred by the board in investigating and preparing the case for trial.

(3) Fifty percent of all fines paid under this section must be deposited in the general fund of the county in which the conviction is obtained, and 50% must be deposited in the state special revenue fund for the use of the board in enforcing this chapter.

**Section 9. Enforcement.** Investigations and arrests for violations of this chapter may be made by any peace officer; warden of the department of fish, wildlife, and parks; or federal agency enforcement personnel.

**Section 10. Transfer of agency — name change — duties transferred.** (1) The Montana outfitters' council is transferred to the department of commerce and is renamed the board of outfitters.

(2) The authority and functions of the department of fish, wildlife, and parks regarding licensing of outfitters and guides are transferred to the board of outfitters, and any reference in 87-4-122, 87-4-124, 87-4-125, 87-4-129, 87-4-131, and 87-4-143 to the department of fish, wildlife, and parks or to the department or director, meaning the department of fish, wildlife, and parks or the director of that department, is changed to the board, meaning the board of outfitters.

**Section 11. Codification instruction.** (1) The code commissioner shall recodify Title 87, chapter 4, part 1, as a separate chapter of Title 37, and the provisions of Title 37, chapter 1, apply. The code commissioner shall change internal references accordingly.

(2) The code commissioner shall recodify section 2-15-3403 as an integral part of Title 2, chapter 15, part 18.

**Section 12. Repealer.** Sections 87-4-105, 87-4-106, and 87-4-144, MCA, are repealed.

**Section 13. Transition — effective date.** (1) Members of the board of outfitters may be nominated and appointed upon passage and approval of sections 1 through 12 but may not take office prior to the effective date of sections 1 through 12. The board upon appointment may adopt rules as authorized in sections 1 through 12, but such rules may not become effective prior to the effective date of sections 1 through 12.

(2) This section is effective on passage and approval.

**Section 14. Termination date.** This act terminates June 30, 1991.

Approved April 17, 1987.

## CHAPTER NO. 529

[HB 471]

AN ACT PROVIDING FOR THE LICENSING AND REGULATION OF NUTRITIONISTS BY THE BOARD OF MEDICAL EXAMINERS; ADDING A NUTRITIONIST TO THE BOARD OF MEDICAL EXAMINERS; AMENDING SECTION 2-15-1841, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Legislative finding and purpose.** The legislature finds and declares that the practice of nutrition assessment and counseling affects the public health, safety, and welfare. It is the purpose of [this act] to provide for the licensing and regulation of nutritionists in order to protect the public health, safety, and welfare, to ensure that nutritional services of high quality are available to the people of Montana, and to provide a means of identifying those qualified to practice nutrition.

**Section 2. Definitions.** In [this act], unless the context requires otherwise, the following definitions apply:

(1) "Accredited" means accredited through the council on postsecondary accreditation and the U.S. department of education.

(2) "Board" means the board of medical examiners.

(3) "Commission" means the commission on dietetic registration, which is a member of the national commission for health certifying agencies.

(4) "Department" means the department of commerce.

(5) "Dietetic-nutrition practice" or "dietetics-nutrition" is the integration and application of principles derived from the sciences of nutrition, biochemistry, physiology, and food management and from the behavioral and social sciences to achieve and maintain health. The primary function of dietetic-nutrition practice is to provide nutrition assessment and nutrition counseling.

(6) "General nutritional information" means information on:

- (a) principles of good nutrition;
- (b) foods to be included in a daily diet;
- (c) the essential nutrients needed by the body;
- (d) recommended amounts of these nutrients;
- (e) the action of these nutrients on the body;
- (f) the effects of deficiencies in these nutrients; or
- (g) foods and supplements that are good sources of essential nutrients.

(7) "Licensed nutritionist" means a nutritionist licensed under [this act].

(8) "Nutrition assessment" means the evaluation of nutritional needs of individuals and groups based on appropriate biochemical, anthropometric, physical, and dietary data in order to determine nutrient needs and to recommend appropriate nutritional intake, including both enteral and parenteral nutrition.

(9) "Nutrition counseling" means providing assistance and advice to individuals or groups in the selection of food and other sources of nutrients to achieve appropriate nutritional intake, based on:

- (a) the nutrition assessment;
- (b) the composition of food and other sources of nutrients; and
- (c) meal preparation consistent with cultural background and socioeconomic status.

(10) "Nutritionist" means:

- (a) a person licensed under [this act]; or
- (b) a person who has satisfactorily completed a baccalaureate and master's or a doctoral degree in the field of dietetics, food and nutrition, or public health nutrition conferred by an accredited college or university.

(11) "Registered dietitian" means a person who is registered by the commission.

**Section 3. Scope of dietetic-nutrition practice.** Only a nutritionist can provide the following services:

- (1) assessing the nutrition needs of individuals and groups and determining resources and constraints in the practice setting;



(2) establishing priorities and objectives that meet nutritive needs and are consistent with available resources and constraints;

(3) providing nutrition counseling for any individual;

(4) developing, implementing, and managing nutrition care systems; and

(5) evaluating, adjusting, and maintaining appropriate standards of quality in food and nutrition services.

**Section 4. Licensing requirements.** (1) An applicant for licensure as a licensed nutritionist shall file a written application with the board and demonstrate to the board that he is registered by the commission.

(2) An applicant shall pay an application fee, set by the board.

**Section 5. Issuance of license — effective date.** (1) Upon successful completion of the requirements in [section 4], an applicant must be issued a license attesting to the date and fact of licensure.

(2) The license is effective on the date of issuance and expires 1 year after that date.

**Section 6. Exemptions from licensure requirements.** [This act] does not prevent:

(1) a student or intern in an approved academic program or a paraprofessional with approved dietetic-nutrition training from engaging in the practice of dietetics-nutrition if a licensed nutritionist is available for direct supervision and if the student, intern, or paraprofessional does not represent himself to the public as a nutritionist;

(2) a licensed physician or nurse from engaging in the practice of dietetics-nutrition when it is incidental to the practice of his profession;

(3) a person licensed under any other law from engaging in the profession or business for which he is licensed if he does not represent himself to the public as a nutritionist;

(4) an educator or advisor employed by a nonprofit agency acceptable to the board or by an accredited degree-granting institution or an accredited elementary or secondary school from engaging in an activity within the scope of his salaried position;

(5) a person employed by or under contract with an agency of the state or federal government from discharging his official duty if he does not represent himself to the public as a nutritionist;

(6) a person from furnishing general nutritional information, including dissemination of literature, as to the use of food, food materials, or dietary supplements or from engaging in the explanation as to the use of foods or food products, including dietary supplements, in connection with the marketing and distribution of those products if he does not represent himself to the public as a nutritionist;

(7) a person from furnishing general nutrition information or disseminating literature if he does not represent himself to the public as a dietitian or a nutritionist; or

(8) a person from fulfilling state or federal regulations governing the delivery or provision of nutritional health services to hospitals or long-term care facilities if he does not represent himself to the public as a nutritionist.

**Section 7. Representation to public as nutritionist — limitation on use of title.** No person may represent himself to the public by any title, sign, or advertisement or description of services as a nutritionist or a licensed nutritionist unless he has been licensed under [this act] or has met the requirements of [section 2(10)(b)].

**Section 8. Reciprocity.** A person licensed to practice dietetics-nutrition in another state with licensing requirements equivalent to or more stringent than those in [section 4] is entitled to a license to practice dietetics-nutrition in Montana.

**Section 9. Renewal of license — continuing education.** (1) An application for renewal of license must be made annually within 30 days after the expiration of the existing license.

(2) A renewal license must be issued when the applicant submits proof that requirements for continuing education have been met and pays a renewal fee set by the board commensurate with costs.

(3) An additional fee may be imposed on applications for renewal received by the board more than 30 days after the expiration of the existing license.

**Section 10. Powers and duties of the board.** In addition to all other powers and duties conferred and imposed on the board by [this act], the board shall:

(1) examine qualified applicants for a license to practice dietetics-nutrition, issue licenses to applicants who meet the requirements established by [this act], and renew licenses as provided in [section 9]; and

(2) adopt rules that set professional, practice, and ethical standards for licensed nutritionists and such other rules as may be necessary for the administration of [this act].

**Section 11. Grounds for revocation, suspension, or refusal to renew license.** The board may impose a fine or probationary conditions, suspend or revoke a license, or deny or refuse to renew a license if the licensee or applicant has:

(1) obtained a license by means of fraud, misrepresentation, or concealment of material facts;

(2) engaged in unprofessional conduct or gross incompetence as defined by rule of the board;

(3) been convicted of a crime of moral turpitude or a felony related to the practice of dietetics-nutrition; or

(4) violated an order or rule of the board.

**Section 12.** Section 2-15-1841, MCA, is amended to read:

**"2-15-1841. Board of medical examiners.** (1) There is a Montana state board of medical examiners.

(2) The board consists of *ten* members appointed by the governor with the consent of the senate. Appointments made when the legislature is not in session may be confirmed at the next session.

(3) The members are:

- (a) five members having the degree of doctor of medicine;
- (b) one member having the degree of doctor of osteopathy;
- (c) one member who is a licensed podiatrist;
- (d) *one member who is a licensed nutritionist; and*
- (e) two members of the general public who are not medical practitioners.

(4) The members having the degree of doctor of medicine may not be from the same county. Each member shall be a citizen of the United States. Each member, except for public members, shall have been licensed and shall have practiced medicine *or dietetics-nutrition* in this state for at least 5 years and shall have been a resident of this state for at least 5 years, *except that for 5 years after [the effective date of this act] the number of years of licensure required for the nutritionist member is no greater than the number of years this act has been in effect.*

(5) *The member who is a licensed nutritionist may vote only on issues that affect the licensure and regulation of nutritionists.*

(6) Members shall serve staggered 4-year terms. A term commences on September 1 of each year of appointment. A member may, upon notice and hearing, be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Approved April 17, 1987.

## CHAPTER NO. 530

[HB 501]

AN ACT PROVIDING FOR AN INTERPLEADER IN SMALL CLAIMS COURT PROCEDURE; AND AMENDING SECTIONS 25-34-102 AND 25-34-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 25-34-102, MCA, is amended to read:

**"25-34-102. Jurisdiction — joinder — interpleader.** (1) The small claims court has original jurisdiction in all actions for the recovery

of money or specific personal property when such action arises out of a contract, express or implied, the amount of the claim, exclusive of costs, does not exceed \$1,500, and the defendant can be served within the county or counties for which the small claims court has been created.

(2) More than one claim may be joined if all claims joined would separately meet the requirements for jurisdiction in the small claims court and the total value of money claimed or property sought does not exceed \$1,500.

(3) *The small claims court has jurisdiction over an interpleader under [section 3] in which the amount claimed does not exceed \$1,500.*"

Section 2. Section 25-34-201, MCA, is amended to read:

**"25-34-201. Commencement of actions.** (1) Actions in small claims court shall be commenced by filing an affidavit with the clerk of court. The small claims court judge shall assist any claimant in preparing an affidavit or may direct the clerk of court to provide such assistance.

(2) The clerk of court shall provide forms for the affidavits, which shall be in substantially the following form:

"In the Small Claims Court of the ..... Judicial District in and for the County of ....., State of Montana.

|           |                        |
|-----------|------------------------|
| .....,    | Doc. .... No. ....     |
| Plaintiff | PLAINTIFF'S COMPLAINT/ |
| vs.       | AFFIDAVIT NOTICE TO    |
| .....,    | DEFENDANT, SEEKING     |
| Defendant | MONEY DAMAGES          |

Plaintiff states that defendant(s) owe and should be ordered to pay to me the sum of ....., because on ..... (date) at ..... (place), the defendant(s)

Plaintiff declares that the defendant or defendants are not a "person in military service" or "person in the military service of the United States" as defined in Sec. 101 of the Soldiers' and Sailors' Civil Relief Act of 1940.

To the best of my knowledge and belief, the defendant named above resides at the following address or the following is the business address:

My printed name and printed address are as follows:

Signed in my presence

Signature: .....

Clerk or Deputy

Today's date: .....

## ORDER OF THE COURT/NOTICE TO DEFENDANT

This claim has been filed against you. You must appear before this court on ..... (date) at ..... (time) at ..... (location).

If you do not appear, a judgment may be entered against you. Costs of the action also may be charged against you. You should read the information on the back of this claim and notice. If you have any questions about the procedure, you may contact the Clerk of the Court in person at ..... (location of court) or by telephone at ..... (number)

.....  
Clerk of the Court

By:....."

(3) *When an interpleader appears, he shall prepare an interpleader affidavit under [section 3]. Upon the interpleader affidavit being sworn to by the affiant, the judge, justice, or clerk of the court shall file it and make a true copy and at the same time shall sign the order directing the defendant to appear and answer the claim. A copy of the order must then be served upon the defendant in the manner provided by law for service of summons.*

(4) *Upon the matter being decided by the court, the court may order the court costs to be reimbursed from the interpleaded funds. The clerk of the court is charged with the responsibility of disbursing the interpleaded funds in accordance with the judge's order."*

**Section 3. Interpleader actions.** (1) As used in this chapter, interpleader actions determine the rights of rival claimants to a fund held by a disinterested party and may be maintained in the small claims court when any person appears before a judge or clerk of court or justice of the peace and executes an affidavit setting forth the nature and basis of the claim.

(2) The person filing the interpleader affidavit shall deposit the funds with the clerk of court or justice of the peace at the same time the interpleader affidavit is filed.

(3) The interpleader must be substantially in the following form:

"In the Small Claims Court of the ..... Judicial District in and for the County of ....., State of Montana.

.....  
Plaintiff  
vs.  
.....  
Defendant  
and  
.....  
Defendant

INTERPLEADER AFFIDAVIT

State of Montana                    )  
                                              )ss

....., being duly sworn, deposes and says: That ..... the defendant resides at ....., in the above named county. That ....., defendant resides at ....., in the above named county. That the plaintiff has custody or possession of money in the amount of \$....., held pursuant to the following:

.....  
 .....  
 .....  
 .....

That the defendants claim or may claim to be entitled to the money. That the plaintiff deposits into the court \$....., which represents the amount of money in dispute.

That the plaintiff resides at the address shown in the above caption.

.....  
 Affiant

Subscribed and sworn to before me this .... day of ....., 19....

.....  
 Justice of the Peace

.....  
 Clerk

### ORDER

The State of Montana to the within named defendants, greeting:

You are hereby directed to appear and answer the within and foregoing claim at my office in (name, building, or residence), in ..... County of ....., State of Montana, on the ..... day of ....., 19...., at the hour of .....(AM)(PM); and to have with you then and there, all books, papers, and witnesses needed by you to establish your claim to such money.

You are further notified that in case you do not so appear, judgment will be given against you as follows:

Determining or foreclosing your claim to the above-described money as well as the disposition thereof; and, in addition, for costs of the action.

Dated this ..... day of ....., 19....

.....  
 Justice of the Peace

.....  
 Clerk"

**Section 4. Codification instruction.** Section 3 is intended to be codified as an integral part of Title 25, chapter 34, part 1, and the provisions of Title 25, chapter 34, apply to section 3.

Approved April 17, 1987.

**CHAPTER NO. 531**

[HB 503]

AN ACT GRANTING A LANDOWNER IMMUNITY AGAINST CLAIMS OF PERSONS GRATUITOUSLY TOURING OR VIEWING CULTURAL AND HISTORICAL SITES AND MONUMENTS ON THE LANDOWNER'S PROPERTY; EXCLUDING FROM IMMUNITY ANY CLAIMS ARISING FROM THE LANDOWNER'S WILLFUL OR WANTON MISCONDUCT; AND AMENDING SECTION 70-16-301, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 70-16-301, MCA, is amended to read:

**"70-16-301. Recreational purposes defined.** "Recreational purposes", as used herein, shall include hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, winter sports, hiking, *touring or viewing cultural and historical sites and monuments*, or other pleasure expeditions."

Approved April 17, 1987.

**CHAPTER NO. 532**

[HB 530]

AN ACT TO PERMIT THE SALE OF PROGENY RAPTORS HELD FOR BREEDING PURPOSES; AND AMENDING SECTIONS 87-5-206 AND 87-5-210, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-5-206, MCA, is amended to read:

**"87-5-206. Restrictions on taking, possessing, and selling raptors.** (1) A licensee may not at any time possess more than three raptors, including those that have been imported, except as permitted by the department under 87-5-210.

(2) Licensees may take raptors as young or fledglings from nests (unless specifically prohibited by department rules) or by traps or nets which are humane in their operation and use. Not more than one young may be taken from one nest by a permittee or permittees, and at least one young must be left in the nest. The department may close an area of the state to the taking of raptors at any time or designate other raptors which may not be taken. This subsection does not permit the removal of raptors in any national or state refuge or park or in any area in which local laws may prohibit that activity. Trapping raptors is permitted only between September 1 and February 1.

(3) A licensee may not transfer ownership or possession of a raptor taken or possessed under the provisions of this part without notifying the department within 10 days after the date of transfer.

(4) A person may not sell or offer for sale raptors in this state *except as permitted by the department under 87-5-210*. A person may not transport raptors out of the state except by permit issued by the department."

Section 2. Section 87-5-210, MCA, is amended to read:

**"87-5-210. Captive breeding of raptors — permit — fee — transfer and revocation — rules.** (1) The department may grant permits to a person, whether or not licensed under this part, for the taking and holding of raptors for captive breeding purposes under such conditions, consistent with this part, as the department may specify in the permit.

(2) The fee for a captive breeding permit is \$20 a year.

(3) Captive breeding permits are not transferable and may be revoked at any time by the department for violation of any conditions of the permit or regulations of the department.

(4) The department may adopt rules for the keeping of records *on*, the trapping, taking, possession, propagation, and release *of*, and the sale of *progeny* of raptors taken and held for captive breeding projects."

Section 3. **Report.** The department shall report to the 51st legislature the results of the program regulating the sale of the progeny of raptors, including but not limited to the numbers of birds sold, a description of the enforcement efforts undertaken, and the cost of the program to the department.

Section 4. **Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 17, 1987.

## CHAPTER NO. 533

[HB 554]

AN ACT REQUIRING CREATION OF AN ESCROW FUND TO PAY CRIME VICTIMS FROM THE PERPETRATOR'S PROCEEDS OF A CRIME; AND AMENDING SECTION 53-9-104, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-9-104, MCA, is amended to read:

**"53-9-104. Powers and duties of division.** (1) The division shall:

- (a) adopt rules to implement this part;
- (b) prescribe forms for applications for compensation;



- (c) determine all matters relating to claims for compensation; and
- (d) *require any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, book, photograph, movie, television production, play, or article relating to such crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, if the individual is convicted of the crime, to be held for such period of time as the division may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to pay the costs and attorney fees of court-appointed counsel for the charged person. Each victim and dependent of a deceased victim is entitled to his actual and unreimbursed damages of all kinds or \$5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the county as reimbursement for any public defender or any attorney appointed for the charged person must be deposited in the account established in 53-9-109.*

(2) The division may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the division to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(c) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge; and

(d) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part."

**Section 2. Extension of authority.** Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 17, 1987.

## CHAPTER NO. 534

[HB 622]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE FINANCIAL REGULATION OF INSURANCE COMPANIES; AND AMENDING SECTIONS 33-2-121, 33-2-534, 33-2-701, 33-2-806, AND 33-2-1114, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-2-121, MCA, is amended to read:

**"33-2-121. Duration of suspension — insurer's obligations — reinstatement.** (1) Suspension of an insurer's certificate of authority shall

be for such period as is fixed by the commissioner in the order of suspension *and shall continue until rescinded or otherwise removed by the commissioner*. During the suspension the commissioner may shorten the period thereof by his further order.

(2) During the period of the suspension the insurer shall file its annual statement and pay fees, licenses, and taxes as required under this code as if the certificate had continued in full force.

(3) *If within such period of suspension the certificate of authority has not been terminated, the insurer's certificate of authority may be reinstated if the commissioner finds that the causes of the suspension have been removed or that the insurer is otherwise in compliance with the requirements of this code.*

(4) Upon reinstatement of the insurer's certificate of authority, the authority of its agents in this state to represent the insurer shall likewise reinstate.

(5) The commissioner shall forthwith notify both the insurer and its agents in this state, as shown by his records, of such reinstatement."

Section 2. Section 33-2-534, MCA, is amended to read:

**"33-2-534. Valuation of property.** (1) Real property acquired pursuant to a mortgage loan or contract for sale shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, the cost of improvements thereafter made by the insurer, and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property. *After the initial valuation as set forth herein, any land shall be valued at its acquisition cost and any improvements thereon shall be valued at depreciated acquisition cost.*

(2) Other real property held by an insurer shall not be valued at an amount in excess of *acquisition cost if land and depreciated acquisition cost if an improvement to land.*

(3) Personal property acquired pursuant to chattel mortgages made in accordance with 33-2-831 shall not be valued at an amount greater than the unpaid balance of principal on the defaulted loan at the date of acquisition, together with taxes and expenses incurred in connection with such acquisition, or the fair value of such property, whichever amount is the lesser."

Section 3. Section 33-2-701, MCA, is amended to read:

**"33-2-701. Annual statement — revocation or fine for failure to file — penalty for perjury.** (1) Each authorized insurer shall annually on or before March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the December 31 preceding. The statement shall be in such general form and context as is required or not disapproved by the commissioner, as is in current use for similar reports to states in general with respect to the type of insurer and kinds of insurance to be reported upon, and as supplemented for additional information required by the commissioner. The statement shall be verified

by the oath of the insurer's president or vice-president and secretary or, if a reciprocal insurer, by the oath of the attorney-in-fact or its like officers if a corporation. The commissioner may, in his discretion, waive any such verification under oath.

(2) The statement of an alien insurer shall relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to an alien insurer's affairs throughout the world, the insurer shall file such statement with the commissioner as soon as reasonably possible. The statement shall be verified by the insurer's United States manager or other officer duly authorized.

(3) The commissioner may refuse to accept the fee for continuance of the insurer's certificate of authority, as provided in 33-2-117, or may in his discretion suspend or revoke the certificate of authority of any insurer failing to file its annual statement when due.

(4) Any director, officer or agent, or employee of any company who subscribes to, makes, or concurs in making or publishing any annual statement or any other statement required by law knowing the same to contain any material statement which is false shall be punished by a fine of not more than \$1,000.

(5) At time of filing, the insurer shall pay to the commissioner the fee for filing its statement as prescribed in 33-2-708.

(6) *The commissioner may impose a fine not to exceed \$100 a day for each day after March 1 that an insurer fails to file the annual statement referred to in subsection (1). Such fine may not exceed a maximum of \$1,000."*

Section 4. Section 33-2-806, MCA, is amended to read:

**"33-2-806. Diversification of investments.** An insurer shall invest in or hold as admitted assets categories of investments only within applicable limits as follows:

(1) An insurer shall not, except with the consent of the commissioner, have at any one time any combination of investments in or loans upon the security of the obligations, property, or securities of any one person or insurer aggregating an amount exceeding 5% of the insurer's assets. This restriction shall not apply as to general obligations of the United States of America or of any state or include policy loans made under 33-2-825.

(2) An insurer shall not invest in or hold at any one time more than 10% of the outstanding voting stock of any corporation, except with the consent of the commissioner given with respect to voting rights of preference stock during default of dividends. This provision does not apply as to stock of a wholly-owned subsidiary of the insurer or to controlling stock of an insurer acquired under 33-2-821.

(3) An insurer, other than title insurer, shall invest and maintain invested funds not less in amount than the minimum paid-in capital stock required under this code of a domestic stock insurer transacting like kinds

of insurance, only in cash and the securities provided for under the following sections: 33-2-811(1), 33-2-812, and 33-2-830.

(4) A life insurer shall also invest and keep invested its funds in amount not less than the reserves under its life insurance policies and annuity contracts, other than variable annuities, in force in cash and/or the securities or investments provided for under 33-2-531.

(5) Except with the commissioner's consent, an insurer shall not have invested at any one time more than 20% of its assets in the class of securities described in 33-2-818, exclusive of obligations of public utilities.

(6) An insurer may invest and have invested at any one time in aggregate amount not more than 10% of its assets in all stocks under 33-2-820 and 33-2-821. Determination of the amount which an insurer has invested in common stocks for the purposes of this provision shall be based on the cost of such stocks to the insurer. This provision shall not apply as to stock of a controlled or subsidiary insurance corporation or other corporations under 33-2-821 and 33-2-822.

(7) *Except with the commissioner's consent, an insurer may not have invested at any one time more than 5% of its assets in securities allowed under 33-2-824.*

(8) Except with the commissioner's consent, an insurer shall not have invested at any one time more than 10% of its assets in the class of securities described in any one of the following sections: 33-2-814, 33-2-819, and 33-2-823.

(9) Limits as to investments in the category of real estate shall be as provided in 33-2-832. Other specific limits shall apply as stated in the sections dealing with other respective kinds of investments."

Section 5. Section 33-2-1114, MCA, is amended to read:

**"33-2-1114. Dividends and other distributions — commissioner approval.** (1) *An insurer subject to registration under 33-2-1111 and 33-2-1112 may not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until 30 days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment or the commissioner shall have approved such payment within such 30-day period.*

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds 10% of such insurer's surplus as regards policyholders as of December 31 next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until the commissioner has approved the payment of such dividend or distribution or the commissioner has not disapproved such payment within the 30-day period referred to above."

Section 6. **Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 17, 1987.

## CHAPTER NO. 535

[HB 642]

AN ACT REVISING THE PERMIT AND UTILIZATION PROVISIONS OF THE WATER USE LAWS; ALTERING THE FILING AND ISSUANCE REQUIREMENTS OF A CERTIFICATE OF WATER RIGHT; REDUCING THE PUBLICATION REQUIREMENT FOR A PERMIT APPLICATION; REDEFINING A REASONABLE PERIOD OF TIME TO ESTABLISH BONA FIDE INTENT; REVISING THE PROCEDURE FOR GRANTING AN EXTENSION OF TIME FOR COMPLETING AN APPROPRIATION UNDER A PERMIT OR CHANGE AUTHORIZATION; EXPANDING AUTHORITY TO EXPEND MONEY FROM THE WATER RIGHT APPROPRIATION ACCOUNT; SUBORDINATING PRIORITY DATES OF MISSOURI RIVER BASIN RESERVATIONS IN A LIMITED CLASS OF CASES AND EXTENDING DEADLINES FOR RESERVATIONS BELOW FORT PECK DAM; REVISING THE COMPLIANCE PROVISION IN THE TRANSFER OF A WATER RIGHT; AMENDING SECTIONS 85-2-236, 85-2-306, 85-2-307, 85-2-310, 85-2-312, 85-2-318, 85-2-331, 85-2-402, AND 85-2-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-2-236, MCA, is amended to read:

**"85-2-236. Certificate of water right.** (1) When a final decree is entered, the water judge shall send a copy to the department. *Except as provided in 85-2-306*, the department shall on the basis of the final decree issue a certificate of water right to each person decreed an existing right. The original of the certificate shall be sent to the person to whom the right is decreed. The department shall keep a copy of the certificate in its office in Helena.

(2) The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all certificates of water right issued by the department within the county."

Section 2. Section 85-2-306, MCA, is amended to read:

**"85-2-306. Exceptions to permit requirements.** (1) Groundwater may be appropriated only by a person who has either exclusive property rights in the groundwater development works or the written consent of the person with those property rights. Outside the boundaries of a controlled

groundwater area, a permit is not required before appropriating groundwater by means of a well or developed spring with a maximum appropriation of less than 100 gallons per minute, *except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.* Within 60 days of completion of the well or developed spring and appropriation of the groundwater for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation shall be the date of refile of a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate shall be sent to the *appropriator*. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of groundwater by means of a well or developed spring, first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) of this section, with the department to perfect the water right. The filing of a claim of existing water right pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation shall be the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of less than 100 gallons per minute, the department shall issue a certificate of water right. *If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.*

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional

permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113."

Section 3. Section 85-2-307, MCA, is amended to read:

**"85-2-307. Notice of application.** (1) (a) Upon receipt of a proper application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice *once* in a newspaper of general circulation in the area of the source.

(b) Before the date of publication, the department shall also serve the notice by first-class mail upon:

(i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation;

(ii) any purchaser under contract for deed, as defined in 70-20-115, of property that, according to the records of the department, may be affected by the proposed appropriation; and

(iii) any public agency that has reserved waters in the source under 85-2-316.

(c) The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation.

(d) The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than 15 days or more than 60 days after the date of publication) persons may file with the department written objections to the application.

(3) The requirements of subsections (1) and (2) of this section do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons."

Section 4. Section 85-2-310, MCA, is amended to read:

**"85-2-310. Action on application.** (1) The department shall grant, deny, or condition an application for a permit in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant, or, in those cases where an

environmental impact statement must be prepared or in other extraordinary cases, not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons therefor by certified mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department or denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions, or limitations specified by it or that the application should be denied, the department shall prepare a statement of its opinion and the reasons therefor. The department shall serve a statement of its opinion by certified mail upon the applicant, together with a notice that the applicant may obtain a hearing by filing a request therefor within 30 days after the notice is mailed. The notice shall further state that the application will be modified in a specified manner or denied, unless a hearing is requested.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for any of these reasons shall be accompanied by a statement of the reasons for which it was returned, and there shall be no right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection shall be deemed a final decision of the department.

(4) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan *describing* when and how much water will be put to a beneficial use. *The project plan must include a reasonable time line, not to exceed 10 years from the time of issuance of a permit, for the completion of the project and the actual application of the water to a beneficial use.*

(iv) for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and



(v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement fee, if any, is not paid as required by 85-2-124."

Section 5. Section 85-2-312, MCA, is amended to read:

**"85-2-312. Terms of permit.** (1) The department may issue a permit for less than the amount of water requested, but in no case may it issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. The department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 85-2-311, and it may issue temporary or seasonal permits. A permit shall be issued subject to existing rights and any final determination of those rights made under this chapter.

(2) *The department shall specify in the permit or in any authorized extension of time provided in subsection (3), the time limits for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. The department shall issue the permit or authorized extension of time subject to the terms, conditions, restrictions, and limitations it considers necessary to ensure that the work on the appropriation is commenced, conducted, and completed and that the water is actually applied in a timely manner to the beneficial use specified in the permit.*

(3) *The department may, upon a showing of good cause, extend time limits specified in the permit for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. All requests for extensions of time must be by affidavit and must be filed with the department prior to the expiration of the time limit specified in the permit or any previously authorized extension of time. The department may issue an order temporarily extending the time limit specified in the permit for 120 days or until the department has completed its action under this section, whichever is greater. Upon receipt of a proper request for extension of time, the department shall prepare a*

*notice containing the facts pertinent to the request for extension of time and shall publish the notice in a newspaper of general circulation in the area of the source. The department may serve notice by first-class mail upon any public agency or other person the department determines may be interested in or affected by the request for extension of time. The department shall hold a hearing on the request for extension of time on its own motion or if requested by an interested party. The department may grant the extension of time in the absence of a hearing if no requests for a hearing are received and the extension of time is granted as requested, or the department may grant the extension of time in a modified form by following the process established in 85-2-310(2). Subsequent extensions of time may be made in the same manner.*

(4) The original of the permit shall be sent to the permittee, and a copy shall be kept in the office of the department in Helena.

(5) The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all water right permits, certificates, and change approvals issued by the department within the county."

Section 6. Section 85-2-318, MCA, is amended to read:

**"85-2-318. Water right appropriation account.** There is established a water right appropriation account in the state special revenue fund of the state treasury. All fees collected as provided in 85-2-113 shall be deposited in the account to help pay the expenses incurred by the department for administering and enforcing this part, part 1, part 4, and part 5 of chapter 2, Title 85, and Title 37, chapter 43."

Section 7. Section 85-2-331, MCA, is amended to read:

**"85-2-331. Reservations within Missouri River basin.** (1) The state or any agency or political subdivision thereof or the United States or any agency thereof that desires to apply for a reservation of water in the Missouri River basin shall file an application pursuant to 85-2-316 no later than July 1, 1989, *except that applications for reservation of water below Fort Peck dam must be filed no later than July 1, 1991.*

(2) Subject to legislative appropriation, the department shall provide technical and financial assistance to other state agencies and political subdivisions in applying for reservations within the Missouri River basin.

(3) (a) Before December 31, 1991, the board shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1989, for reservations of water in the Missouri River basin *above Fort Peck dam.*

(b) *Before December 31, 1993, the board shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1991, for reservations of water in the Missouri River basin below Fort Peck dam.*

(c) *The board shall determine which applications or portions of applications are considered to be above or below Fort Peck dam.*

(4) Water reservations approved by the board under this section have a priority date of July 1, 1985. *If the department issues a permit under Title 85, chapter 2, part 3, prior to the granting of a reservation under this section, the board may subordinate the reservation to the permit if it finds that the subordination does not interfere substantially with the purpose of any reservation. The board shall by order establish the relative priority of applications approved under this section.*"

Section 8. Section 85-2-402, MCA, is amended to read:

**"85-2-402. Changes in appropriation rights.** (1) An appropriator may not make a change in an appropriation right except as permitted under this section and with the approval of the department or, if applicable, of the legislature.

(2) Except as provided in subsections (3) through (5), the department shall approve a change in appropriation right if the appropriator proves by substantial credible evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(3) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by substantial credible evidence that:

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (3) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(5) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(b) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (5)(b)(ii) and (5)(b)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and

comply with the laws of the state of Montana governing the appropriation and use of water.

(6) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that such a change might adversely affect the rights of other persons.

(7) The department or the legislature, if applicable, may approve a change subject to such terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. *The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).*

(8) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(9) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(10) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(11) A change in appropriation right contrary to the provisions of this section is invalid. No officer, agent, agency, or employee of the state may knowingly permit, aid, or assist in any manner such unauthorized change in appropriation right. No person or corporation may, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section."

Section 9. Section 85-2-403, MCA, is amended to read:

**"85-2-403. Transfer of appropriation right.** (1) The right to use water shall pass with a conveyance of the land or transfer by operation of law, unless specifically exempted therefrom. All transfers of interests in appropriation rights shall be without loss of priority.

(2) Failure to comply with the provisions of 85-2-402 does not render a conveyance or reservation of a water right void, but the right may not be used until the department has approved the change. This subsection applies retroactively, within the meaning of 1-2-109, to a conveyance or reservation made after July 1, 1973."

**Section 10. Extension of authority.** Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 11. Effective date.** This act is effective on passage and approval.

Approved April 17, 1987.

## CHAPTER NO. 536

[HB 750]

AN ACT REVISING THE EMPLOYEE AND COMMUNITY HAZARDOUS CHEMICAL INFORMATION ACT; SPECIFYING THE RELATIONSHIP OF THE ACT TO FEDERAL LAWS; SPECIFYING THE APPLICATION OF THE ACT TO DISTRIBUTORS; AMENDING SECTIONS 50-78-103, 50-78-104, AND 50-78-301, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-78-103, MCA, is amended to read:

**"50-78-103. Applicability — exemptions.** (1) The provisions of this chapter do not apply to:

(a) any consumer product intended for personal consumption or use by an employee;

(b) any retail food sale establishment or other retail trade establishment, exclusive of processing and repair areas;

(c) a food, drug, or cosmetic as defined in the Montana Food, Drug, and Cosmetic Act, Title 50, chapter 31;

(d) a source of ionizing radiation that is an exempt or generally licensed material or device, as defined and described in rules adopted under 75-3-202 and implementing 75-3-104 and 75-3-202;

(e) the radiological properties of any source, byproduct, or special nuclear material as defined in sections 11(z), 11(aa), and 11(e)(1) of the federal Atomic Energy Act of 1954; or

(f) sealed containers of hazardous chemicals:

(i) during transportation or while in storage at transportation terminals, so long as existing labels are not removed or defaced and the employer complies with state and federal regulations relating to the transportation of hazardous chemicals; or

(ii) at a facility of a distributor, so long as existing labels are not removed or defaced and the employer distributes material safety data sheets as required under 50-78-203(1).

(2) Employers operating the following workplaces are in compliance with this chapter if they retain and make accessible to employees and, when applicable, to students, all material safety data sheets received or, if no material safety data sheet is received for a hazardous chemical, any other information received on its hazards and safe handling and if the provisions of 50-78-206, 50-78-301(2) through (4), and 50-78-305 are met:

(a) a teaching, research, or testing laboratory, including any associated storeroom;

(b) a clinical laboratory or health care facility as defined in 50-5-101;

(c) a pharmacy as defined in 37-7-101; or

(d) an office of a physician, dentist, osteopath, podiatrist, optometrist, or veterinarian licensed under Title 37.

(3) The provisions of this chapter do not apply to any hazardous chemical subject to the packaging and labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq., except that a chemical manufacturer producing such hazardous chemicals must comply with all provisions of this chapter."

Section 2. Section 50-78-104, MCA, is amended to read:

**"50-78-104. Relationship to OSHA standard.** *Any employer complying with the provisions of the OSHA standard, whether or not that employer is regulated by the OSHA standard, is exempt from the provisions of this chapter, except for 50-78-204 and 50-78-301."*

Section 3. Section 50-78-301, MCA, is amended to read:

**"50-78-301. Emergency and community information.** (1) *An employer shall comply with the provisions of the federal Emergency Planning and Community Right-To-Know Act of 1986 or be subject to the enforcement provisions thereof.*

(2) The local fire chief must be permitted onsite inspection of hazardous chemicals in any workplace, including workplaces under the control of a state agency, for the purposes of planning fire department activities in case of an emergency and reviewing compliance with this chapter. For a workplace that employs fire safety personnel, the local fire chief shall consult with the responsible fire safety official to clarify respective roles and response procedures in the event of an emergency.

(3) As a result of an inspection, the local fire chief may note and report for possible action by the county attorney or other appropriate law enforcement official any violation by an employer of a provision of this chapter or any other law pertaining to hazardous chemicals or fire safety.

(4) The local fire chief shall consult at least annually on safety and emergency considerations with each person responsible for the operation of any research, educational, or testing laboratory workplace. The consultation may result in recommendations or, under the provisions of 50-62-108, orders by the fire chief to be implemented by the laboratory operator to enhance public safety, to reduce the likelihood of emergency incidents, or

to improve emergency response in the event of an accident. The person responsible for the operation of the laboratory shall contact the local fire chief at any time there is a significant change in the location or nature of the hazardous chemicals in the workplace, initiation of any new and potentially dangerous method of processing or reacting hazardous chemicals, or any other operational change affecting emergency response considerations."

**Section 4. Effective date.** (1) This act, except for section 3, is effective on passage and approval.

(2) Section 3 is effective on completion of the following sequence of events in Montana under the provisions of the federal Emergency Planning and Community Right-to-know Act of 1986:

(a) the appointment of an emergency planning commission by the governor;

(b) the designation by the commission of emergency planning districts that together encompass the entire state; and

(c) the appointment of members to local planning committees in each district.

Approved April 17, 1987.

## CHAPTER NO. 537

[HB 771]

AN ACT TO AMEND THE LAWS RELATING TO THE AUTHORIZATION OF SURPLUS LINES INSURERS, AGENTS, AND INSURANCE; AMENDING SECTIONS 33-1-402, 33-1-614, 33-1-711, 33-2-119, 33-2-301 THROUGH 33-2-317, 33-2-706, 33-2-708, 33-17-1001, AND 33-18-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-2-301, MCA, is amended to read:

**"33-2-301. Short title — purpose.** (1) This part constitutes and may be referred to as "The Surplus Lines Insurance Law".

(2) *This part must be applied to:*

(a) *protect persons seeking insurance in this state;*

(b) *permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers and to be exported from this state pursuant to this part;*

(c) *establish a system of regulation that will permit orderly access to surplus lines insurance in this state and encourage authorized insurers to provide new and innovative types of insurance to consumers in this state; and*



(d) *protect revenues of this state."*

**Section 2. Definitions.** As used in [this part], the following definitions apply:

(1) "Authorized insurer" means an insurer authorized pursuant to 33-2-101 to transact insurance in this state.

(2) "Eligible surplus lines insurer" means an unauthorized insurer with which a surplus lines agent may place surplus lines insurance under 33-2-307.

(3) "Export" means to place surplus lines insurance with an unauthorized insurer.

(4) "Kind of insurance" means one of the types of insurance required to be reported in the annual statement filed with the commissioner by an authorized insurer.

(5) "Producing agent" means the individual agent dealing directly with the person seeking insurance.

(6) "Surplus lines agent" means an individual, partnership, or corporation licensed under 33-2-305 to place surplus lines insurance (on risks resident, located, or to be performed in this state) with unauthorized insurers eligible to accept such insurance.

(7) "Surplus lines insurance" means any insurance (on risks resident, located, or to be performed in this state) permitted to be placed through a surplus lines agent with an unauthorized insurer eligible to accept the insurance. The term does not include the kinds of insurance exempted under [section 21].

(8) "Unauthorized insurer" means an insurer not authorized pursuant to 33-2-101 to transact insurance in this state. The term includes insurance exchanges authorized under the laws of other states.

**Section 3.** Section 33-2-302, MCA, is amended to read:

**"33-2-302. Conditions precedent to sale of surplus lines insurance.** *Insurance may be procured through a licensed surplus lines agent from an unauthorized insurer if:*

(1) *the insurer is an eligible surplus lines insurer;*

(2) *the full amount or kind of insurance cannot be obtained from authorized insurers. The full amount or kind of insurance may be procured from an eligible surplus lines insurer if the agent makes a diligent search among the insurers who are authorized to transact and are actually writing the particular kind and class of insurance in this state and cannot obtain the full amount or kind of insurance from an authorized insurer.*

(3) *the insurance is not so procured for the purpose of securing advantages either as to:*

(a) *a lower premium rate than would be accepted by an authorized insurer; or*

(e) an agreement that the commissioner may examine the advisory organization under the provisions of subsection (3).

(3) The commissioner may make or cause to be made an examination of each advisory organization. The reasonable cost of an examination shall be paid by the advisory organization upon presentation to it by the commissioner of a detailed account of such cost. The officers, managers, agents, and employees of the advisory organization may be examined at any time, under oath, and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. The commissioner shall furnish two copies of the examination report to the examined advisory organization and shall notify the organization that it may, within 20 days of receipt of the report, request a hearing on the report or on any facts or recommendations contained in it. If the commissioner finds the advisory organization or any of its members to be in violation of this part, he may issue an order requiring the discontinuance of the violation.

(4) The commissioner may by order compel a surplus lines agent to join an advisory organization as a condition of continued licensure under this part.

Section 11. Section 33-2-308, MCA, is amended to read:

**"33-2-308. Evidence of the insurance — changes — penalty.**

(1) Upon placing surplus lines insurance, the surplus lines agent shall promptly issue and deliver to the insured or the producing agent evidence of the insurance, consisting either of the policy as issued by the insurer or, if such policy is not then available, a cover note or certificate of insurance signed or countersigned by the agent. Such cover note or certificate must show the subject, coverage, conditions, and term of the insurance, the premium charged and taxes collected from the insured, and the name and address of the insurer. If the direct risk is assumed by more than one insurer, the cover note or certificate must state the name and address and proportion of the entire direct risk assumed by each such insurer.

(2) If after the issuance and delivery of any such cover note or certificate there is any change as to the identity of the insurers or the proportion of the direct risk assumed by the insurer as stated in the original cover note or certificate or in any other material respect as to the insurance coverage evidenced by the cover note or certificate, the agent shall promptly issue and deliver to the insured a substitute cover note or certificate accurately showing the current status of the coverage and the insurers responsible thereunder.

(3) If a policy issued by the insurer is not available upon placement of the insurance and the agent has issued and delivered a cover note or certificate as hereinabove provided, upon request therefor by the insured, the agent shall as soon as reasonably possible procure from the insurer its policy evidencing such insurance and deliver such policy to the insured in replacement of the cover note or certificate theretofore issued.

(4) Any surplus lines agent who knowingly or negligently issues or delivers a false cover note or certificate of insurance or fails promptly to notify the insured of any material change with respect to such insurance by delivery to the insured of a substitute cover note or certificate as provided in

*agent who fails to apply for a renewal of the license on or before March 1 shall pay a fine of \$100 before the commissioner renews the license.*

*(4) A corporation is eligible to be a resident surplus lines agent if:*

*(a) the corporate license lists the individuals within the corporation who have satisfied the requirements of this part to become surplus lines agents; and*

*(b) only those individuals listed on the corporate license transact surplus lines business."*

Section 7. Section 33-2-306, MCA, is amended to read:

**"33-2-306. Agent's authority under license — acceptance of business from other agents — placement fee.** (1) Under a surplus lines agent license the licensee may place surplus lines insurance, in compliance with The Surplus Lines Insurance Law, with any foreign or alien insurer or insurers not otherwise authorized to transact insurance in this state and as to such coverages to act as agent in this state for such insurer or insurers.

(2) The surplus lines agent may accept surplus lines insurance from any duly licensed agent of an authorized insurer and may compensate him therefor.

(3) A surplus lines agent who places or renews surplus lines insurance in accordance with subsection (1) may collect a placement fee of 0.5% of the premium charged to cover the costs of issuing and servicing the policy. The fee may not be less than \$10 or more than \$100."

Section 8. Section 33-2-307, MCA, is amended to read:

**"33-2-307. Requirements for eligible surplus lines insurers.** (1) A surplus lines agent may not place insurance with an unauthorized insurer unless, at the time of placement, the unauthorized insurer:

(a) has established satisfactory evidence of good reputation and financial integrity; and

(b) is qualified under one of the following subsections:

(i) the insurer maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals the greater of:

(A) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

(B) \$2.5 million 1 year after [the effective date of this act] and \$3.5 million 3 years after [the effective date of this act]. After 3 years from [the effective date of this act], an insurer possessing less than \$4 million subcapital and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by the commissioner. The commissioner's finding must be based upon such factors as quality of management, capital, and surplus of a parent company; company underwriting profit and investment income trends; and company record and reputation within the

industry. The commissioner may not make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$3 million.

(ii) in the case of Lloyd's or another similar unincorporated group of alien individual insurers, the insurer maintains a trust fund of not less than \$50 million as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group. The trust must comply with the terms and conditions established in subsection (1)(b)(iv) for alien insurers.

(iii) in the case of an insurance exchange created by the laws of individual states, the insurer maintains capital and surplus, or their substantial equivalent, of not less than \$15 million in the aggregate. For an insurance exchange that maintains funds for the protection of each insurance exchange policyholder, each individual syndicate shall maintain minimum capital and surplus, or their substantial equivalent, of not less than \$1.5 million. If the insurance exchange does not maintain funds for the protection of each insurance exchange policyholder, each individual syndicate shall meet the minimum capital and surplus requirements of subsection (1)(b)(i).

(iv) in the case of an alien insurer, the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system, in an amount not less than \$1.5 million, for the protection of all its policyholders in the United States and such trust fund consists of cash, securities, or letters of credit or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of insurers authorized to write like kinds of insurance in this state. Such trust fund, which must be included in any calculation of capital and surplus or its equivalent, must have an expiration date which at no time may be less than 5 years. In addition, the alien insurer must appear on the national association of insurance commissioners' Non-Admitted Insurers Quarterly Listing.

(c) has provided the commissioner a copy of its current annual statement, certified by the insurer no more than 6 months after the close of the period reported upon (or quarterly if considered necessary by the commissioner), and which is either:

(i) filed with and approved by the regulatory authority in the state of domicile of the unauthorized insurer; or

(ii) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's state of domicile.

(2) In the case of an insurance exchange, the statement required by subsection (1)(c) may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

(3) In addition to meeting the requirements in subsection (1), an insurer is an eligible surplus lines insurer only if it appears on the most recent list of eligible surplus lines insurers published at least semiannually by the commissioner. This subsection does not require the commissioner to place or maintain the name of any unauthorized insurer on the list of eligible

*surplus lines insurers. No action may lie against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible surplus lines insurers referred to in this subsection.*

(4) *As used in this section, the following definitions apply:*

(a) *"Capital", as used in the financial requirements of 33-2-307, means funds invested in for stocks or other evidences of ownership.*

(b) *"Surplus", as used in the financial requirements of 33-2-307, means funds over and above liabilities and capital of the insurer for the protection of policyholders."*

**Section 9. Withdrawal of eligibility from a surplus lines insurer.**

(1) The commissioner may declare an eligible surplus lines insurer ineligible if at any time the commissioner has reason to believe that it:

- (a) is in unsound financial condition;
- (b) is no longer eligible under 33-2-307;
- (c) has willfully violated the laws of this state; or
- (d) does not make reasonably prompt payment of just losses and claims in this state or elsewhere.

(2) The commissioner shall promptly mail notice of all such declarations to each surplus lines agent.

**Section 10. Surplus lines advisory organizations — examination by commissioner.** (1) A surplus lines advisory organization of surplus lines agents may be formed to:

- (a) facilitate and encourage compliance by its members with the laws of this state and the rules and regulations of the commissioner relative to surplus lines insurance;
- (b) provide means for the confidential examination of all surplus lines insurance written by its members to determine whether such insurance complies with this part;
- (c) communicate with organizations of authorized insurers with respect to the proper use of the surplus lines market; and
- (d) receive and disseminate to its members information relative to surplus lines insurance.

(2) Each advisory organization shall file with the commissioner:

- (a) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation;
- (b) a copy of its bylaws, rules, and regulations governing its activities;
- (c) a current list of its members;
- (d) the name and address of a resident of this state upon whom notices or orders of the commissioner or processes issued at his direction may be served; and

(e) an agreement that the commissioner may examine the advisory organization under the provisions of subsection (3).

(3) The commissioner may make or cause to be made an examination of each advisory organization. The reasonable cost of an examination shall be paid by the advisory organization upon presentation to it by the commissioner of a detailed account of such cost. The officers, managers, agents, and employees of the advisory organization may be examined at any time, under oath, and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. The commissioner shall furnish two copies of the examination report to the examined advisory organization and shall notify the organization that it may, within 20 days of receipt of the report, request a hearing on the report or on any facts or recommendations contained in it. If the commissioner finds the advisory organization or any of its members to be in violation of this part, he may issue an order requiring the discontinuance of the violation.

(4) The commissioner may by order compel a surplus lines agent to join an advisory organization as a condition of continued licensure under this part.

Section 11. Section 33-2-308, MCA, is amended to read:

**"33-2-308. Evidence of the insurance — changes — penalty.**

(1) Upon placing surplus lines insurance, the surplus lines agent shall promptly issue and deliver to the insured or the producing agent evidence of the insurance, consisting either of the policy as issued by the insurer or, if such policy is not then available, a cover note or certificate of insurance signed or countersigned by the agent. Such cover note or certificate must show the subject, coverage, conditions, and term of the insurance, the premium charged and taxes collected from the insured, and the name and address of the insurer. If the direct risk is assumed by more than one insurer, the cover note or certificate must state the name and address and proportion of the entire direct risk assumed by each such insurer.

(2) If after the issuance and delivery of any such cover note or certificate there is any change as to the identity of the insurers or the proportion of the direct risk assumed by the insurer as stated in the original cover note or certificate or in any other material respect as to the insurance coverage evidenced by the cover note or certificate, the agent shall promptly issue and deliver to the insured a substitute cover note or certificate accurately showing the current status of the coverage and the insurers responsible thereunder.

(3) If a policy issued by the insurer is not available upon placement of the insurance and the agent has issued and delivered a cover note or certificate as hereinabove provided, upon request therefor by the insured, the agent shall as soon as reasonably possible procure from the insurer its policy evidencing such insurance and deliver such policy to the insured in replacement of the cover note or certificate theretofore issued.

(4) Any surplus lines agent who knowingly or negligently issues or delivers a false cover note or certificate of insurance or fails promptly to notify the insured of any material change with respect to such insurance by delivery to the insured of a substitute cover note or certificate as provided in

subsection (2) shall be guilty of a violation of this code and upon conviction shall be subject to the penalties provided by 33-1-104 or to any greater applicable penalty otherwise provided by law.

(5) *A surplus lines agent may not issue or deliver any evidence of insurance or purport to insure or represent that insurance will be or has been written by any eligible surplus lines insurer unless he has authority from the insurer to cause the risk to be insured or has received information from the insurer in the regular course of business that such insurance has been granted.*"

Section 12. Section 33-2-309, MCA, is amended to read:

**"33-2-309. Liability of insurer as to losses and unearned premiums.** (1) As to a surplus lines risk which has been assumed by an unauthorized insurer pursuant to *The Surplus Lines Insurance Law* and if the premium thereon has been received by the surplus lines agent who placed such insurance, in all questions thereafter arising under the coverage as between the insurer and the insured, the insurer shall be deemed to have received the premium due to it for such coverage. The insurer shall be liable to the insured as to losses covered by such insurance and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the agent is indebted to the insurer with respect to such insurance or for any other cause. This provision shall not affect rights as between the insurer and the surplus lines agent.

(2) *A payment of premium to a surplus lines agent acting for a person other than himself in negotiating, continuing, or reviewing a policy of insurance under this part is considered to be payment to the insurer, notwithstanding any conditions or stipulations that may be inserted in the policy or contract.*

(3) Each unauthorized insurer assuming a surplus lines direct risk under *The Surplus Lines Insurance Law* is considered thereby to have subjected itself to the terms of this section."

Section 13. Section 33-2-310, MCA, is amended to read:

**"33-2-310. Records and annual statement — affidavit.** (1) Each surplus lines agent shall keep a separate record and account of all business transacted under his license, including a copy of each daily report, if any, and of each policy, certificate of insurance, cover note, or other evidence of insurance issued by him. The records must be available for examination by the commissioner at any reasonable time within 5 years after the issuance of the surplus lines insurance to which it relates.

(2) Prior to April 1 of each year the agent shall file with the commissioner a statement for the calendar year preceding, showing:

(a) name and address of each insured for whom surplus lines insurance was procured;

(b) name and home office address of each insurer providing the surplus lines insurance;

(c) amount of each surplus lines insurance policy, the premium rate, and the gross premium charged therefor;

- (d) date and term of the policy;
- (e) amount of premium returned on each policy canceled or not taken;
- (f) amount of tax and other sums to be collected from the insured;
- (g) identity of the producing agent;
- (h) the application and any correspondence from the surplus lines insurer or its representative; and
- (i) such additional information as the commissioner may reasonably require.

(3) *Each producing agent shall execute and each surplus lines agent shall file an affidavit, on a standardized form furnished by the commissioner, as to the diligent efforts to place the coverage with authorized insurers and the results of such efforts. An affidavit filed under this subsection is subject to public inspection unless the commissioner determines that the public interest requires otherwise. The producing agent shall state in the affidavit that he has expressly advised the insured in writing prior to placing the insurance that:*

*(a) the surplus lines insurer with whom the insurance is placed is not authorized in this state and is not subject to the same supervision as an authorized insurer; and*

*(b) in the event of the insolvency of the surplus lines insurer, the property and casualty guaranty fund of the state will not pay losses under the surplus lines coverage."*

Section 14. Section 33-2-311, MCA, is amended to read:

**"33-2-311. Tax on surplus lines.** There is imposed upon premiums collected for surplus lines insurance transacted in this state a tax at the same rate and computed in the same manner as provided in subsection (2)(b)(i) of 33-2-705 as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes, and in excess of the premium otherwise required, *are not considered* to be part of the premium for the purposes of such computation. Upon filing of the annual statement referred to in 33-2-310(2), the surplus lines agent shall pay to the commissioner the amount of tax owing as to surplus lines insurance business transacted by him during the preceding calendar year. If a surplus lines insurance policy covers risks or exposures only partially in this state, the tax payable *must* be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state."

Section 15. Section 33-2-312, MCA, is amended to read:

**"33-2-312. Penalty for failure to file statement or pay tax.** Every surplus lines agent who fails to make and file the annual statement as required under 33-2-310 or to pay the taxes as required under 33-2-311 is liable to a penalty of \$25 for each day of delinquency, commencing with April 1. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction, the attorney general representing him. The penalty when collected



shall be paid to the state treasurer and placed to the credit of the general fund. The surplus *lines agent* license is also subject to revocation as provided in 33-2-313."

Section 16. Section 33-2-313, MCA, is amended to read:

**"33-2-313. Revocation or suspension of agent license.** (1) The commissioner shall revoke or suspend any surplus *lines agent* license, together with his license as an insurance agent:

(a) if the agent fails to file his annual statement or to remit the tax as required by law;

(b) if the agent fails to keep the records or to allow the commissioner to examine his records, as required by law;

(c) if the agent falsifies the affidavit required by 33-2-310(3);

(d) if the agent removes the resident surplus *lines agent* office from this state;

(e) if the agent removes the resident surplus *lines agent* office accounts and records from this state during the period during which the accounts and records are required to be maintained under 33-2-310(1);

(f) if the agent closes the resident surplus *lines agent* office for a period of more than 30 business days, unless the commissioner grants permission otherwise;

(g) if the agent violates any provision of this part; or

(h) for any of the causes for which an insurance agent's license may be revoked.

(2) The procedures provided by 33-17-1001 for the suspension or revocation of *agent* licenses apply to suspension or revocation of a surplus *lines agent* license.

(3) An agent whose license has been so revoked or suspended may not again be so licensed within 1 year thereafter or until he pays all penalties and delinquent taxes that he owes."

Section 17. Section 33-2-314, MCA, is amended to read:

**"33-2-314. Actions against insurer — venue.** Every unauthorized insurer issuing a surplus *lines insurance* policy under this part is considered to be doing business in this state as an *unauthorized* insurer and may be sued in this state upon any cause of action arising under any insurance contract so made by it. Such suit *must* be brought in the district court of the county wherein the plaintiff resides."

Section 18. Section 33-2-315, MCA, is amended to read:

**"33-2-315. Commissioner appointed process agent — service of process.** (1) Every surplus *lines* insurer before *transacting surplus lines insurance* under this part shall in writing appoint the commissioner as its true and lawful attorney upon whom legal process in any action or proceeding against it in this state shall be served and in such writing shall agree

that any such process served upon such attorney shall be of the same legal force and validity as if served in this state upon such insurer and that such authority shall continue in force so long as any liability remains outstanding against it in this state. At the time of filing such appointment, the insurer shall also file designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change such designation by a new filing.

(2) Service upon such an insurer *must* be made upon the commissioner and in accordance with the procedures, requirements, and results as provided under 33-1-603."

**Section 19. Penalties.** A surplus lines agent who in this state represents or aids an unauthorized insurer in violation of this part is guilty of a misdemeanor and shall be fined not more than \$1,000 or be imprisoned in the county jail for a term no longer than 6 months, or both.

**Section 20.** Section 33-2-316, MCA, is amended to read:

**"33-2-316. Rules.** (1) The commissioner shall make or may approve and adopt reasonable rules, consistent with this *part*, for any or all of the following purposes:

- (a) effectuation of *The Surplus Lines Insurance Law*;
- (b) establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus *lines* insurer or insurers; and
- (c) establishment, procedures, and operations of any voluntary organization of surplus *lines* insurance agents or others designed to assist such agents to comply with such law.

(2) Such rules shall be subject to the procedures and carry the penalty provided by 33-1-313."

**Section 21.** Section 33-2-317, MCA, is amended to read:

**"33-2-317. Exemptions.** The provisions of this surplus *lines* insurance law controlling the *placement* of insurance with unauthorized insurers *does not* apply to reinsurance or to the following insurances when so placed by a licensed insurance *agent* of this state:

- (1) wet marine and transportation insurances;
- (2) insurance on subjects located, resident, or to be performed wholly outside of this state or on vehicles or aircraft owned and principally garaged outside this state;
- (3) insurance on property or operations of railroads engaged in interstate commerce; and
- (4) insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled interstate flight or cargo of such aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of such aircraft."

**Section 22.** Section 33-1-402, MCA, is amended to read:

**"33-1-402. Examination of agents, managers, and promoters.** For the purpose of ascertaining compliance with this code, the commissioner may as often as he deems advisable examine the accounts, records, documents, and transactions pertaining to or affecting its insurance affairs or proposed insurance affairs of:

(1) any insurance agent, solicitor, surplus *lines* agent, general agent, or adjuster;

(2) any person having a contract under which he enjoys in fact the exclusive or dominant right to manage or control an insurer;

(3) any person holding the shares of voting stock or policyholder proxies of a domestic insurer, for the purpose of controlling the management thereof, as voting trustee or otherwise;

(4) any person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer or insurance holding corporation or corporation to finance a domestic insurer or the production of its business."

Section 23. Section 33-1-614, MCA, is amended to read:

**"33-1-614. Exemptions from service of process provisions.** Sections 33-1-611 through 33-1-613 shall not apply to:

(1) surplus *lines* insurance lawfully effectuated under part 3, chapter 2;

(2) reinsurance; or

(3) any action or proceeding against an unauthorized insurer arising out of:

(a) wet marine and transportation insurance;

(b) insurance on or with respect to subjects located, resident, or to be performed wholly outside this state or on or with respect to vehicles or aircraft owned and principally garaged outside this state;

(c) insurance on property or operations of railroads engaged in interstate commerce; or

(d) insurance on aircraft or cargo of such aircraft or against liability, other than employer's liability, arising out of the ownership, maintenance, or use of such aircraft, where the policy or contract contains a provision designating the commissioner as its attorney for the acceptance of service of lawful process in any action or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such policy or where the insurer enters a general appearance in any such action."

Section 24. Section 33-1-711, MCA, is amended to read:

**"33-1-711. Appeals from the commissioner.** (1) An appeal from the commissioner shall be taken only from an order on hearing or with respect to a matter as to which the commissioner has refused a hearing. Any person who was a party to such hearing or whose pecuniary interests are directly and immediately affected by any such order or refusal and who is aggrieved thereby may, within 30 days after the order has been mailed

or delivered to the persons entitled to receive the same, the commissioner's order denying rehearing or reargument has been so mailed or delivered, or the commissioner's refusal to grant a hearing, appeal from such order on hearing or such refusal of a hearing. The appeal shall be taken to the district court of Lewis and Clark County by filing written notice of appeal in such court and by filing a copy of such notice with the commissioner, except that in appeals from the suspension or revocation of the certificate of authority of a domestic insurer or of the license of an agent, solicitor, or surplus *lines* agent, the person taking the appeal may at his option, in lieu of the district court of Lewis and Clark County, take the appeal to the district court of the county of Montana in which the insurer has its principal place of business or the licensee resides.

(2) Upon filing of the notice of appeal therein, the court shall have full jurisdiction and shall determine whether such filing shall operate as a stay of the order or action appealed from, except that in the following instances the filing of the notice of appeal shall automatically stay the order appealed from pending the judgment of the district court on the appeal:

(a) appeal from suspension or revocation of the license of an agent, solicitor, or surplus *lines* agent;

(b) appeal from suspension or revocation of the certificate of authority of an insurer.

(3) Within 20 days after filing of the copy of the notice of appeal in his office, the commissioner shall make and return to the court in which the appeal is pending a copy of his order appealed from and a full and complete transcript, duly certified by the commissioner, of his record of the hearing upon which the order was issued, together with all exhibits and documentary evidence introduced thereat. If the appeal is from an action of the commissioner with respect to which a hearing was refused, the commissioner shall within such 20-day period make and return to the court a full and complete transcript, duly certified by him, of all documents on file in his office directly relating to the matter as to which such appeal is taken.

(4) Upon receipt of such transcripts and evidence, the court shall hear the matter *de novo* as soon as reasonably possible thereafter. Upon the hearing of the appeal, the court shall consider the evidence contained in the transcript, exhibits, and documents therein filed by the commissioner, together with such additional proper evidence as may be offered by any party to the appeal.

(5) After hearing the appeal, the court may affirm, modify, or reverse the order or action of the commissioner in whole or in part or remand the action to the commissioner for further proceedings in accordance with the court's direction.

(6) Costs shall be awarded as in civil actions.

(7) Appeal may be taken to the supreme court from the judgment of the district court as in other civil cases to which the state is a party. A stay of the effectiveness of any such judgment may be made only by order of

the supreme court upon the giving of such security as that court deems proper.

(8) This section shall not apply to appeals as to matters covered by chapter 16."

Section 25. Section 33-2-119, MCA, is amended to read:

**"33-2-119. Suspension or revocation for violations and special grounds.** (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has:

(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;

(b) reinsured more than 90% of its risks resident, *located*, or to be performed in Montana, in another insurer. In considering suspension or revocation, the commissioner shall consider all relevant factors, including whether:

(i) after the reinsurance transaction all parties will be in compliance with Montana law; and

(ii) the transaction will substantially reduce protection and service to Montana policyholders.

(2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay proper claims arising under its policies, whether any such claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to such third person, or without just cause compels such insured or claimant to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or such an insured to secure full payment or settlement of such claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus *lines* insurer under part 3 of this chapter.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."

Section 26. Section 33-2-706, MCA, is amended to read:

**"33-2-706. Report and tax of independently procured coverages.** (1) Every insured who in this state procures or causes to be procured or continues or renews insurance in an unauthorized foreign insurer or any self-insurer who in this state so procures or continues excess loss, catastrophe, or other insurance upon a subject of insurance resident, located, or to be performed within this state, other than insurance procured through a surplus *lines* agent pursuant to The Surplus *Lines* Insurance Law or exempted from such law under 33-2-317, shall, within 30 days after the date such insurance was so procured, continued, or renewed, file a written report of the same with the commissioner on forms designated by the commissioner and furnished to such an insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the commissioner. If any such insurance covers also a subject of insurance resident, located, or to be performed outside this state, a proper pro rata portion of the entire premium payable for all such insurance shall be allocated as to the subjects of insurance resident, located, or to be performed in this state, for the purposes of this section.

(2) Any insurance in an unauthorized insurer procured through negotiations or an application in whole or in part occurring or made within or from within this state or for which premiums in whole or in part are remitted directly or indirectly from within this state shall be deemed to be insurance procured or continued or renewed in this state within the intent of subsection (1) above.

(3) For the general support of the government of this state there is levied upon the obligation, chose in action, or right represented by the premium charged or payable for such insurance a tax at the rate of 2 <sup>3</sup>/<sub>4</sub>% of the gross amount of such premium. The insured shall withhold the amount of the tax from the amount of premium charged by and otherwise payable to the insurer for such insurance, and within 30 days after the insurance was so procured, continued, or renewed and coincidentally with the filing with the commissioner of the report provided for in subsection (1) above, the insured shall pay the amount of the tax to the state treasurer through the commissioner.

(4) If the insured fails to withhold from the premium the amount of tax herein levied, the insured shall be liable for the amount thereof and shall pay the same to the commissioner within the time stated in subsection (3) above.

(5) The tax imposed hereunder if delinquent shall bear interest at the rate of 6% per annum, compounded annually.

(6) The tax shall be collectable from the insured by civil action brought by the commissioner.

(7) This section does not abrogate or modify and shall not be construed or deemed to abrogate or modify any provision of 33-2-104 or 33-2-105 or any other provision of this code.

(8) This section does not apply as to life or disability insurances."

Section 27. Section 33-2-708, MCA, is amended to read:

**"33-2-708. Fees and licenses.** (1) The commissioner shall collect in advance and the persons so served shall so pay to the commissioner the following fees and licenses:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (b) below) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with such application and for issuance of an original certificate of authority, if issued:

|                                                            |          |
|------------------------------------------------------------|----------|
| (A) domestic insurers .....                                | \$ 30.00 |
| (B) foreign insurers .....                                 | 300.00   |
| (ii) annual continuation of certificate of authority ..... | 300.00   |
| (iii) reinstatement of certificate of authority .....      | 25.00    |

(b) articles of incorporation:

(i) filing original articles of incorporation of domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state .....

20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation .....

10.00

(c) filing bylaws or amendment thereto where required .....

5.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority .....

25.00

(e) resident agent's license:

(i) application for original license, including issuance of license, if issued (life and/or disability) .....

10.00

(ii) application for original license, including issuance of license, if issued (other than life and/or disability) .....

10.00

(iii) appointment of agent, each insurer .....

10.00

(iv) annual renewal, each insurer .....

10.00

|                                                                                                                               |        |
|-------------------------------------------------------------------------------------------------------------------------------|--------|
| (v) temporary license .....                                                                                                   | 10.00  |
| (vi) amendment of license (excluding additions thereto) or reissuance of master license .....                                 | 10.00  |
| (f) nonresident agent's license:                                                                                              |        |
| (i) application for original license, including issuance of license, if issued (life and/or disability) .....                 | 100.00 |
| (ii) application for original license, including issuance of license, if issued (other than life and/or disability) .....     | 100.00 |
| (iii) appointment of agent, each insurer .....                                                                                | 10.00  |
| (iv) annual renewal, each insurer .....                                                                                       | 10.00  |
| (v) amendment of license (excluding additions thereto) or reissuance of master license .....                                  | 10.00  |
| (g) solicitor's license:                                                                                                      |        |
| (i) application for original license, including issuance of license, if issued .....                                          | 5.00   |
| (ii) annual renewal of license .....                                                                                          | 5.00   |
| (h) examination for license as agent or solicitor, each examination .....                                                     | 10.00  |
| (i) surplus <i>lines agent</i> license:                                                                                       |        |
| (i) application for original license and for issuance of license, if issued .....                                             | 25.00  |
| (ii) annual renewal of license .....                                                                                          | 25.00  |
| (j) adjuster's license:                                                                                                       |        |
| (i) application for original license and for issuance of license, if issued .....                                             | 10.00  |
| (ii) annual renewal of license .....                                                                                          | 10.00  |
| (k) insurance vending machine license, each machine, each year .....                                                          | 10.00  |
| (l) commissioner's certificate under seal (except when on certificates of authority or licenses) .....                        | 3.00   |
| (m) copies of documents on file in the commissioner's office, per page .....                                                  | .50    |
| (n) policy forms:                                                                                                             |        |
| (i) filing each policy form .....                                                                                             | 25.00  |
| (ii) filing each application, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks ..... | 10.00  |
| (iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days .....          | 50.00  |



(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706 collected by him pursuant to Title 33 and the rules adopted thereunder.

(3) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 will be refunded.

(4) All fees and examination and miscellaneous charges, except fines or penalties or those amounts received pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by the commissioner pursuant to Title 33 and the rules adopted thereunder must be deposited in the insurance regulatory trust account pursuant to 17-2-121 through 17-2-123."

Section 28. Section 33-17-1001, MCA, is amended to read:

**"33-17-1001. Suspension, revocation, or refusal of license.** (1) Except as provided in 33-17-411, the commissioner may suspend for not more than 12 months or may revoke or refuse to continue any license issued under this chapter or any surplus *lines* agent license if, after hearing held on not less than 20 days' advance notice by certified mail of such hearing and of the charges against the licensee given as provided in 33-1-314(3) to the licensee and to the insurers represented, as to an agent, or to the appointing agent, as to a solicitor, he finds that as to the licensee any one or more of the following causes exist:

(a) for any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;

(b) for obtaining or attempting to obtain any such license through misrepresentation or fraud;

(c) for violation of or noncompliance with any applicable provision of this code or for willful violation of any lawful rule or order of the commissioner;

(d) for misappropriation or conversion to his own use or illegal withholding of moneys or property belonging to policyholders or insurer or beneficiaries or others and received in conduct of business under the license;

(e) conviction, by final judgment, of a felony involving moral turpitude;

(f) if in the conduct of his affairs under the license the licensee has used fraudulent or dishonest practices or has shown himself to be incompetent, untrustworthy, or a source of injury and loss to the public.

(2) The license of a firm or corporation may be suspended, revoked, or refused also for any of such causes as relate to any individual designated in the license to exercise its powers."

Section 29. Section 33-18-212, MCA, is amended to read:

**"33-18-212. Illegal dealing in premiums — improper charges for insurance.** (1) No person shall willfully collect any sum as premium or charge for insurance, which insurance is not then provided or is not in due course to be provided (subject to acceptance of the risk by the insurer) by an insurance policy issued by an insurer as authorized by this code.

(2) No person shall willfully collect as premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance and, as specified in the policy, in accordance with the applicable classifications and rates as filed with and approved by the commissioner; or in cases where classifications, premiums, or rates are not required by

this code to be so filed and approved, such premiums and charges shall not be in excess of or less than those specified in the policy and as fixed by the insurer. This provision shall not be deemed to prohibit the charging and collection, by surplus lines agents licensed under chapter 2, part 3, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. It shall not be deemed to prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy. The provision of this subsection does not prohibit the collection from an insured of a placement fee, not to exceed 7 1/2% of the annual premium, for placement through the state compensation insurance fund by a duly licensed casualty insurance agent. This placement fee is not a premium as defined in 33-15-102.

(3) Each violation of this section shall be punishable under 33-1-104."

**Section 30. Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 31. Codification instruction.** Sections 2, 9, 10, and 19 are intended to be codified as an integral part of Title 33, chapter 2, part 3, and the provisions of Title 33, chapter 2, part 3, apply to sections 2, 9, 10, and 19.

**Section 32. Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

**Section 33. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 34. Effective date.** This act is effective on passage and approval.

Approved April 17, 1987.

## CHAPTER NO. 538

[HB 831]

AN ACT AMENDING LAWS RELATING TO THE BOARD OF WATER WELL CONTRACTORS; INCREASING THE COMPENSATION FOR BOARD MEMBERS TO \$50 A DAY; ALLOWING FOR LICENSING OF MONITORING WELL CONSTRUCTORS; REQUIRING BONDS FOR MONITORING WELL CONSTRUCTORS; AMENDING SECTIONS 37-43-101, 37-43-102, 37-43-201 THROUGH 37-43-203, 37-43-301 THROUGH 37-43-303, 37-43-305 THROUGH 37-43-308, 37-43-312, 37-43-401, AND 37-43-402, MCA; REPEALING SECTION 37-43-304, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-43-101, MCA, is amended to read:

**"37-43-101. Purpose.** It is the purpose of this chapter to reduce and minimize the waste and contamination of groundwater resources within

this state by reasonable regulation and licensing of drillers or makers of water wells and *monitoring wells* and to protect the health and general welfare by providing a means for the development of the natural resource of underground water in an orderly, sanitary, and reasonable manner. The reasonable regulation and licensing of drillers or makers of water wells and *monitoring wells* is in the best interest of the public, and the waste and contamination of groundwater resources through inefficient or incompetent operations of drillers or makers of water wells and *monitoring wells* is prohibited. For the protection of the public and for the conservation of underground water resources, it is necessary that standards be set and maintained to insure that competency in the drilling and making of water wells and *monitoring wells* in this state is obtained."

Section 2. Section 37-43-102, MCA, is amended to read:

**"37-43-102. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) *"Apprentice water well driller"* means an individual who is learning the trade of water well drilling and performs labor and services for a licensed water well contractor and whose duties are directly related to well drilling or drilling rig operation.

(2) *"Board"* means the board of water well contractors provided for in 2-15-3307.

(3) *"Department"* means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) *"Monitoring well"* means a well that is used for monitoring groundwater quality or flow direction but is not used for withdrawing groundwater for purposes other than water quality sampling or pump testing.

(5) *"Monitoring well constructor"* means a natural person who drills or supervises the drilling of monitoring wells.

(6) *"Water well"* means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of groundwater. The term does not include spring development or excavations, by backhoe or otherwise, for recovery and use of surface waters or for the purpose of stock watering or irrigation where the depth is 25 feet or less. The term does not include an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying or for inserting media to repressure oil- or natural-gas-bearing formations or for storing petroleum, natural gas, or other products.

(7) *"Water well contractor"* or *"contractor"* means a natural person who contracts on behalf of a firm, corporation, partnership, or other business entity to construct, alter, or rehabilitate a water well on lands other than his own for compensation.

(8) *"Water well driller"* or *"driller"* means any person, other than an apprentice, at a drilling site causing a water well to be drilled, altered, or rehabilitated."

Section 3. Section 37-43-201, MCA, is amended to read:

**"37-43-201. Organization — seal — compensation of members.**

(1) *The board shall annually elect a chairman and vice-chairman.*

(2) The board shall have a seal with the words engraved thereon, "Board of Water Well Contractors", and such seal shall be affixed to all writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of such seal.

(3) Each appointed member of the board who is not a government employee shall receive as compensation for his services the sum of \$50 per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and per diem expenses as provided for in 2-18-501 through 2-18-503. *The members who are employees of the state of Montana shall receive no extra compensation for their services as members of the board.*

Section 4. Section 37-43-202, MCA, is amended to read:

**"37-43-202. Powers and duties.** (1) The board may exercise the authority granted to it by this chapter.

(2) The board shall adopt rules and orders to effectuate this chapter.

(3) The board shall adopt rules to establish mandatory water well construction standards and enforcement procedures. The standards must address the protection of the drilling site; specifications for casing materials; materials and specifications for well screens; casing perforations; well development procedures; proper sealing and grouting; temporary capping; cleaning and disinfecting; bonds; guaranties; contractors' and drillers' qualifications; tests for yield and drawdown; reporting procedures and requirements for water quality, well logs, location of wells, and information relating to local conditions; well filters; access ports; gravel packing; sampling methods; plumbness and alignment of the hole and casing; well abandonment procedures; and other necessary and appropriate standards.

(4) *The board shall adopt rules regarding the construction, use, and abandonment of monitoring wells by January 1, 1989.*

(5) The board may request the department to inspect water wells drilled or being drilled, and the department has access to these at reasonable times.

(6) The board may establish a program for training *apprentices and licensed or prospective water well contractors, water well drillers, and monitoring well constructors* to more effectively carry out this chapter.

(7) The board shall set and enforce standards and rules governing the licensing, registration, and conduct of water well drillers, water well contractors, *and monitoring well constructors.*

(8) The board shall set fees commensurate with costs. The board may establish fees, including but not limited to fees for application, examination, renewal, reciprocity, late renewal, and continuing education. Board

costs not related to specific programs may be equitably distributed as determined by the board. The board shall maintain records sufficient to support the fees charged for each program area.

(9) The rules of the board shall be compiled in printed form for distribution to interested persons, for which the department may charge a fee. Sums realized from these sales shall be deposited in the state special revenue fund for the use of the board.

(10) The board shall:

(a) authorize the department to issue licenses to qualified water well contractors, *water well* drillers, and *monitoring well* constructors in this state;

(b) cause examinations to be made of applicants for licenses;

(c) deny, revoke, or suspend licenses for good cause, after notice and opportunity to be heard;

(d) reinstate licenses previously revoked when justification is shown to the satisfaction of the board; and

(e) generally perform duties which will carry out this chapter.

(11) The board shall pay to the department its share of the assessed costs of the department in administering this chapter."

Section 5. Section 37-43-203, MCA, is amended to read:

**"37-43-203. Disciplinary authority — injunctions.** (1) The board may adopt rules specifying grounds for disciplinary action and rules providing for:

(a) revocation of a license;

(b) suspension of its judgment of revocation on terms and conditions determined by the board;

(c) suspension of the right to practice for a period not exceeding 1 year;

(d) placing a licensee on probation;

(e) reprimand or censure of a licensee; or

(f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by the board must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) *The* board may maintain an action to enjoin a person from engaging in the drilling, making, or construction of water wells *or monitoring wells* until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court."

Section 6. Section 37-43-301, MCA, is amended to read:

**"37-43-301. Licensed person to supervise all construction.** (1) Any firm, corporation, or partnership may engage in the business of constructing water wells provided a licensed *water well* contractor is placed in charge of all water well construction.

(2) *The licensed water well contractor must be the individual who contracts on behalf of the firm, corporation, or partnership.*

(3) *A licensed water well driller, pursuant to 37-43-305, must be employed by a licensed water well contractor."*

Section 7. Section 37-43-302, MCA, is amended to read:

**"37-43-302. License required.** (1) The drilling, making, or construction of water wells and *monitoring wells* is declared to be a business and activity affecting the public interest, requiring reasonable standards of competence. Except as provided in subsection (2), it is unlawful for any *water well* contractor, *water well* driller, or *monitoring well* constructor as defined in this chapter, to construct, alter, or rehabilitate a water well or a *monitoring well* without first having obtained a valid license therefor as provided for in this chapter. *An individual who is licensed as a water well contractor is not required to have a separate water well driller's license to perform the actual construction work on the well.*

(2) A license is not required for:

(a) a person who drills, alters, or rehabilitates a water or monitoring well on land that is owned or leased by him, *provided:*

(i) *the land* is used by him for farming, ranching, or agricultural purposes or as his residence;

(ii) *the person* obtains a permit from the board; and

(iii) *the construction of the well conforms to the minimum construction standards for water or monitoring wells set by board rule; or*

(b) *an apprentice water well driller* who performs labor or services for a licensed water well contractor or driller in connection with the drilling of a water well at the direction and under the personal supervision of a licensed water well contractor or driller.

(3) (a) To obtain a permit under subsection (2)(a), a person shall file with the department an application containing the applicant's name, mailing address, the location of the proposed well, the nature of the applicant's ownership interest in the property on which the well is to be located, *the construction or installation method to be used*, and the use for the proposed well.

(b) The board shall promptly issue a permit if it finds that:

(i) *the well is located* on land that *the applicant* owns or leases and that he uses for farming, ranching, or agricultural purposes or as his residence; and

(ii) *the construction or installation method to be used meets the minimum standards for water wells set by board rule."*

Section 8. Section 37-43-303, MCA, is amended to read:

**"37-43-303. Application — fee.** (1) Except as provided in 37-43-302(2), a person desiring to engage in the drilling, making, construction, *alteration, or rehabilitation* of one or more *water or monitoring* wells for underground water in this state shall first file an application with the department for a license. *The application must set forth the applicant's* qualifications, the equipment proposed to be used in the contracting, and other matters required by the board on forms adopted by the board.

(2) The department shall charge a fee prescribed by the board for filing an application. The application shall not be acted on until the fee has been paid. Fees collected under this section shall be deposited in the state special revenue fund for the use of the board.

(3) *An appropriate* license shall be issued to an applicant if, in the opinion of the board, the applicant is qualified to conduct water well or *monitoring well* construction operations. In the granting of licenses, the board shall have due regard for the interest of this state in the protection of its underground waters."

Section 9. Section 37-43-305, MCA, is amended to read:

**"37-43-305. Examination and qualifications.** (1) Under board rules pertaining to the business of drilling and contracting for drilling of water wells and *monitoring wells*, the department shall inquire by examination or otherwise into the qualifications of applicants for licenses. Examinations may be oral, written, or both.

(2) The qualifications *for a water well contractor's license* are:

(a) familiar knowledge of groundwater laws of this state and sanitary standards for water well drilling and construction of water wells;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of geology in its relation to well construction;

(e) possession of adequate equipment by the applicant to complete satisfactory water wells under the standards of the board;

(f) financial responsibility of the applicant;

(g) successful completion of an examination given by the department; and

(h) *completion of an apprenticeship of 1 year or more* under the direct supervision of a licensed water well contractor.

(3) *The qualifications for a water well driller's license* are:

(a) *familiar knowledge of groundwater laws of this state and sanitary standards for water well drilling and water well construction;*

(b) *knowledge of types of water well construction;*

(c) *knowledge of types of drilling tools and their uses;*

- (d) *knowledge of geology in its relation to well construction;*
- (e) *employment by a licensed water well contractor;*
- (f) *completion of an apprenticeship of 1 year or more under the direct supervision of a licensed water well contractor or driller; and*
- (g) *successful completion of an examination given by the department.*
- (4) *The qualifications for a license to construct monitoring wells are:*
  - (a) *familiar knowledge of groundwater laws of this state and sanitary standards for drilling and construction of monitoring wells;*
  - (b) *knowledge of types of monitoring well construction;*
  - (c) *knowledge of types of drilling tools used for monitoring wells and their uses;*
  - (d) *knowledge of geology;*
  - (e) *financial responsibility of the applicant;*
  - (f) *1 or more years of experience in drilling monitoring wells under the direct supervision of a licensed monitoring well constructor; and*
  - (g) *successful completion of an examination related specifically to drilling of monitoring wells given by the department.*

(5) The department shall give examinations at times and places the board determines. Failure of an applicant to successfully complete the examination disqualifies him from making further application for a period of 3 months. The board shall act within a reasonable time on applications for licenses. An application shall be accompanied by the initial fee, and failure to successfully meet the requirements of the board does not entitle the applicant to a refund of the fee."

Section 10. Section 37-43-306, MCA, is amended to read:

**"37-43-306. Bond to be required.** (1) The department, on issuance of a *water well contractor's or monitoring well constructor's* license under this chapter, shall require, before the person commences operations in this state, a good and sufficient surety bond or its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, in the sum of \$4,000, conditioned that the licensee will comply with the rules of the board.

(2) *A person who is licensed in more than one category need supply only one surety bond or its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, for \$4,000."*

Section 11. Section 37-43-307, MCA, is amended to read:

**"37-43-307. Annual renewal — fee — revocation for non-renewal.** (1) The term for licenses issued under this chapter is from July 1 of each year through the following June 30. After the payment of the initial fee under 37-43-303, a licensee shall pay, before the first day of each license year, a renewal fee as prescribed by the board.



(2) If a licensee does not apply for renewal of his license before the first day of a license year and remit to the department the renewal fee, he shall have his license suspended by the board. If the license remains suspended for a period of more than 30 days after the first day of a license year, it shall be revoked by the board. However, the department, prior to this revocation, shall notify the licensee of the board's intention to revoke at least 10 days prior to the time set for action to be taken by the board on the license, by mailing notice to the licensee at the address appearing for the licensee in the records and files of the department. A license once revoked may not be reinstated unless it appears that an injustice has occurred indicating to the board that the licensee was not guilty of negligence or laches. If a person whose license has been revoked through his own fault desires to engage in the business of water well drilling or *monitoring well construction* in this state or contracting therefor, he must apply under 37-43-303. Notice of suspension shall be given a licensee when the suspension occurs."

Section 12. Section 37-43-308, MCA, is amended to read:

**"37-43-308. Reciprocity.** If a person holding a license entitling him to drill water wells in another state applies for a Montana water well contractor's or *water well driller's* license, the board may waive the apprenticeship requirements and examination requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana. However, the board may require the applicant to successfully complete an examination based on Montana statutes and rules relating to the drilling of water wells in this state."

Section 13. Section 37-43-312, MCA, is amended to read:

**"37-43-312. Penalty.** Any person who shall willfully violate any lawful rule or order of the board or who shall engage in the business of drilling, making, *altering, or rehabilitating* water wells or *monitoring wells* without first having obtained a license as in this chapter required or who shall violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than \$500 or imprisonment in a county jail for a term not exceeding 6 months, or both. Any violation of this chapter shall be prosecuted by the county attorney in the county in which the violation occurred or is occurring, and the trial thereof shall be held in that county."

Section 14. Section 37-43-401, MCA, is amended to read:

**"37-43-401. No action or counterclaim to be maintained except by licensee.** No action or counterclaim shall be maintained by any *water well* contractor, *water well driller, or monitoring well constructor* in any court in this state with respect to any agreement, work, labor, or materials for which a license is required by this chapter or to recover the agreed price or any compensation under any such agreement or for any such work, labor, or materials for which a license is required by this chapter without alleging and proving that such *water well* contractor, *water well driller, or monitoring well constructor* had a valid license at the time of making such agreement and of supplying such labor, work, or materials."

Section 15. Section 37-43-402, MCA, is amended to read:

**"37-43-402. Completion of contracts by successor in interest of licensee.** Upon the transfer by operation of law to the successor in interest of a licensed water well contractor's *or monitoring well constructor's* rights under a contract or agreement for the drilling, making, *or construction* of a water well *or monitoring well*, the successor in interest to such rights shall be permitted to engage in the business of drilling, making, *or construction* of water wells *or monitoring wells* to the extent necessary to perform the obligations of said *licensee* under such contract or agreement, provided that such engagement in business shall be under the supervision of a licensed water well contractor *or monitoring well constructor*."

**Section 16. Initial licensure as a monitoring well constructor.** (1) An applicant who submits an application for a monitoring well constructor's license before June 1, 1988, shall receive a license if the applicant:

- (a) is a licensed water well contractor or is engaged in installing monitoring wells;
- (b) provides verification of 1 or more years' experience in drilling monitoring wells within the 4 years preceding the application;
- (c) pays a fee established by the board under 37-43-303;
- (d) successfully completes the examination for monitoring well installation; and
- (e) provides a bond in compliance with 37-43-306.

(2) An applicant who applies for a monitoring well constructor's license after May 31, 1988, shall meet the requirements of 37-43-303, 37-43-305, and 37-43-306.

**Section 17. Licensed monitoring well constructor to supervise all construction of monitoring wells.** (1) Any firm, corporation, or partnership may engage in the business of constructing or installing monitoring wells provided a licensed monitoring well constructor is in charge of all monitoring well installation.

(2) The licensed monitoring well constructor must be physically present at the site throughout the construction of the monitoring well.

**Section 18. Repealer.** Section 37-43-304, MCA, is repealed.

**Section 19. Extension of authority.** Any existing authority of the board of water well contractors to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 20. Codification instruction.** Sections 16 and 17 are intended to be codified as an integral part of Title 37, chapter 43, part 3, and the provisions of Title 37, chapter 43, part 3, apply to sections 16 and 17.

**Section 21. Effective date.** This act is effective July 1, 1987.

Approved April 17, 1987.

**CHAPTER NO. 539**

[HB 839]

AN ACT TO PROVIDE THE BOARD OF TRUSTEES OF A SCHOOL DISTRICT A METHOD TO PREVENT DILUTION OF ACCESS TO THE ELECTORAL PROCESS FOR MINORITIES BY PROVIDING THE BOARD AN OPTION TO CREATE SINGLE-MEMBER TRUSTEE DISTRICTS; TO PROVIDE THAT THE CREATION OF SUCH DISTRICTS BE ACCOMPLISHED IN ORDER TO CONFORM TO FEDERAL LAW PROHIBITING DILUTION OF ACCESS; AND AMENDING SECTIONS 20-3-305, 20-3-344, AND 20-20-301, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Legislative intent.** It is the intent of the legislature to provide a board of trustees of a school district with the option to:

(1) review the voting and population patterns of minorities of the school district, as determined by the most recent federal decennial census, voting records, and other pertinent information; and

(2) create single-member trustee districts within the school district if the board determines that the present trustee selection process does not serve the best interests of the electors of the district or ensure that the access of minority populations to the political process is not diluted in contravention of federal law.

(3) "Minority", as used in [sections 1 and 2], means a minority whose rights are protected under section 2 of the Voting Rights Act of 1965, (42 U.S.C. 1973), as amended.

**Section 2. Plan for creating single-member trustee districts.** (1) The board of trustees of a school district may establish a procedure for studying the appropriateness of creating single-member trustee districts within the school district.

(2) If the board considers a single-member district plan, the plan must establish single-member districts that:

(a) are as compact in area and as equal in population as possible; and

(b) provide equitable voting rights for the minorities residing within the school district by ensuring that the access of minorities to the political process is not diluted in contravention of the Voting Rights Act Amendments of 1982, Public Law 97-205.

(3) If the board determines that it is in the best interest of the electors of the school district, it shall:

(a) propose creation of a single-member trustee district plan;

(b) schedule and hold a public hearing on the proposed plan; and

(c) publish in a newspaper of general circulation in the district a notice of the public hearing, including a map of the proposed single-member

trustee district plan, and the reasons why the board believes that the plan satisfies the criteria set forth in subsection (2).

(4) After the public hearing is held, the board shall forward a copy of the proposed single-member trustee district plan to the secretary of state and the superintendent of public instruction for review and comment. The copy of the proposed plan must be accompanied by:

(a) a map indicating the circulation of the newspaper in which the notice required in subsection (3) was published;

(b) the published notice of the public hearing;

(c) a map of the proposed single-member trustee district plan; and

(d) a summary of any public comments to the board regarding the proposed plan.

(5) After receiving comments from the secretary of state and the superintendent of public instruction, the board of trustees may amend, revise, approve, or disapprove the proposed plan. If the plan is adopted by the board, it shall:

(a) inform the county superintendent of schools of its adoption;

(b) publish notice of the adoption in a newspaper of general circulation within the district, including identification of the boundaries of each new single-member trustee district and the implementation date of the plan; and

(c) file with the county clerk and recorder a certificate designating the boundary lines and limits of each single-member trustee district.

(6) All successors to the board of trustees must be elected in accordance with the adopted single-member trustee district plan.

(7) No change in the boundaries of a trustee district may be made within 3 months preceding a regular school election day as provided in 20-3-304.

**Section 3. Trustees elected by single-member district.** (1) At each annual election provided for in 20-3-304, each trustee candidate in a single-member trustee district must be a qualified elector of the trustee district and have resided in the trustee district to be represented for at least 1 year prior to becoming a candidate for the trustee position.

(2) Nomination of trustee candidates under the provisions of 20-3-305 and 20-3-344 must be by electors of the trustee district.

(3) The election of each trustee must be submitted to the electors in the trustee district who are qualified to vote under the provisions of 20-20-301.

**Section 4.** Section 20-3-305, MCA, is amended to read:

**“20-3-305. Candidate qualification and nomination.** (1) *Except as provided in [section 3], any person who is qualified to vote in a district under the provisions of 20-20-301 shall be eligible for the office of trustee.*

(2) *Except as provided in [section 3], any five electors qualified under the provisions of 20-20-301 of any district, except a first-class elementary district, may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy shall be submitted to the clerk of the district not less than 20 days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated shall also be indicated.*"

Section 5. Section 20-3-344, MCA, is amended to read:

**"20-3-344. Nomination of candidates by petition in first-class elementary district.** *Except as provided in [section 3], any 20 electors, qualified under the provisions of 20-20-301, of any first-class elementary district may nominate by petition as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy shall be submitted to the clerk of the district not less than 40 days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated shall also be indicated. The election shall be conducted with the ballot as specified in 20-3-306.*"

Section 6. Section 20-20-301, MCA, is amended to read:

**"20-20-301. Qualifications of elector.** An individual is entitled to vote at school elections if he has the qualifications set forth in 13-1-111 and is a resident of the school district or, *in a school district that has been apportioned into single-member trustee districts according to [section 2], a resident of the trustee district.*"

Section 7. **Codification instruction.** Sections 1 through 3 are intended to be codified as an integral part of Title 20, chapter 3, part 3, and the provisions of Title 20 apply to sections 1 through 3.

Approved April 17, 1987.

## CHAPTER NO. 540

[HB 504]

AN ACT LIMITING CHALLENGES TO INITIATIVES AND REFERENDUMS PRIOR TO ELECTIONS; AND AMENDING SECTIONS 3-2-202 AND 3-5-302, MCA.

WHEREAS, Article II, section 1, of the Montana Constitution recognizes that all political power is vested in and derived from the people and that all government of right originates with the people, is founded on their will only, and is instituted solely for the good of the whole; and

WHEREAS, the right of the people to make statutory changes by initiative is retained in Article III, section 4, of the Montana Constitution; and

WHEREAS, the right of the people to alter their Constitution by initiative is retained in Article XIV, section 9, of the Montana Constitution.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 3-2-202, MCA, is amended to read:

**"3-2-202. Original jurisdiction.** (1) *Except as provided in subsection (3), in the exercise of its original jurisdiction, the supreme court has power to issue writs of mandamus, certiorari, prohibition, injunction, and habeas corpus.*

(2) *It also has power to issue all other writs necessary and proper to the complete exercise of its appellate jurisdiction.*

(3) (a) *Except as provided in subsection (3)(b), a contest of a ballot issue submitted by initiative or referendum may be brought prior to the election only if it is filed within 30 days after the date on which the issue was certified to the governor, as provided in 13-27-308, and only for the following causes:*

(i) *violation of the law relating to qualifications for inclusion on the ballot;*

(ii) *constitutional defect in the substance of a proposed ballot issue; or*

(iii) *illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.*

(b) *A contest of a ballot issue based on subsection (3)(a)(i) or (3)(a)(iii) may be brought at any time after discovery of illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.*

(c) *Nothing in subsection (3) limits the right to challenge a measure enacted by a vote of the people."*

Section 2. Section 3-5-302, MCA, is amended to read:

**"3-5-302. Original jurisdiction.** (1) *Except as provided in subsection (6), the district court has original jurisdiction in:*

(a) *all criminal cases amounting to felony;*

(b) *all civil and probate matters;*

(c) *all cases at law and in equity;*

(d) *all cases of misdemeanor not otherwise provided for; and*

(e) *all such special actions and proceedings as are not otherwise provided for.*

(2) *The district court has concurrent original jurisdiction with the justice's court in the following criminal cases amounting to misdemeanor:*

(a) misdemeanors arising at the same time as and out of the same transaction as a felony or misdemeanor offense charged in district court;

(b) misdemeanors resulting from the reduction of a felony or misdemeanor offense charged in the district court; and

(c) misdemeanors resulting from a finding of a lesser included offense in a felony or misdemeanor case tried in district court.

(3) The district court has exclusive original jurisdiction in all civil actions that might result in a judgment against the state for the payment of money.

(4) The district court has the power of naturalization and of issuing papers therefor in all cases where it is authorized to do so by the laws of the United States.

(5) The district court and its judges have power to issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original remedial writs, and all writs of habeas corpus on petition by or on behalf of any person held in actual custody in their respective districts. Injunctions and writs of prohibition and habeas corpus may be issued and served on legal holidays and nonjudicial days.

(6) (a) *Except as provided in subsection (6)(b), a contest of a ballot issue submitted by initiative or referendum may be brought prior to the election only if it is filed within 30 days after the date on which the issue was certified to the governor, as provided in 13-27-308, and only for the following causes:*

(i) *violation of the law relating to qualifications for inclusion on the ballot;*

(ii) *constitutional defect in the substance of a proposed ballot issue; or*

(iii) *illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.*

(b) *A contest of a ballot issue based on subsection (6)(a)(i) or (6)(a)(iii) may be brought at any time after discovery of illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.*

(c) *Nothing in subsection (6) limits the right to challenge a measure enacted by a vote of the people."*

Approved April 20, 1987.

## CHAPTER NO. 541

[HB 506]

### AN ACT PROHIBITING THE USE OF MINERAL SLAG IN ROAD SANDING.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Prohibited materials.** Neither the department nor any agency of state or local government may use mineral slag in road sanding or snow removal one-fourth mile from lakes and 100 yards from streambeds.

**Section 2. Extension of authority.** Any existing authority of the department of highways to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 60, chapter 2, part 2, and the provisions of Title 60, chapter 2, part 2, apply to section 1.

Approved April 20, 1987.

## CHAPTER NO. 542

[HB 509]

AN ACT PROHIBITING THE OPERATION OF AN AIRCRAFT BY A PERSON UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; PROVIDING BLOOD ALCOHOL STANDARDS; AMENDING SECTIONS 67-1-204 AND 67-1-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 67-1-204, MCA, is amended to read:

**"67-1-204. Lawfulness of flight and landings.** (1) Flight in aircraft over the lands and waters of this state is lawful, unless at such a low altitude as to interfere with the then-existing use to which the land or water or the space over the land or water is put by the owner or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water or in violation of the air commerce regulations which have been or may be promulgated by the department of *transportation* of the United States.

(2) Aircraft landings and takeoffs from the public waters of this state are lawful if proper safety precautions regarding public waters, as prescribed in Title 14, part 91, Code of Federal Regulations, are taken prior to such landing or takeoff, except as otherwise provided by this section.

(3) Aircraft landings and takeoffs from public roads in this state are lawful if proper safety precautions, as approved by the governing jurisdiction of such roads, are taken prior to such landing or takeoff, except as otherwise provided in this section. However, the local governing jurisdiction shall incur no liability as a result of an approval under this subsection.

(4) No person shall operate an aircraft, as pilot thereof, either in the air, on the water, or on the ground, in a careless or reckless manner so as to endanger the life or property of others, including the aircraft being operated and passengers carried therein.

(5) The willful and malicious use of aircraft in stunting or diving over livestock in a manner calculated to frighten or stampede them shall be deemed an unlawful use thereof, and actual and punitive damages, in addition to the penalties provided by this part, may be recovered in an action for damages caused therefrom.



(6) The landing of an aircraft on the private lands or waters of another without his consent is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the pilot shall be liable for actual damage caused by such forced landing.

(7) *No person may knowingly operate, attempt to operate, or be in actual physical control of an aircraft while under the influence of alcohol or drugs. "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination thereof a person's ability to safely operate the aircraft has been diminished to the slightest degree.*

(8) *A person having information regarding a violation of subsection (7) shall report such information to the department."*

Section 2. Section 67-1-205, MCA, is amended to read:

**"67-1-205. Penalties.** A person who violates any provision of this part, *except 67-1-204(8)*, shall be guilty of a misdemeanor and punishable by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both."

**Section 3. Blood alcohol concentration standards — evidence admissible — administration of tests.** (1) If a person acting or attempting to act as a crewmember of an aircraft has a blood alcohol concentration of 0.04% by weight or more as defined in 61-8-407, that person is conclusively presumed to be under the influence of alcohol or drugs and is in violation of 67-1-204.

(2) Evidence of the amount of alcohol in a person's blood at the time of the act alleged under subsection (1) and any other competent evidence bearing on the question of whether the person was under the influence of alcohol at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a chemical test of his blood, breath, or urine for the purpose of determining the alcohol or drug content of his blood if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol or drugs. The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol or drugs. The arresting officer may designate which one of the aforesaid tests must be administered. A person who is unconscious or who is otherwise in a condition rendering him incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with violation of 67-1-204 refuses to submit to a chemical test of his blood, breath, or urine for the purpose of determining

the alcohol content of his blood, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(6) The provisions relating to administration of tests provided in 61-8-405 and the definition of alcohol concentration provided in 61-8-407 apply to any testing done to determine the blood alcohol concentration of a person charged with violation of 67-1-204.

**Section 4. Extension of authority.** Any existing authority of the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 5. Codification instruction.** Section 3 is intended to be codified as an integral part of Title 67, chapter 1, part 2, and the provisions of Title 67, chapter 1, part 2, apply to section 3.

**Section 6. Effective date.** This act is effective on passage and approval.

Approved April 20, 1987.

## CHAPTER NO. 543

[HB 564]

AN ACT GENERALLY REVISING THE LAW CONCERNING CITY COURTS; DEFINING A CITY COURT'S CONCURRENT JURISDICTION WITH JUSTICES' COURTS; PROVIDING FOR PROCEDURES IN CITY COURTS; AMENDING SECTIONS 3-11-101, 3-11-102, 3-11-201 THROUGH 3-11-203, 3-11-302, 7-4-4102, 7-4-4103, AND 25-32-101 THROUGH 25-32-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 3-11-101, MCA, is amended to read:

**"3-11-101. City court established.** (1) A city court is established in each city or town. *The city judge shall establish regular sessions of the court.* On judicial days, the court shall be open for all business, civil and criminal. On nonjudicial days, as defined in 3-1-302, the court may transact criminal business only.

(2) Police court is hereby renamed city court, and all references to police court or police judges in the Montana Code Annotated shall be considered amended to read city court or city judge."

**Section 2.** Section 3-11-102, MCA, is amended to read:

**"3-11-102. Concurrent jurisdiction.** (1) The city court has concurrent jurisdiction with the justice's court of all misdemeanors *and proceedings mentioned and provided for under chapter 10, part 3, of this title.*

(2) Applications for search warrants and complaints charging the commission of a felony may be filed in the city court. When they are filed, the city judge has the same jurisdiction and responsibility as a justice of the peace, including the holding of a preliminary hearing. The city attorney may file an application for a search warrant or a complaint charging the commission of a felony when the offense was committed within the city limits. The county attorney, however, must handle any action after a defendant is bound over to district court."

Section 3. Section 3-11-201, MCA, is amended to read:

**"3-11-201. Term of office.** (1) An elected or appointed city judge shall hold office for a term of 4 years and until the qualification of his successor.

(2) A justice of the peace designated to act as city judge for a *city or town* under 3-11-205 shall serve as city judge for the duration of his term as justice of the peace *[or until the agreement provided for in 3-11-205 terminates].*"

Section 4. Section 3-11-202, MCA, is amended to read:

**"3-11-202. Salary — qualifications.** (1) *A city judge, at the time of election or appointment, shall meet the qualifications of a justice of the peace under 3-10-202 and any additional qualifications prescribed by ordinance.*

(2) The annual salary and compensation of city judges must be fixed by ordinance *or resolution.*

(3) Each city judge shall receive his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties."

Section 5. Section 3-11-203, MCA, is amended to read:

**"3-11-203. When substitute for judge called in.** (1) The city judge or mayor may call in *a city judge*, a justice of the peace, or some qualified *person* to act in the judge's place whenever the judge is:

- (a) a party in a case;
- (b) interested in a case;
- (c) the spouse of or related to either party in a case by consanguinity or affinity within the sixth degree; or
- (d) sick, absent, or unable to act.

(2) The city judge may call in *a city judge*, justice of the peace, or some qualified *person* to act in his stead when a disqualifying affidavit is filed against him pursuant to the supreme court's rules on disqualification and substitution of judges.

(3) *A city judge of any city or a justice of the peace of any county may sit as city judge at the city judge's request."*

Section 6. Section 3-11-302, MCA, is amended to read:

**"3-11-302. Who named as plaintiff.** (1) *A criminal action brought for violation of a city or town ordinance must be brought in the name of the city or town as the plaintiff and against the accused as the defendant.*

(2) *A criminal action brought for violation of a state law within the city or town may be brought either in the name of the state of Montana as the plaintiff or in the name of the city or town as the plaintiff and must be brought against the accused as the defendant.*

(3) *A criminal action brought for violation of a state law within the county and within its concurrent jurisdiction with the justice's court must be brought in the name of the state of Montana as the plaintiff and against the accused as the defendant.*

(4) *A civil action brought in the city court must be prosecuted or defended in the same manner as a civil action in justices' courts under the Montana Justice Courts Rules of Civil Procedure (Title 25, chapter 22)."*

Section 7. Section 7-4-4102, MCA, is amended to read:

**"7-4-4102. Officers of city of second or third class.** (1) The officers of a city of the second or third class consist of:

- (a) one mayor;
- (b) two aldermen from each ward;
- (c) one city judge.

(2) The officers listed in subsection (1), except the city judge for a city of the third class, must be elected by the qualified electors of the city as hereinafter provided.

(3) The governing body of a city of the third class may by ordinance determine whether the office of city judge shall be filled by appointment by the governing body or by election, *or may designate a justice's court to act as city court as provided in 3-11-205.*

(4) There may also be appointed by the mayor, with the advice and consent of the council:

- (a) one city attorney;
- (b) one city clerk, who is ex officio city assessor;
- (c) one city treasurer or one city clerk-treasurer;
- (d) one chief of police; and
- (e) any other officers necessary to carry out the provisions of this title.

(5) The city council may prescribe the duties of all city officers and fix their compensation."

Section 8. Section 7-4-4103, MCA, is amended to read:

**"7-4-4103. Officers of towns.** (1) The officers of a town consist of:

- (a) one mayor;

- (b) two aldermen from each ward; and
- (c) one city judge.

(2) The officers listed in subsection (1), except for the city judge, must be elected by the qualified electors of the town, as hereinafter provided.

(3) The governing body of the town *may by ordinance determine that the office of city judge must be filled either by election or appointment or may designate a justice's court to act as city court as provided in 3-11-205.*

(4) There may be appointed by the mayor, with the advice and consent of the council:

- (a) one clerk, who may be ex officio assessor and tax collector and a member of the council;
- (b) one marshal, who may be ex officio street commissioner; and
- (c) any other officers necessary to carry out the provisions of this title.

(5) The town council may prescribe the duties of all town officers and fix their compensation, subject to the limitations contained in this title."

Section 9. Section 25-32-101, MCA, is amended to read:

**"25-32-101. Applicability of laws on procedure in justices' courts.** All proceedings in civil actions in city courts must, except as in this chapter otherwise provided, be conducted in the same manner as civil actions in justices' courts *and conform to the Montana Justice Courts Rules of Civil Procedure (Title 25, chapter 22).*"

Section 10. Section 25-32-102, MCA, is amended to read:

**"25-32-102. Commencement of action — complaint.** (1) Civil actions in city courts are commenced by filing a complaint *as provided under the Montana Justice Courts Rules of Civil Procedure (Title 25, chapter 22).*

(2) *The complaint must set forth a concise statement of the facts constituting the cause of action.*

(3) *A complaint under 3-11-103 must set forth the interest of the city in the action. An allegation that the cause of action arose from a violation of a city ordinance or failure to perform a duty required by city ordinance is a sufficient interest of the city.*

(4) The ordinance may be referred to by its title, section, and number."

Section 11. Section 25-32-103, MCA, is amended to read:

**"25-32-103. Summons.** Immediately after filing the complaint, a summons must be issued, directed to the defendant and returnable *as provided under the Montana Justice Courts Rules of Civil Procedure (Title 25, chapter 22).*"

Section 12. Section 25-32-104, MCA, is amended to read:

**"25-32-104. Answer and immediate trial.** On the return of the summons, the defendant *shall file a written answer to the complaint.* The

answer must conform to the Montana Justice Courts Rules of Civil Procedure (Title 25, chapter 22). Upon return of the answer the case must be tried as in justice's court."

Section 13. **Coordination instruction.** If House Bill No. 482, including the section of that bill amending 3-11-205, is not passed and approved, the bracketed language in section 3(2) is void.

Section 14. **Effective date.** This act is effective on passage and approval.

Approved April 20, 1987.

## CHAPTER NO. 544

[HB 577]

AN ACT TO REQUIRE 16 HOURS OF TRAINING A YEAR FOR ADULT AND JUVENILE PROBATION OFFICERS AND PAROLE OFFICERS; AND AMENDING SECTIONS 41-5-702 AND 46-23-1003, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 41-5-702, MCA, is amended to read:

**"41-5-702. Qualifications of probation officers.** (1) Any person appointed as a chief probation officer must have the following qualifications:

- (a) a master's degree in the behavioral sciences;
- (b) a bachelor's degree from an accredited college or university in the behavioral sciences and at least 1 year's experience in work of a nature related to the duties of a probation officer as set forth in 41-5-703; or
- (c) a bachelor's degree in any field and at least 3 years' experience in work related to the duties of a probation officer as set forth in 41-5-703.

(2) The judge may appoint any reputable person as a probation officer who has had experience in work of a nature related to the duties of a chief probation officer, provided preference shall be given to persons with the qualifications set forth in subsection (1).

(3) *Each person appointed as a chief probation officer or probation officer under this section or as a deputy probation officer under 41-5-705 must, through a source approved by his employer, obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers."*

Section 2. Section 46-23-1003, MCA, is amended to read:

**"46-23-1003. Qualifications of probation and parole officers.** (1) Probation and parole officers shall have at least a college degree and some

formal training in behavioral sciences. Exceptions to this rule must be approved by the department. Related work experience in the areas listed in 2-15-2302(2) may be substituted for educational requirements at the rate of 1 year of experience for 9 months formal education if approved by the department. All present employees will be exempt from this requirement but are encouraged to further their education at the earliest opportunity.

*(2) Each probation and parole officer must, through a source approved by his employer, obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers."*

**Section 3. Extension of authority.** Any existing authority of the department of institutions to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 20, 1987.

## CHAPTER NO. 545

[HB 606]

AN ACT EXEMPTING LAND FROM TAXATION WHEN IT IS OWNED BY A COOPERATIVE ASSOCIATION OR NONPROFIT CORPORATION ORGANIZED TO FURNISH POTABLE WATER TO ITS MEMBERS OR CUSTOMERS FOR USES OTHER THAN THE IRRIGATION OF AGRICULTURAL LAND; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-6-201, MCA, is amended to read:

**"15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts, except, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, the property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the

clergy, together with adjacent land reasonably necessary for convenient use of such buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for hospitals;

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. Such property is also exempt from the fee in lieu of tax.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(l) motorcycles and quadricycles;

(m) land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit; and

(p) all farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100.



(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) \$20,000 in the case of a single-family residential dwelling;

(b) \$100,000 in the case of a multifamily residential dwelling or a non-residential structure."

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Applicability.** This act applies to taxable years beginning after December 31, 1987.

Approved April 20, 1987.

## CHAPTER NO. 546

[HB 612]

AN ACT REQUIRING THAT THE ASSETS OF A COUNTY WATER OR SEWER DISTRICT BE DISTRIBUTED, UPON DISSOLUTION, ACCORDING TO A PLAN ADOPTED BY THE BOARD OF DIRECTORS AFTER A PUBLIC HEARING; AND AMENDING SECTION 7-13-2351, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-13-2351, MCA, is amended to read:

**"7-13-2351. Dissolution of district.** (1) Upon receipt of a petition to dissolve the district, signed by more than 50% of the freeholders of the district, the board of directors shall set a date for a public hearing on dissolution of the district. The hearing date may be not earlier than 45 days or later than 60 days after the date on which the board schedules the date of the hearing. A notice of the public hearing on the dissolution must be published as provided in 7-1-2121. The published notice must include notice to creditors of the district to present claims owed by the district to the board of directors prior to the date set for the dissolution hearing.

(2) At the dissolution hearing the board of directors shall hear testimony of all persons interested in whether the district should be dissolved and shall determine whether there are any outstanding debts of the district.

(3) After the hearing, if the board determines that dissolution of the district is in the best interest of the public and that there are no outstanding debts of the district, it may resolve to recommend that the district be dissolved. A copy of the resolution must be sent to the county commissioners of the county or counties in which the district is located.

(4) The district is dissolved after the approval of the dissolution by all the boards of county commissioners of the counties in which the district is located. An instrument approving dissolution must be filed with the clerk and recorder of the county or counties in which the district is located, who shall then cause a copy of the instrument to be filed with the secretary of state.

(5) Any assets of the district after dissolution shall be distributed *according to a specific plan adopted by the board of directors after a public hearing and set forth in the resolution recommending that the district be dissolved.*"

Approved April 20, 1987.

## CHAPTER NO. 547

[HB 626]

AN ACT TO REMOVE EARLY TERMINATION OF TENANCY AS  
GROUNDS FOR A LANDLORD TO RECOVER TREBLE DAMAGES  
FROM A TENANT; AND AMENDING SECTION 70-24-422, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 70-24-422, MCA, is amended to read:

**"70-24-422. Noncompliance of tenant generally — landlord's right of termination — damages — injunction.** (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321 affecting health and safety, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 14 days after receipt of the notice. If the breach is not remedied within that time, the rental agreement terminates as provided in the notice subject to the following exceptions:

(a) If the breach is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate.

(b) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the breach and the date of the termination of the rental agreement.

(2) (a) Except as provided in subsection (2)(b), if rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement.

(b) For a rental agreement involving a tenant who rents space to park a mobile home but who does not rent the mobile home, the notice period referred to in subsection (2)(a) is 15 days.

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the breach under the provisions of 70-24-321(2).

(4) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. *Except as provided in subsection (5), if the tenant's noncompliance is purposeful, the landlord may recover treble damages.*

(5) *Treble damages may not be recovered for the tenant's early termination of the tenancy."*

Approved April 20, 1987.

## CHAPTER NO. 548

[HB 639]

AN ACT PROVIDING FOR THE REGISTRATION OF INDIVIDUALS ACTING AS PROCESS SERVERS; AUTHORIZING REGISTERED PROCESS SERVERS TO ACT AS LEVYING OFFICERS; AND AMENDING SECTIONS 25-3-201 THROUGH 25-3-205, 25-3-301, 25-3-302, 25-13-203, 25-13-301 THROUGH 25-13-307, AND 25-13-401 THROUGH 25-13-404, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Registered process server — levying officer.** (1) Any person who makes more than 10 services of process, as defined in 25-3-101, within this state during 1 calendar year shall file a verified certificate of registration as a process server with the clerk of the district court of the county in which he resides or has his principal place of business.

(2) [Sections 1 through 9] do not apply to:

(a) a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of his employment; or

(b) a licensed attorney.

(3) A registered process server may act as a levying officer under Title 25, chapter 13.

**Section 2. Contents of registration certificate.** The certificate of registration of a process server must contain the following statements:

- (1) the name, age, address, and telephone number of the registrant;
- (2) that the registrant has not been convicted of a felony;
- (3) that the registrant has been a resident of this state for a period of 1 year immediately preceding the filing of the certificate; and
- (4) that the registrant will perform his duties as a process server in compliance with the provisions of law governing the service of process in this state.

**Section 3. Fee — duration of certificate.** (1) A certificate of registration as a process server must be accompanied by a fee of \$100 at the time the certificate is filed. The fee must be deposited in the county general fund for district court operations, unless the county has a district court fund. If the county has a district court fund, the fee must be deposited in that fund.

(2) A certificate of registration is effective for a period of 2 years from the date of filing. A new certificate must be filed upon expiration of a certificate and a new registration fee must accompany the new certificate.

**Section 4. Handbook for process servers.** (1) The department of commerce shall publish a handbook for process servers and levying officers.

(2) Each person who applies to the clerk of the district court of any county for registration as a process server must demonstrate that he has passed an examination based on the handbook and administered by the board of private security patrolmen and investigators provided for in 2-15-1891.

(3) The department of commerce may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination provided for in this section.

**Section 5. List of process servers — identification.** (1) The clerk of the district court shall maintain a list of all process servers registered in the county. The clerk of the district court shall assign a number to each registered process server. Upon renewal of a certificate of registration, the same number may be assigned.

(2) During the course of serving process or acting as a levying officer, a registered process server must have in his possession an identification card with the number assigned under subsection (1) and a photograph of the registered process server. The clerk of the district court shall furnish the identification card, the cost of which must be reimbursed by the process server.

**Section 6. Bond required.** (1) The clerk of the district court may not accept a certificate of registration as a process server unless the certificate is accompanied by a surety bond of \$10,000 per individual or \$100,000 per firm, conditioned upon compliance with [sections 1 through 9] and all laws governing service of process in this state.

(2) A levying officer may not levy on a judgment that exceeds the value of the bond.

**Section 7. Action on bond.** (1) Any person who recovers damages for an injury caused by a service of process, made by a registered process server, that did not comply with the law governing service of process in this state may recover the amount of damages from the bond required under [section 6].

(2) If there has been recovery against a registered process server's bond, the registrant must file a new bond within 30 days or reinstate the bond. If the bond has not been reinstated or filed within 30 days, the county attorney must revoke the registrant's certificate.

**Section 8. Revocation or suspension of certificate.** (1) A certificate of registration of a registered process server may be revoked or suspended by the county attorney of the county of registration whenever the registrant makes a service of process not complying with the law.

(2) The county attorney may conduct an investigation concerning the revocation or suspension of a certificate based on the complaint of a person alleging injury caused by improper service of process by the registrant.

(3) The county attorney shall notify the clerk of the district court when a certificate of registration is suspended, revoked, or reinstated.

**Section 9. Proof of service — requirements.** A proof of service of process signed by a registered process server must indicate the county in which he is registered and the number assigned to him under [section 5].

**Section 10.** Section 25-3-201, MCA, is amended to read:

**"25-3-201. Delivery of papers to officer.** (1) It is the duty of the clerk of any district court, at the request of a party in any civil action pending in such court or his agent or attorney, to forward by mail any process, summons, or other papers required in the cause; and it is the duty of the sheriff, *registered process server*, or other officer to whom said papers may be directed to receive the same at the place where the same are directed. When process in one county is intended for service in another, it is the duty of the clerk to forward the same in like manner.

(2) If the papers are delivered for service away from the county seat, all necessary copies thereof must be furnished for service.

(3) If any sheriff, *registered process server*, or other officer refuses to receive any summons or other process at the point where directed to him or to serve the same, he is guilty of a misdemeanor and upon conviction thereof must be fined in any sum not exceeding \$100."

**Section 11.** Section 25-3-202, MCA, is amended to read:

**"25-3-202. When officer's execution of process justified and required.** A sheriff, *registered process server*, or other ministerial officer is justified in the execution of and must execute all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued."

Section 12. Section 25-3-203, MCA, is amended to read:

**"25-3-203. Prepayment of cost of service.** In no case shall the officer or registered process server receiving papers for service be required to serve the same unless the person in whose behalf the service is made or his agent or attorney first pay the cost of the service upon a demand therefor by the officer or registered process server."

Section 13. Section 25-3-204, MCA, is amended to read:

**"25-3-204. Officer to exhibit process.** The officer or registered process server executing such process must, then and at all times subsequent so long as he retains it, upon request, show the same with all papers attached to any person interested therein."

Section 14. Section 25-3-205, MCA, is amended to read:

**"25-3-205. Execution of process when sheriff a party.** When the sheriff is a party to an action or proceeding, the process and orders therein which it would otherwise be the duty of the sheriff to execute must be executed by the coroner of the county or a registered process server."

Section 15. Section 25-3-301, MCA, is amended to read:

**"25-3-301. Time and manner of return.** (1) It shall be the duty of the sheriff or other person serving a summons or other process or order required by any of the provisions of this code, issued out of any of the district courts of this state, to make due and legal return of such service and file the same with the clerk of the court in which such action or proceeding is pending not more than 10 days after the making of such service where the same was made in the county in which such action or proceeding is pending and not more than 15 days after the making of such service when the same was made outside of the county in which such action or proceeding is pending. Any failure to make and file such return as required may be punished as a contempt of court.

(2) When process or a notice is returnable to another county or was forwarded under 25-3-201, the sheriff or a registered process server may enclose his return of such process or notice in an envelope addressed to the officer who sent it and deposit it in the post office, prepaying postage."

Section 16. Section 25-3-302, MCA, is amended to read:

**"25-3-302. Return prima facie evidence.** The return of the sheriff or registered process server upon process or notices is prima facie evidence of the facts in such return stated."

Section 17. Section 25-13-203, MCA, is amended to read:

**"25-13-203. Judgments requiring the performance of specific acts.** (1) When the judgment requires the performance of any other act than those designated in 25-13-201 and 25-13-202, a certified copy of the judgment may be served upon the party against whom the same is rendered or upon the person or officer required thereby or by law to obey the same, and obedience thereto may be enforced by the court.

(2) Where a judgment directs a party to make a deposit or delivery or to convey real property, if the direction is disobeyed, the court, besides

punishing the disobedience as a contempt, may by order require the sheriff or levying officer, who may be a registered process server, to take and deposit or deliver the money or other personal property or to convey the real property in conformity with the direction of the court."

Section 18. Section 25-13-301, MCA, is amended to read:

**"25-13-301. Form and contents of writ.** (1) The writ of execution must:

(a) be issued in the name of the state of Montana, sealed with the seal of the court, and subscribed by the clerk;

(b) be directed to the sheriff or levying officer;

(c) intelligibly refer to the judgment, stating the court and the county where it was entered and, if it is for money, the amount thereof and the amount actually due thereon; and

(d) require the sheriff or levying officer to act substantially as provided in this part.

(2) In executions, the amount thereof must be computed and stated as near as may be in dollars and cents, rejecting fractions of a cent."

Section 19. Section 25-13-302, MCA, is amended to read:

**"25-13-302. Execution against principal debtor before surety.** Upon the rendition of any judgment, if it shall be shown that one or more of the defendants against whom the judgment is to be rendered are principal debtors and others of the said defendants are sureties of such principal debtor, the court may order the judgment so to state, and upon the issuance of an execution upon such judgment, it shall direct the sheriff or levying officer to make the amount due thereon out of the goods and chattels, lands and tenements of the principal debtor or debtors or, if sufficient thereof cannot be found within his county to satisfy the same, to levy and make the same out of the property, personal or real, of the judgment debtor who was surety."

Section 20. Section 25-13-303, MCA, is amended to read:

**"25-13-303. Execution when only some of defendants served.** When a writ of execution is issued on a judgment recovered against two or more persons in an action upon a joint contract, in which action all the defendants were not served with summons or did not appear, it must direct the sheriff or levying officer to satisfy the judgment out of the joint property of all the defendants and the individual property only of the defendants who were served or who appeared in the action."

Section 21. Section 25-13-304, MCA, is amended to read:

**"25-13-304. Execution against property of judgment debtor.** If the writ be against the property of the judgment debtor, it shall require the sheriff or levying officer to satisfy the judgment, with interest, out of the personal property of such debtor and, if sufficient personal property cannot be found, out of his real property as provided in 25-13-305."

Section 22. Section 25-13-305, MCA, is amended to read:

**"25-13-305. Execution of lien on real property.** If the judgment be a lien upon real property, the writ shall require the sheriff or *levying officer* to satisfy the judgment, with interest, out of the real property belonging to the judgment debtor on the day when the judgment was docketed or at any time thereafter or, if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the clerk of the district court of such county, stating such day, or any time thereafter."

Section 23. Section 25-13-306, MCA, is amended to read:

**"25-13-306. Execution against property in hands of representative.** If the writ be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff or *levying officer* to satisfy the judgment, with interest, out of such property."

Section 24. Section 25-13-307, MCA, is amended to read:

**"25-13-307. Execution requiring delivery of possession of property.** If the writ be for the delivery of the possession of real or personal property, it must require the sheriff or *levying officer* to deliver the possession of the same, particularly describing it, to the party entitled thereto and may at any time require the sheriff or *levying officer* to satisfy any costs, damages, rents, or profits recovered by the same judgment out of the personal property of the person against whom it was rendered, the value of the property for which the judgment was rendered to be specified therein, if a delivery cannot be had, and if sufficient personal property cannot be found, then out of the real property, as provided in 25-13-305."

Section 25. Section 25-13-401, MCA, is amended to read:

**"25-13-401. To whom execution issued.** Where the execution is against the property of the judgment debtor, it may be issued to the sheriff or *levying officer* of any county in the state. Where it requires the delivery of real or personal property, it must be issued to the sheriff or *levying officer* of the county where the property or some part thereof is situated. Executions may be issued at the same time to different counties."

Section 26. Section 25-13-402, MCA, is amended to read:

**"25-13-402. How writ executed.** The sheriff or *levying officer* must execute the writ against the property of the judgment debtor by levying on a sufficient amount of property, if there be sufficient, collecting or selling the things in action, and selling the other property and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of the sheriff or *levying officer*, he must levy only on such part of the property as the judgment debtor may indicate if the property indicated be amply sufficient to satisfy the judgment and costs."



Section 27. Section 25-13-403, MCA, is amended to read:

**"25-13-403. Security for costs when property seized.** If the sheriff or levying officer will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of a writ of execution shall provide a bond or other security to pay for all costs which may be incurred as a result of the service of such writ."

Section 28. Section 25-13-404, MCA, is amended to read:

**"25-13-404. Return of the execution.** (1) Except as provided in subsection (2), execution may be made returnable, at any time not less than 10 or more than 60 days after its receipt by the sheriff or levying officer, to the clerk of the court in which the judgment was rendered.

(2) The writ of execution issued by the county treasurer under 15-16-401 may be made returnable, at any time not less than 10 or more than 90 days after its receipt by the sheriff or levying officer, to the county treasurer of the county in which the writ was issued."

Approved April 20, 1987.

## CHAPTER NO. 549

[HB 641]

AN ACT TO PROVIDE FOR TREATMENT OF INDIVIDUALS LESS THAN 18 YEARS OF AGE, BUT NOT LESS THAN 12, AT MONTANA STATE HOSPITAL UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 53-21-506, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-21-506, MCA, is amended to read:

**"53-21-506. No commitment to Montana state hospital.** (1) An individual less than 18 years of age may not be voluntarily admitted or committed by a court to the Montana state hospital unless such individual is transferred to district court pursuant to 41-5-206.

(2) *Notwithstanding the provisions of 41-5-523, an individual less than 18 years of age, but not less than 12, may be temporarily admitted to the Montana state hospital by the department of institutions:*

(a) (i) *for not more than 30 days if the court finds that the individual is seriously mentally ill, as defined in 53-21-102; or*

(ii) *if the court finds that reasonable grounds exist that the individual is suffering from a mental disorder, as defined in 53-21-102, and the court requests an evaluation not to exceed 60 days for the sole purpose of determining whether the individual is seriously mentally ill. After 30 days, the court will review the status of the evaluation and take appropriate action.*

(b) *the treatment space provided for in section 5, Chapter 14, Special Laws of June 1986, is fully utilized; and*

(c) *other appropriate inpatient psychiatric treatment space is not available."*

**Section 2. Effective date — termination.** (1) This act is effective on passage and approval.

(2) Section 1(2) terminates June 30, 1989.

Approved April 20, 1987.

## CHAPTER NO. 550

[HB 648]

### AN ACT TO LEGALIZE CALCUTTA POOLS; TO ESTABLISH PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definition.** As used in [this act], "Calcutta pool" means a form of auction pool in which persons bid or wager money, with winnings awarded based on the outcome of an event, except that persons may not bid or wager money on any elementary school or high school sports event.

**Section 2. Calcutta pools authorized.** It is hereby lawful to conduct or participate in a Calcutta pool as defined in [section 1].

**Section 3. Minors not to participate.** No person under the age of 18 may be permitted to participate in a Calcutta pool organized or conducted pursuant to [this act].

**Section 4. Cheating unlawful.** It is unlawful for any person to conduct or participate in a Calcutta pool authorized under [this act] in a manner that results in cheating, misrepresentation, or other disreputable tactics that distract from a fair and equal chance for all participants to win the pool or that otherwise affects the outcome of the pool.

**Section 5. Penalty.** Any person who violates a provision of [this act] shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$1,000 or imprisoned in the county jail for a term not to exceed 3 months, or both.

**Section 6. Construction.** Nothing in [this act] may be construed to permit a person to conduct a race meet or to bet on a race of a licensed race meet in violation of 23-4-201 and 23-4-301.

**Section 7. Codification, instruction.** Sections 1 through 6 are intended to be codified as an integral part of Title 23, chapter 5, and the provisions of Title 23, chapter 5, apply to sections 1 through 6.

**Section 8. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this

act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. **Effective date.** This act is effective on passage and approval.

Approved April 20, 1987.

## CHAPTER NO. 551

[HB 661]

AN ACT FURTHER DEFINING THE TERM "PROJECT" TO CLARIFY THAT A PROJECT DOES NOT INCLUDE MAINTENANCE AND REPAIR OF EXISTING IRRIGATION FACILITIES; AMENDING SECTIONS 75-7-103 AND 75-7-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-7-103, MCA, is amended to read:

**"75-7-103. Definitions.** As used in this part, the following definitions apply:

(1) "Applicant" means any person presenting notice of a project to the supervisors.

(2) "Department" means the Montana department of fish, wildlife, and parks.

(3) "District" means a conservation district under Title 76, chapter 15, in which the project will take place; a grass conservation district under Title 76, chapter 16, where no conservation district exists, or the board of county commissioners where a district does not exist.

(4) "Person" means any natural person, corporation, firm, partnership, association, or other legal entity not covered under 87-5-502.

(5) (a) "Project" means a physical alteration or modification of a stream in the state of Montana which results in a change in the state of the stream in contravention of 75-7-102.

(b) *Project does not include customary and historic maintenance and repair of existing irrigation facilities:*

(i) *that do not significantly alter or modify the stream in contravention of 75-7-102; or*

(ii) *for which a plan of annual operation has been submitted to and approved by the district. The plan is subject to future review and approval by the district at its option. Any modification to the plan must have prior approval of the district.*

(6) "Stream" means any natural perennial-flowing stream or river, its bed and immediate banks.

(7) "Supervisors" means the board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district.

(8) "Team" means one representative of the supervisors, one representative of the department, and the applicant or his representative."

Section 2. Section 75-7-117, MCA, is amended to read:

**"75-7-117. Rules — minimum standards.** (1) *The board of natural resources and conservation, after consultation with the association of conservation districts, shall adopt and may from time to time revise rules setting minimum standards and guidelines for the purposes of this part.*

(2) *The supervisors of each district shall adopt and may from time to time revise by resolution after a public hearing rules setting standards and guidelines for projects and exclusions within their districts which meet, exceed, or are not covered by the minimum standards set by the board under subsection (1)."*

Section 3. **Extension of authority.** Any existing authority of the board of natural resources and conservation and the supervisors as provided in 75-7-103 to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 20, 1987.

## CHAPTER NO. 552

[HB 670]

AN ACT AUTHORIZING THE ATTORNEY GENERAL TO APPOINT EMPLOYEES OF CLASS I RAILROAD CORPORATIONS AS SPECIAL PEACE OFFICERS; RESTRICTING THE AUTHORITY OF SPECIAL PEACE OFFICERS; DEFINING THE RESPONSIBILITY OF THE RAILROAD CORPORATION FOR THE SPECIAL PEACE OFFICERS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Attorney general — appointment of special peace officers.** The attorney general may appoint special peace officers as provided in [this act].

Section 2. **Application for appointment.** A class I railroad corporation, as defined by the interstate commerce commission in part 1201 of 49 CFR, desiring the appointment of an officer or employee as a special peace officer shall apply to the attorney general. The application must state the name, age, and place of residence of the person applying for appointment. The applicant must have at least 3 years of experience as a class I railroad

peace officer or have completed a training course at an approved law enforcement academy, or meet the qualifications described in 7-32-303 and adopted under 44-4-301. The application must be signed by the applicant and a managing officer of the railroad corporation. The managing officer signing the application shall at the same time submit an affidavit to the effect that he is acquainted with the person seeking appointment, that he believes him to be of good moral character, and that he is of such character and experience that he can be safely entrusted with the powers and duties of a special peace officer.

**Section 3. Limitations on special peace officer.** A person appointed and sworn as a special peace officer shall when on duty have the power and authority of a peace officer but may exercise such power and authority only in the protection of the property of the class I railroad corporation employing him.

**Section 4. Responsibility of corporation.** The class I railroad corporation employing a special peace officer is solely responsible for the compensation of the special peace officer and is civilly liable for any action of the officer arising out of his actions as a special peace officer. The class I railroad corporation employing a special peace officer shall hold the state, its subdivisions, and the officers and employees thereof harmless and indemnify them from any claim or liability, including costs and attorney fees, arising out of any action of a special peace officer or the certification of the special peace officer by the state.

**Section 5. Effective date.** This act is effective July 1, 1987.

Approved April 20, 1987.

## CHAPTER NO. 553

[HB 679]

AN ACT TO ALLOCATE A PORTION OF THE REVENUE FROM FINES FOR THE COMMISSION OF THE CRIMINAL OFFENSE OF DOMESTIC ABUSE AND OTHER CRIMES TO THE BATTERED SPOUSES AND DOMESTIC VIOLENCE GRANT PROGRAM; AMENDING SECTIONS 40-2-405 AND 46-18-235, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-18-235, MCA, is amended to read:

**"46-18-235. Disposition of money collected as fines and costs.** The money collected by a court as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 shall be paid to the county general fund of the county in which the court is held, except that:

(1) if the costs assessed include any district court expense listed in 3-5-901, the money collected from assessment of these costs must be paid

to the department of commerce for deposit into the state general fund to the extent the expenses were paid by the state;

(2) if the fine was imposed for a violation of Title 45, chapter 9, the court may order the money paid into the drug forfeiture fund maintained under 44-12-206 for the law enforcement agency which made the arrest from which the conviction and fine arose; and

(3) *if the fine was imposed for a violation of 45-5-206, 50% of the amount collected[, except for fines collected by a justice court and distributed pursuant to 3-10-601.] must be deposited in the state special revenue fund for use of the department of social and rehabilitation services in the battered spouses and domestic violence grant program created by 40-2-401."*

Section 2. Section 40-2-405, MCA, is amended to read:

**"40-2-405. Funding.** (1) Revenue from the marriage license fee, the fee collected for filing a declaration of marriage without solemnization, and the portion of fines allocated to this program by 46-18-235 is the primary source of funding for the battered spouses and domestic violence program. The disposition of the marriage license fee is as established in 25-1-201.

(2) Twenty percent of the operational costs of a battered spouses and domestic violence program must come from the local community served by the program. The local contribution may include in-kind contributions."

Section 3. **Coordination instruction.** If House Bill 740, including the section of that bill amending 3-10-601 to provide a percentage of fines to be allocated to the battered spouses and domestic violence grant program, is not passed and approved, the bracketed language in section 1(3) is void.

Section 4. **Effective date.** This act is effective July 1, 1987.

Approved April 20, 1987.

## CHAPTER NO. 554

[HB 716]

AN ACT TO FUND THE VOLUNTARY STATEWIDE GENETICS PROGRAM BY IMPOSING A FEE ON HEALTH INSURERS OF 35 CENTS FOR EACH MONTANA RESIDENT INSURED; EXEMPTING CERTAIN GROUP DISABILITY POLICYHOLDERS; APPROPRIATING MONEY FOR THE PROGRAM; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Genetics program fee.** Except as provided in [section 2], for each Montana resident insured under any individual or group disability or health insurance policy on February 1 of each year, the insurer or health service corporation issuing the policy, and the state group health plan provided for in Title 2, chapter 18, part 8, shall pay 35 cents to the commissioner. The fee must be paid on or before March 1 of each year and be

deposited in the general fund. The purpose of the fee is to fund the voluntary statewide genetics program established in 50-19-211.

**Section 2. Group disability policy exemption.** The fee required in [section 1] does not apply to blanket group disability insurance as defined in Title 33, chapter 22, part 6, where the total premium charged per person is less than \$10 a year. For these policies, the fee is to be assessed on the basis of the number of blanket group policyholders in Montana.

**Section 3. Appropriation.** There is appropriated from the general fund to the department of health and environmental sciences \$520,000 for the biennium ending June 30, 1989, for the purpose of implementing and operating the voluntary statewide genetics program established in 50-19-211.

**Section 4. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 33, chapter 2, and the provisions of Title 33, chapter 2, apply to section 1.

**Section 5. Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 6. Effective date.** This act is effective July 1, 1987.

**Section 7. Termination.** This act terminates on June 30, 1989.

Approved April 20, 1987.

## CHAPTER NO. 555

[HB 718]

AN ACT ALLOCATING FUNDS FROM THE INTEREST INCOME OF THE RESOURCE INDEMNITY TRUST FUND TO THE ENVIRONMENTAL QUALITY PROTECTION FUND; SPECIFYING USES OF THE ENVIRONMENTAL QUALITY PROTECTION FUND; AMENDING SECTIONS 15-38-202, 75-10-704, AND 75-10-715, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-38-202, MCA, is amended to read:

**"15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All moneys paid into the resource indemnity trust fund shall be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund shall annually be added thereto until it has reached the sum of \$10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches \$100 million. Thereafter, all net earnings and all receipts shall be appropriated by the legislature and expended, provided that the balance in the fund may never be less than \$100 million.

(2) Beginning in fiscal year 1982, provided the amount in the resource indemnity trust fund is greater than \$10 million, 30% of the interest income of the resource indemnity trust fund must be allocated to the water development state special revenue account created by 85-1-604.

(3) Beginning in fiscal year 1986, 6% of the interest income of the resource indemnity trust fund must be allocated to the department of health and environmental sciences to be used to implement the Montana Hazardous Waste Act and the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 in accordance with Title 75, chapter 10, part 6. The allocation in this subsection must be appropriated for each full biennium as necessary to obtain matching federal funds for the biennium.

(4) *Beginning in fiscal year 1990, 4% of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704."*

Section 2. Section 75-10-704, MCA, is amended to read:

**"75-10-704. Environmental quality protection fund.** (1) There is created in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may *only* be used to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances. *Fund uses must include the conduct of the hazardous waste site remedial action program, which is a program of remedial action at sites:*

(a) *where a release has occurred; and*

(b) *where the U.S. environmental protection agency has, under the provisions of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, conducted a hazard ranking study and judged the site not eligible for inclusion on the national priority list or where the U.S. environmental protection agency has no authority or no plan to assess the site under CERCLA.*

(3) *The department's program for remedial action under subsection (2) must include:*

(a) *a system for prioritizing sites for remedial action based on potential effects on human health and the environment; and*

(b) *investigation, negotiation, and legal action, as appropriate, to identify responsible parties, to obtain the participation and financial contribution of responsible parties for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.*

(4) There must be deposited in the fund:

(a) *all penalties, damages, and department expenditures recovered pursuant to 75-10-715;*



(b) funds appropriated to the fund by the legislature; and

(c) funds received from the *interest income of the resource indemnity trust fund* pursuant to 15-38-202.

(5) *Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101."*

Section 3. Section 75-10-715, MCA, is amended to read:

**"75-10-715. Reimbursement and penalties — proceedings — defenses.** (1) Subject only to the defenses set forth in subsection (4), a party responsible for a release is liable for:

(a) all costs of remedial action taken by the department pursuant to this part; and

(b) damages for injury to, destruction of, or loss of natural resources caused by the release or threatened release.

(2) If the responsible party fails, without sufficient cause, to properly provide remedial action upon notification by the department pursuant to 75-10-711(3)(b), the responsible party may be liable for punitive damages in an amount not to exceed two times the amount of any costs incurred by the department pursuant to this section.

(3) The department may initiate civil proceedings in district court to recover costs, damages, or penalties under subsections (1) and (2). Venue for any action to recover costs, damages, or penalties lies in the county where the release occurred or where the responsible party resides or has its principal place of business or in the district court of the first judicial district.

(4) No party is liable under subsection (1) or (2) if that party can establish by a preponderance of the evidence that:

(a) the department failed to follow the notice provisions of 75-10-711 when required; or

(b) the release did not emanate from any vessel, vehicle, or facility over which the party had any authority or control and was not caused by any action or omission of the party; or

(c) in the case of assessment of punitive damages, that factors beyond the control of the responsible party prevented the party from taking timely remedial action."

Section 4. **Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Coordination instruction.** If Senate Bill No. 373, including the section of that bill amending 15-38-202, is passed and approved, section 18 of Senate Bill No. 373 must read:

**"NEW SECTION. Section 18. Coordination instruction.** (1) If House Bill No. 777, including the section of that bill amending 15-38-202, is passed and approved, and if House Bill No. 718, including the section of that bill amending 15-38-202, is passed and approved, the bracketed material in section 12 must read "46%".

(2) If House Bill No. 777, including the section of that bill amending 15-38-202, is passed and approved, and if House Bill No. 718, including the section amending 15-38-202, is not passed and approved, the bracketed material in section 12 must read "50%".

(3) If House Bill No. 777, including the section amending 15-38-202 is not passed and approved, and if House Bill No. 718, including the section amending 15-38-202, is passed and approved, the bracketed material in section 12 must read "52%"."

**Section 6. Effective date.** This act is effective July 1, 1987.

Approved April 20, 1987.

## CHAPTER NO. 556

[HB 733]

**AN ACT EXEMPTING FROM TAXATION NONPROFIT FACILITIES PROVIDED PRIMARILY FOR TRAINING FOR OR COMPETITION IN INTERNATIONAL SPORTS OR ATHLETIC EVENTS; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-6-201, MCA, is amended to read:

**"15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts, except, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, the property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for hospitals;

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. Such property is also exempt from the fee in lieu of tax.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(l) motorcycles and quadricycles;

(m) fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit;

(p) all farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100; and

*(q) property owned by a nonprofit corporation organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.*

(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) \$20,000 in the case of a single-family residential dwelling;

(b) \$100,000 in the case of a multifamily residential dwelling or a non-residential structure."

**Section 2. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date — applicability.** (1) This act is effective on passage and approval.

(2) This act applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1986.

Approved April 20, 1987.

**CHAPTER NO. 557**

[HB 740]

AN ACT TO RELIEVE JUSTICES OF THE PEACE FROM OVERLY BURDENSOME BOOKKEEPING AND OTHER ADMINISTRATIVE DUTIES IN REGARD TO FINES, PENALTIES, AND FORFEITURES PAID IN THEIR COURTS; TO REVISE THE METHOD OF DISTRIBUTING THE FINES, PENALTIES, AND FORFEITURES; AMENDING SECTIONS 3-10-601, 7-14-2138, 7-14-2826, 7-22-2117, 7-22-2434, 7-23-105, 13-37-124, 13-37-129, 15-1-105, 15-8-309, 15-70-101, 19-8-504, 20-7-504, 20-7-505, 20-9-331, 20-9-332, 23-2-507, 23-2-644, 32-2-106, 33-2-312, 37-2-301, 37-4-327, 37-7-324, 37-8-432, 37-10-313, 37-16-408, 37-41-212, 39-71-201, 46-17-303, 46-18-235, 46-18-236, 46-18-603, 50-1-204, 50-2-124, 50-52-105, 50-70-118, 53-9-109, 61-8-718, 61-10-148, 61-11-104, 61-12-701, 75-2-412, 75-5-634, 75-7-216, 75-10-418, 75-20-112, 76-13-111, 76-13-114, 77-1-117, 80-3-613, 80-7-704, 80-11-313, 81-3-231, 81-4-202, 81-4-621, 81-8-216, 81-8-279, 81-23-403, 85-2-123, 85-3-213, 85-15-502, 87-1-601, AND 87-4-808, MCA; REPEALING SECTION 3-10-603, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 3-10-601, MCA, is amended to read:

**“3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.** (1) Each justice of the peace shall collect the fees prescribed by law for justices’ courts and shall pay them into the county treasury of the county wherein he holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) *All fines, penalties, and forfeitures that this code requires to be imposed, collected, or paid in a justice’s court must, for each calendar month, be paid by the justice’s court on or before the 5th day of the following month to the treasurer of the county in which the justice’s court is situated.*

(3) *The county treasurer shall, in the manner provided in 15-1-504, distribute money received under subsection (2) as follows:*

(a) *50% to the state treasurer; and*

(b) *50% to the county general fund.*

(4) *The state treasurer shall distribute money received under subsection (3) as follows:*

(a) *23% to the state general fund;*

(b) *10% to the fish and game account in the state special revenue fund;*

(c) *12.5% to the state highway account in the state special revenue fund;*

(d) *36% to the traffic education account in the state special revenue fund;*

(e) 0.6% to the department of livestock account in the state special revenue fund;

(f) 16.9% to the crime victims compensation account in the state special revenue fund; and

(g) 1% to the department of social and rehabilitation services special revenue account for the battered spouses and domestic violence grant program."

Section 2. Section 7-14-2138, MCA, is amended to read:

**"7-14-2138. Prosecution by county attorney.** (1) The county attorney, upon complaint of the road supervisor, county surveyor, or any other person, shall prosecute all actions provided in parts 21 through 28 in the name of the state of Montana.

(2) All penalties, *except those paid to a justice's court*, shall be paid into the general fund of the county."

Section 3. Section 7-14-2826, MCA, is amended to read:

**"7-14-2826. Regulation of ferry operation — penalties.** (1) The board of commissioners may make all needful rules for the government of ferries and ferrykeepers prescribing:

(a) how many boats must be kept, their character, and how propelled;

(b) the number of hands, boatmen, or ferrymen to be employed and rules for their government;

(c) when and under what circumstances to make trips in the nighttime;

(d) who may be ferried free of toll;

(e) in what cases of danger or peril not to cross;

(f) penalties for violation of regulations;

(g) in case of steamboats, the rate of speed;

(h) the method of and preference in loading and crossing; and

(i) how and by whom action must be brought to recover penalties.

(2) Subject to the foregoing regulations, ferrykeepers must make trips to accommodate all passengers who desire to cross, and any failure to do so subjects the franchise to forfeiture by a proper proceeding for that purpose.

(3) The owner of every ferry must have the rates of toll, as fixed by the board, printed or written and posted in some conspicuous place on or near the ferry.

(4) All ferrykeepers must keep the banks of the streams or waters at the landings of their ferries graded and in good order for the passage of vehicles. For every day compliance herewith is neglected, \$25 is forfeited, to be collected, *except as provided in 3-10-601*, for the use of the road fund of the county."

Section 4. Section 7-22-2117, MCA, is amended to read:

**"7-22-2117. Violations.** (1) Any person who in any manner interferes with the board or its authorized agent in carrying out the provisions of this part or who refuses to obey an order or notice of the board is guilty of a misdemeanor, and upon conviction thereof, he shall be fined not to exceed \$100 for the first offense and not less than \$100 or more than \$200 for each subsequent offense.

(2) All fines, bonds, and penalties collected under the provisions of this part, *except those collected by a justice's court*, shall be paid to the county treasurer of each county and placed by him to the credit of a fund to be known as the noxious weed fund."

Section 5. Section 7-22-2434, MCA, is amended to read:

**"7-22-2434. Disposition of fines, bonds, and penalties.** All fines, forfeited bonds, and penalties collected under the provisions of this part, *except those collected by a justice's court*, shall be paid to the county treasurer of each county and placed by him to the credit of the mosquito control fund."

Section 6. Section 7-23-105, MCA, is amended to read:

**"7-23-105. Disposition of fines.** All fines collected under the provisions of this part and part 21, *except those collected by a justice's court*, shall be paid into the county treasury and shall be used to pay fees, salaries, costs, or expenses for the enforcement of this part and part 21."

Section 7. Section 13-37-124, MCA, is amended to read:

**"13-37-124. Consultation and cooperation with county attorney.** (1) Whenever the commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution under chapters 35, 36, or 37 of this title, he shall notify the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the county attorney all information relevant to the alleged violation. If the county attorney fails to initiate the appropriate civil or criminal action within 30 days after he receives notification of the alleged violation, the commissioner may then initiate the appropriate legal action.

(2) A county attorney may, at any time prior to the expiration of the 30-day time period specified in subsection (1), waive his right to prosecute and thereby authorize the commissioner to initiate the appropriate civil or criminal action.

(3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has been committed by the county attorney of a county. In this instance, the commissioner is authorized to directly prosecute any alleged violation of chapters 35, 36, or 37 of this title.

(4) If a prosecution is undertaken by the commissioner, all court costs associated with the prosecution shall be paid by the state of Montana, and all fines and forfeitures imposed pursuant to a prosecution by the commissioner, *except those paid to or imposed by a justice's court*, shall be deposited in the state general fund."

Section 8. Section 13-37-129, MCA, is amended to read:

**"13-37-126. Liability and disposition of fines.** In determining the amount of liability under 13-37-128, the court may take into account the seriousness of a violation and the degree of culpability of the defendant. If a judgment is entered against the defendant or defendants in an action brought by a county attorney *in a court other than a justice's court*, the county shall receive 50% of the amount recovered. The remaining 50% shall be deposited in the general fund of the state. In an action brought by the commissioner *in a court other than a justice's court*, the entire amount recovered shall be paid to the general fund of the state."

Section 9. Section 15-1-105, MCA, is amended to read:

**"15-1-105. Fines and forfeitures to county.** All fines, forfeitures, and penalties incurred by a violation of any of the provisions of the state tax laws, *except those paid to a justice's court*, must be paid into the treasury for the use of the county where the person against whom the recovery is had resides."

Section 10. Section 15-8-309, MCA, is amended to read:

**"15-8-309. Violation and penalty.** (1) Every person who refuses to furnish the statement hereinbefore required or to make and subscribe such affidavit respecting his name and place of residence or to appear and testify when requested so to do by the department, as above provided, for each and every refusal and as often as the same is repeated forfeits to the people of the state the sum of \$100 to be recovered by action brought in the name of the state in any city or justice's court.

(2) All moneys recovered under the provisions of this section, *except moneys paid to a justice's court*, must be paid into the treasury of the county in which the property is located."

Section 11. Section 15-70-101, MCA, is amended to read:

**"15-70-101. Disposition of funds.** All taxes, interest, and penalties collected under this chapter, *except those collected by a justice's court*, shall be turned over promptly to the state treasurer, who shall place the same in the state special revenue fund to the credit of the department of highways. Those funds hereinbelow allocated to cities, towns, and counties shall be paid by the department of highways from the state special revenue fund to such cities, towns, and counties.

(1) \$14,000,000 of the funds collected under this chapter, *except those collected by a justice's court*, is statutorily appropriated, as provided in 17-7-502, to the department of highways and shall be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (a) and (b) hereof:

(a) \$6,350,000 shall be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system,



bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state;

(b) \$7,650,000 shall be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds hereby allocated to counties, cities, and towns shall be used for the construction, reconstruction, maintenance, and repair of rural roads, city or town streets and alleys or for the share which such city, town, or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets which are part of the federal-aid primary or secondary highway system or urban extensions thereto, except that the governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.

(3) Upon receipt of the allocation provided herein, the governing bodies of the recipient counties, cities, and towns shall inform the department of highways of the purposes for which the funds will be expended so that the county commissioners, the governing body, and the department of highways may coordinate the expenditure of public funds for road improvements.

(4) All funds hereby allocated to counties, cities, and towns shall be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases where the contract for construction, reconstruction, maintenance, or repair is in excess of \$4,000.

(5) For the purposes of this section where distribution of funds is made on a basis related to population, the population shall be determined by the last preceding official federal census.

(6) For the purposes of this section where determination of mileage is necessary for distribution of funds, it shall be the responsibility of the cities, towns, and counties to furnish to the department of highways a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted shall be subject to review and approval by the department of highways.

(7) Except by a town or third-class city as provided in subsection (2), none of the funds authorized by this section shall be used for the purchase of capital equipment.

(8) Funds authorized by this section shall be used for construction and maintenance programs only."

Section 12. Section 19-8-504, MCA, is amended to read:

**"19-8-504. State's contribution.** Each month the state treasurer shall pay to the account, out of the department of fish, wildlife, and parks moneys, a sum equal to 7.15% of the total of all members' salaries, and out of the moneys collected as fines and forfeited bonds under the provisions of 87-1-601 or moneys distributed under 3-10-601(4), all such collections are statutorily appropriated to the account until the unfunded liability in the account is solvent and a verification statement to that effect is given to the state treasurer by the board."

Section 13. Section 20-7-504, MCA, is amended to read:

**"20-7-504. State traffic education account — proceeds earmarked for the account.** (1) There is a traffic education account in the treasury of the state of Montana. There shall be paid into this account a portion of the fines and forfeitures collected in any court *except a justice's court* from persons apprehended or arrested by highway patrol officers or department of highways peace officers for any violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 relating to the operation or use of motor vehicles in the following amounts:

- (a) if a fine is imposed, 25% of the fine imposed;
- (b) if multiple offenses are involved, 25% of the total sum of all fines imposed;
- (c) if a fine is suspended, in whole or in part, 25% of the fine actually paid; and
- (d) if any deposit of bail is made for an offense to which this section applies and the bail is forfeited, 25% of the forfeited bail.

(2) A portion of all money from the collection of fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses shall be contributed to the traffic education account as provided in 61-5-121."

Section 14. Section 20-7-505, MCA, is amended to read:

**"20-7-505. Transmittal of proceeds from fines and other sources.** (1) The portion of the proceeds from fines and bail forfeitures, *except those paid to a justice's court*, which are to be deposited in the traffic education account shall be transmitted to the county treasurer by the court collecting them, in the manner and at the times that fines and bail forfeitures are transmitted to the county treasurer under law. The court shall indicate what portion of each fine is to be credited to the traffic education account. The county treasurer shall transmit monthly to the state treasurer, without deduction, the portions of the fines received, *except those paid to a justice's court*, which are to be credited to the traffic education account.

(2) When a court is required to transmit fees, fines, and forfeitures directly to the state treasurer, the gross proceeds including the portion of the fines to be credited to the traffic education account shall be transmitted to the state treasurer and the appropriate portion shall be deposited in the traffic education account."

Section 15. Section 20-9-331, MCA, is amended to read:

**"20-9-331. Basic county tax and other revenues for county equalization of the elementary district foundation program.** (1) It shall be the duty of the county commissioners of each county to levy an annual basic tax of 28 mills on the dollars of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of the elementary school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenues identified in subsection (2) below shall be subtracted from the sum of the county elementary transportation obligation and the total of the foundation programs of all elementary districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined above, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed by this section and the revenues from the following sources shall be used for the equalization of the elementary district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of such proceeds and revenues by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, *except money paid to a justice's court*, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for the various sources of revenue established or referred to in this section;

(e) any federal or state money, including anticipated or reappropriated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536, distributed to the county as payment in lieu of the property taxation established by the county levy required by this section; and

(f) net proceeds taxes for new production, as defined in 15-23-601."

Section 16. Section 20-9-332, MCA, is amended to read:

**"20-9-332. Fines and penalties proceeds for elementary county equalization.** All fines and penalties collected under the provisions of this title, *except those collected by a justice's court*, shall be paid into the county elementary equalization fund as provided by 20-9-331(2)(c). In order to implement this section and any other provision of law requiring the deposit of fines in the elementary county equalization fund, *a report* shall be made to the county superintendent of the county, at the close of each term, by the clerk of each district court, *reporting* all fines imposed and collected during the term *and* indicating the type of violation and the date of collection."

Section 17. Section 23-2-507, MCA, is amended to read:

**"23-2-507. Penalty.** Violations of any section of this part, except 23-2-526(3), unless otherwise specified shall be a misdemeanor and be punishable by fine of not less than \$15 or more than \$500 or by imprisonment up to 6 months or by both such fine and imprisonment. All fine and bond forfeitures, *except those paid to a justice's court*, shall be transmitted to the state treasurer, who shall deposit such fines and forfeitures in the motorboat account of an earmarked fund. The moneys shall be used only by the department for enforcement of this part, as amended."

Section 18. Section 23-2-644, MCA, is amended to read:

**"23-2-644. Use of funds from fines and forfeitures.** All fines and forfeitures collected under this part relating to snowmobiles, *except those collected by a justice's court*, shall be transmitted to the state treasurer, who shall deposit such fines and forfeitures in the state special revenue fund to the credit of the department to be used only for snowmobile safety and education."

Section 19. Section 32-2-106, MCA, is amended to read:

**"32-2-106. Penalties.** (1) It shall be unlawful for any association, whether foreign or domestic and whether citizens of this state or otherwise, to do business or attempt to do business, as defined in this chapter, without having first complied with its provisions and having received a certificate of authority to do business from the department. Any such association violating any of the provisions of this chapter and failing to comply with any of its provisions shall be fined not less than \$250 or more than \$1,000 for each and every such violation, to be recovered by an action in the name of the state and on collection, *except when collected by a justice's court*, paid into the state treasury.

(2) Any person or persons, whether citizens of this state or otherwise, who aid or assist any such association to do business contrary to the provisions of this chapter without having first complied with all of its provisions

shall be guilty of a misdemeanor and on conviction thereof shall be fined not more than \$500 or imprisoned not more than 6 months, or both."

Section 20. Section 33-2-312, MCA, is amended to read:

**"33-2-312. Penalty for failure to file statement or pay tax.** Every surplus line agent who fails to make and file the annual statement as required under 33-2-310 or to pay the taxes as required under 33-2-311 shall be liable to a penalty of \$25 for each day of delinquency, commencing with April 1. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction, the attorney general representing him. The penalty when collected, *unless collected by a justice's court*, shall be paid to the state treasurer and placed to the credit of the general fund. The surplus line agent's license shall also be subject to revocation as provided in 33-2-313."

Section 21. Section 37-2-301, MCA, is amended to read:

**"37-2-301. Duty to report cases of communicable disease.** (1) If a physician or other practitioner of the healing arts examines or treats a person whom he believes has a communicable disease or a disease declared reportable by the department of health and environmental sciences, he shall immediately report the case to the local health officer. The report shall be in the form and contain information prescribed by the department.

(2) A person who violates the provisions of this section or rules adopted by the department under the provisions of this section is guilty of a misdemeanor. On conviction, he shall be fined not less than \$10 or more than \$500, imprisoned for not more than 90 days, or both. Each day of violation constitutes a separate offense. Fines, *except those collected by a justice's court*, shall be paid to the county treasurer of the county in which the violation occurs."

Section 22. Section 37-4-327, MCA, is amended to read:

**"37-4-327. Practicing dentistry without certificate — penalty.** (1) A person who, as principal, agent, employer, employee, or assistant, practices dentistry or who does an act of dentistry without having first secured a certificate to practice dentistry from the department entitling him to practice in this state is guilty of a misdemeanor and on conviction in a district court may be fined not less than \$500 or more than \$1,000 or be confined for a period not exceeding 6 months in the county jail.

(2) Fines imposed and collected under this chapter, *except those paid to a justice's court*, shall be paid into the treasury of the county in which the suits, actions, or proceedings are commenced. Money paid into the treasury over and above the amount necessary to reimburse the county for expense incurred by the county in a suit, action, or proceeding brought under this chapter shall be deposited before January 1 of each year in the state special revenue fund for the use of the board, subject to 37-1-101(6)."

Section 23. Section 37-7-324, MCA, is amended to read:

**"37-7-324. Deposit of fees and fines.** Fines paid under this chapter, *except those paid to a justice's court*, and fees collected by the department for registration and licenses issued under this chapter shall be

deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6)."

Section 24. Section 37-8-432, MCA, is amended to read:

**"37-8-432. Deposit of fees.** Fees and fines collected by the department under this chapter, *except those collected by a justice's court*, shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6)."

Section 25. Section 37-10-313, MCA, is amended to read:

**"37-10-313. Penalty for violations — deposit of fines.** A person who violates this chapter, except 37-10-104, or the rules of the board is guilty of a misdemeanor and on conviction shall be fined not less than \$200 and not more than \$500 or imprisoned in the county jail not exceeding 6 months or both fined and imprisoned. Fines collected, *except those collected by a justice's court*, shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6)."

Section 26. Section 37-16-408, MCA, is amended to read:

**"37-16-408. Deposit of fees and fines.** Fees and fines collected under this chapter, *except those collected by a justice's court*, shall be deposited in the state special revenue fund for the use of the board, subject to appropriations and 37-1-101(6)."

Section 27. Section 37-41-212, MCA, is amended to read:

**"37-41-212. Enforcement responsibility — penalty — deposit of fines.** (1) State and local health officers shall enforce this chapter.

(2) A person who violates this chapter or a rule of the department is guilty of a misdemeanor and upon conviction shall be fined not more than \$500.

(3) All fines collected under this section, *except those collected by a justice's court*, shall be deposited in the general fund of the county in which the action is brought."

Section 28. Section 39-71-201, MCA, is amended to read:

**"39-71-201. Administration fund.** (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the division must administer are to be paid upon lawful appropriation. The following moneys collected by the division shall be deposited in the state treasury to the credit of the workers' compensation administrative fund and shall be used for the administrative expenses of the division:

(a) all fees and *penalties* provided in 39-71-205 and 39-71-304;

(b) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state insurance fund. The assessments

shall be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, no assessment of the plan No. 1 employer or plan No. 2 insurer shall be less than \$200. The assessments shall be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans using proper accounting and cost allocation procedures. Plan No. 3 shall be assessed an amount sufficient to fund its direct costs and an equitable portion of the indirect costs as referred to above. Other sources of revenue, including unexpended funds from the preceding fiscal year, shall be used to reduce the costs before levying the assessments.

(2) The administration fund shall be debited with expenses incurred by the division in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the division either within or without the state.

(3) Disbursements from the administration money shall be made after being approved by the division upon claim therefor."

Section 29. Section 46-17-303, MCA, is amended to read:

**"46-17-303. Deposit of fines.** All fines imposed and collected by a city court must be paid to the treasurer of the county, city, or town, as the case may be, within 30 days after the receipt of the same. The city judge must take duplicate receipts therefor, one of which he must deposit with the county, city, or town clerk, as the case may be."

Section 30. Section 46-18-235, MCA, is amended to read:

**"46-18-235. Disposition of money collected as fines and costs.** The money collected by a court, *except money collected by a justice's court*, as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 shall be paid to the county general fund of the county in which the court is held, except that:

(1) if the costs assessed include any district court expense listed in 3-5-901, the money collected from assessment of these costs must be paid to the department of commerce for deposit into the state general fund to the extent the expenses were paid by the state; and

(2) if the fine was imposed for a violation of Title 45, chapter 9, the court may order the money paid into the drug forfeiture fund maintained under 44-12-206 for the law enforcement agency which made the arrest from which the conviction and fine arose."

Section 31. Section 46-18-236, MCA, is amended to read:

**"46-18-236. Imposition of charge upon conviction or forfeiture — administration.** (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a defendant upon his

conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

- (a) \$10 for each misdemeanor charge; and
- (b) the greater of \$20 or 10% of the fine levied for each felony charge.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the defendant is not able to pay the fine and costs or that he is unable to pay within a reasonable time, the court must waive payment of the charge imposed by this section.

(3) The charge imposed by this section is not a fine and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charge imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charge.

(5) The charges collected under subsection (1), *except those collected by a justice's court*, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsection (1) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and his deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsection (1) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for such salaries may be used for the payment of any other county salaries."

Section 32. Section 46-18-603, MCA, is amended to read:

**"46-18-603. Disposition of fines and forfeitures.** All fines and forfeitures collected in any court except city courts must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred. After such costs are paid, the residue, if not *paid to a justice's court or otherwise provided by law*, must be paid to the county treasurer of the county in which the court is held and by him credited as provided by law. If the fine or forfeiture is paid to the county treasurer, at the time



of such payment there shall be filed with the county treasurer a complete statement showing the total of the fine or forfeiture received or incurred with an itemized statement of the costs incurred by the county in such action. The statement shall give the title of the cause and be subscribed by the person or officer making such payment."

Section 33. Section 50-1-204, MCA, is amended to read:

**"50-1-204. Quarantine measures.** The department may adopt and enforce quarantine measures against a state, county, or municipality to prevent the spread of communicable disease. A person who does not comply with quarantine measures shall, on conviction, be fined not less than \$10 or more than \$100. Receipts from fines, *except justice's court fines*, shall be deposited in the state general fund."

Section 34. Section 50-2-124, MCA, is amended to read:

**"50-2-124. Penalties for violations.** (1) A person who does not comply with rules adopted by a local board is guilty of a misdemeanor. On conviction, he shall be fined not less than \$10 or more than \$200.

(2) Except as provided in subsection (1) of this section and 50-2-123, a person who violates the provisions of this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor. On conviction, he shall be fined not less than \$10 or more than \$500, imprisoned for not more than 90 days, or both.

(3) Each day of violation constitutes a separate offense.

(4) Fines, *except justice's court fines*, shall be paid to the county treasurer of the county in which the violation occurs."

Section 35. Section 50-52-105, MCA, is amended to read:

**"50-52-105. Violation of chapter a misdemeanor.** (1) A person violating a provision of this chapter or a rule made under it shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$50 or more than \$100 for the first offense and not less than \$75 or more than \$200 for the second offense, and for the third and subsequent offenses, he shall be punished by a fine of not less than \$200 and imprisonment in the county jail not to exceed 90 days.

(2) Fines, *except justice's court fines*, shall be paid to the county treasurer of the county in which the establishment is located. The county treasurer shall send all fines collected to the state treasurer for deposit in the state general fund."

Section 36. Section 50-70-118, MCA, is amended to read:

**"50-70-118. Penalty.** (1) A person who violates this chapter relating to limitations of levels, concentrations, or quantities of emissions of various pollutants from a source determined to be necessary to prevent, abate, or control occupational diseases (unless in compliance with this chapter) is guilty of an offense and subject to a fine not to exceed \$1,000. Each day of violation constitutes a separate offense.

(2) Proceedings under this section are not a bar to enforcement of this chapter or of rules or orders made under it by injunction or other appropriate remedy. The department may institute and maintain in the name of the state these enforcement proceedings.

(3) This chapter does not abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damage or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(4) Fines collected, *except those collected by a justice's court*, shall be deposited to the state general fund."

Section 37. Section 53-9-109, MCA, is amended to read:

**"53-9-109. Crime victims compensation account.** There is a crime victims compensation account in the state special revenue fund. There shall be paid into this account 18% of the fines assessed and bails forfeited, *except those paid to a justice's court*, on all offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61, that are a result of citations or tickets issued by the highway patrol."

Section 38. Section 61-8-718, MCA, is amended to read:

**"61-8-718. Penalty for violation of fuel conservation speed limit.** (1) A person violating the speed limit imposed pursuant to 61-8-304 is guilty of the offense of unnecessary waste of a resource and upon conviction shall be fined \$5, and no jail sentence may be imposed. Bond for this offense shall be \$5.

(2) A violation of 61-8-304 is not a misdemeanor pursuant to 45-2-101, 61-8-104, or 61-8-711."

Section 39. Section 61-10-148, MCA, is amended to read:

**"61-10-148. Disposition of fines and forfeited bonds.** Except as provided in 61-12-701, one-half of all the money collected as fines and forfeited bonds for violations of Title 61, chapter 10, must be remitted monthly by the county treasurer to the state treasurer for deposit in the state highway account in the state special revenue fund. The remaining half, less the deductions required by law, must be deposited in the county road fund. *This section does not apply to fines and forfeited bonds paid to justices' courts.*"

Section 40. Section 61-11-104, MCA, is amended to read:

**"61-11-104. Reports by justices of the peace.** Justices of the peace shall *make available* to the department records of cases which involve the state highway patrol as the department may request."

Section 41. Section 61-12-701, MCA, is amended to read:

**"61-12-701. Disposition of fines and forfeitures.** All fines and forfeitures collected in any court, *except a justice's court*, for violation of the laws and regulations relating to the use of state highways and the operation of vehicles thereon, if the apprehension or arrest was by a highway patrolman, must be paid to the state treasurer and by him credited to the

general fund of the state or, if the apprehension or arrest was by a sheriff or deputy sheriff, must be paid to the county treasurer for deposit in the county general fund, except for that portion of the fines otherwise allocated by law which must be paid into the appropriate accounts in the state special revenue fund."

Section 42. Section 75-2-412, MCA, is amended to read:

**"75-2-412. Criminal penalties — injunction preserved.** (1) A person who violates this chapter or a rule, order, or permit made or issued under it, other than 75-2-105, is guilty of an offense and subject to a fine not to exceed \$1,000. Each day of violation constitutes a separate offense.

(2) A person who willfully violates 75-2-105 is guilty of an offense and subject to a fine not to exceed \$1,000.

(3) Fines collected, *except those collected in a justice's court*, shall be deposited to the state general fund.

(4) Action under this section is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under it by injunction or other appropriate remedy. The department may institute and maintain in the name of the state any enforcement proceedings."

Section 43. Section 75-5-634, MCA, is amended to read:

**"75-5-634. Fines to go to general fund.** Fines collected, *except those collected in a justice's court*, shall be deposited to the state general fund."

Section 44. Section 75-7-216, MCA, is amended to read:

**"75-7-216. Penalty.** (1) A person who violates an order issued under this part or who knowingly violates a regulation made under this part commits a misdemeanor and on conviction may be sentenced to 30 days in the county jail or fined \$500, or both.

(2) Fines collected under this section, *except those collected in a justice's court*, shall be paid to the general fund of the county where the offense was committed for the purpose of administering this part."

Section 45. Section 75-10-418, MCA, is amended to read:

**"75-10-418. Criminal penalties.** (1) Any person who knowingly transports any hazardous waste to an unpermitted facility; who treats, stores, or disposes of hazardous waste without a permit; or who makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed or maintained as required by the provisions of this part or rules made under this part is subject to a fine not to exceed \$10,000 for each violation or imprisonment not to exceed 6 months, or both. A person convicted for a violation of this section after a first conviction under this section is subject to a fine not to exceed \$20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this part, rules made under this part, orders of the department or the board, or permits by injunction or other appropriate remedy.

(3) Money collected under this section, *except money collected in a justice's court*, shall be deposited in the state general fund."

Section 46. Section 75-20-112, MCA, is amended to read:

**"75-20-112. Money to state special revenue fund.** All fees, taxes, fines, and penalties collected under this chapter, *except those collected by a justice's court*, shall be deposited in the state special revenue fund for use by the department in carrying out its functions and responsibilities under this chapter."

Section 47. Section 76-13-111, MCA, is amended to read:

**"76-13-111. Permissible expenditures.** (1) The following funds may be expended as directed by the department for fire prevention, detection, suppression and for forest range, water, and soil conservation:

(a) all moneys collected by county treasurers as assessments on forest lands for forest protection;

(b) moneys collected for the abatement of public nuisances;

(c) all fines collected, *except those collected in a justice's court*, for violations of this part or part 2;

(d) the state's share of the cooperative fire protection funds allocated by the federal government;

(e) any other funds provided for the purposes herein indicated.

(2) All other cooperative funds collected, appropriated, or allocated for the use of the department, including funds for the removal of slash hazards resulting from logging or other wood operations on state and private forest lands, those provided for the purpose of helping to maintain the maximum productivity of the forests of the state, those provided for purposes designed to assist the farmers of the state in the establishment of wind-breaks and woodlots in localities where those forest plantings are helpful, and funds for other cooperative work, may not be expended except for the specific purposes for which they were collected, appropriated, or allocated."

Section 48. Section 76-13-114, MCA, is amended to read:

**"76-13-114. Disposition of fines.** Fines collected in a court of the state under this part or part 2, *except those collected in a justice's court*, shall be transferred to the state treasurer for deposit in the agency fund. Whenever a person is convicted in any court of a violation of this part or part 2, the court may levy and collect as costs in the case the amount necessary to compensate the county for the expenditures made in and for the prosecution of the offender. These costs when collected, *except those collected in a justice's court*, shall be deposited by the court with the proper county treasurer for the benefit of the county."

Section 49. Section 77-1-117, MCA, is amended to read:

**"77-1-117. Disposition of fines.** Unless otherwise provided, all money received as fines, fees, and forfeitures under this title or as penalties for the violation of any of the land laws of this state, *except money received*

by a justice's court, shall be paid to the state treasurer and by him deposited to the credit of the general fund."

Section 50. Section 80-3-613, MCA, is amended to read:

**"80-3-613. Violation — penalty.** A person who violates this part, fails to comply with rules adopted under this part, or fails to obey an order of the department made under this part is guilty of a misdemeanor and shall be fined not less than \$25 or more than \$500, imprisoned in the county jail for not more than 6 months, or both fined and imprisoned. The fine, *except a fine paid to a justice's court*, shall be paid into the state treasury and deposited as provided in 80-3-612."

Section 51. Section 80-7-704, MCA, is amended to read:

**"80-7-704. Disposition of fines and inspection fees.** All fines levied as provided in 80-7-703, *except fines paid to a justice's court*, and all fees collected from inspections shall be deposited with the state treasurer to the credit of the state special revenue fund for the use of the department for the purpose of administering and enforcing 80-7-701 through 80-7-704."

Section 52. Section 80-11-313, MCA, is amended to read:

**"80-11-313. Penalty.** In addition to the penalty specified in 80-11-312, any person who violates or aids in a violation of any of the provisions of this part or any of the rules or orders of the department adopted under this part, upon conviction thereof, is punishable by a fine not to exceed \$500. All fines collected, *except fines collected by a justice's court*, shall be deposited as provided in 80-11-310."

Section 53. Section 81-3-231, MCA, is amended to read:

**"81-3-231. Penalties.** (1) A person is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section if he removes live stock or causes livestock to be removed from a county in this state:

(a) without having the livestock inspected before removal if an inspection is required by law;

(b) without obtaining a market consignment permit or transportation permit if the permits are required by law;

(c) and does obtain a market consignment permit for livestock but does not deliver the livestock transported thereunder to the livestock market designated in the market consignment permit;

(d) and does obtain a transportation permit for the livestock but does not deliver the livestock transported thereunder to the destination as shown on the transportation permit and fails to have the livestock so transported inspected at the point of destination or does not file a loading tally with the carrier as provided in 81-4-607.

(2) A person who sells livestock or offers livestock for sale at a livestock market without having the livestock inspected or removes livestock or causes livestock to be removed from a livestock market without obtaining a release is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(3) A person who ships by railroad carrier and the railroad carrier transporting livestock for which a loading tally has been filed as provided by 81-4-607 and for which shipment of livestock an inspection has not been made which after shipment causes or permits the livestock to leave the custody of the railroad carrier at a place other than where this state regularly maintains a stock inspector is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(4) A person who has in his charge livestock being removed from a county in the state for which an inspection certificate, a market consignment permit, or a market release certificate has been issued and fails to have in his possession accompanying the livestock the inspection certificate, market consignment permit, or a market release certificate as issued for the livestock, or who, having the certificate of inspection, market consignment permit, or market release certificate, fails to exhibit it to a sheriff, deputy sheriff, constable, gross vehicle weight enforcement officer, highway patrolman, state stock inspector, or deputy state stock inspector at his request is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(5) Except as specifically otherwise provided, a person violating any of the provisions of this part is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(6) Upon conviction under this section, a person, firm, association, or corporation shall be fined not less than \$50 or more than \$500 or imprisoned in the county jail for a period of not more than 6 months or both fined and imprisoned. Of all fines assessed and collected under this section, *except those assessed and collected in a justice's court*, 50% shall be paid into the state treasury and credited to the state special revenue fund for the use of the department and 50% shall be paid into the general fund of the county in which the conviction occurred."

Section 54. Section 81-4-202, MCA, is amended to read:

**"81-4-202. Penalties.** (1) Any person violating 81-4-201 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of \$10 for the first offense and in the sum of \$20 for each subsequent offense and shall be liable in damage to any party injured thereby, to be recovered in any court having competent jurisdiction.

(2) All fines collected under the provisions of this section, *except those collected in a justice's court*, shall be paid into the county treasury for the use and benefit of the public schools."

Section 55. Section 81-4-621, MCA, is amended to read:

**"81-4-621. Penalties.** (1) Any person who shall, for his own use or benefit and without the owner's consent, take into his possession any estray shall be guilty of a misdemeanor and shall be punishable by a fine of not less than \$25 or more than \$100 or by imprisonment in the county jail not exceeding 60 days or by both such fine and imprisonment.

(2) Every person, agent, firm, or corporation violating the provisions of 81-4-607 shall be deemed guilty of a misdemeanor and upon conviction

thereof shall be fined in any sum not exceeding \$300 or imprisoned in the county jail not to exceed 6 months or both fined and imprisoned.

(3) Any person, agent, firm, corporation, pool, or roundup association who shall ship cattle from this state and shall fail to make such inspection or tally at point of loading or who shall fail to file a true and correct tally, to the best of his knowledge and belief, of all the brands of cattle in such shipment with the railroad agent at the point of shipment or who shall fail to forward a true and correct copy, duly signed by him as party making the shipment, to the stock inspector at point of destination or any person who shall accompany a shipment of cattle as the shipper in charge from this state and shall fail to take a description of any and every animal taken out in transit and hand such description to the stock inspector at point of destination or any stock inspector at market points who shall fail to make inspection as provided in 81-4-609 shall be deemed guilty of a misdemeanor and shall be subject to a fine of not less than \$50 or more than \$500 for each and every offense. The fines so collected, *except those collected in a justice's court*, shall be turned into the general fund of the county where conviction is had, and any stock inspector, sheriff, or other police officer shall have power to make arrests to enforce the provisions of this part."

Section 56. Section 81-8-216, MCA, is amended to read:

**"81-8-216. Penalties.** (1) A person who violates any provision of 81-8-214, 81-8-215, and 81-8-251 through 81-8-263 or rules adopted by the department under 81-8-231 is guilty of a misdemeanor and upon conviction shall be fined not less than \$100 or more than \$600, imprisoned in the county jail not less than 30 days or more than 6 months, or both. A person convicted of a subsequent violation of 81-8-214, 81-8-215, and 81-8-251 through 81-8-263 or rules adopted to implement those sections shall be fined not less than \$200 or more than \$1,000, imprisoned in the county jail for not less than 3 months or more than 6 months, or both, and the department may cancel his certificate.

(2) Of all fines assessed and collected under this section, *except those assessed and collected in a justice's court*, 50% shall be paid into the state treasury and credited to the special revenue fund for the use of the department and 50% shall be paid into the general revenue fund of the county in which the conviction occurred."

Section 57. Section 81-8-279, MCA, is amended to read:

**"81-8-279. Penalties.** (1) A person who violates any provision of 81-8-271 through 81-8-273 and 81-8-276 through 81-8-278 or rules adopted by the department to implement those sections is guilty of a misdemeanor and upon conviction shall be fined not less than \$250 or more than \$1,000 or imprisoned for not more than 6 months, or both.

(2) Of all fines assessed and collected under this section, *except those assessed and collected in a justice's court*, 50% shall be paid into the state treasury and credited to the special revenue fund for the use of the department and 50% shall be paid into the general revenue fund of the county in which the conviction occurred."

Section 58. Section 81-23-403, MCA, is amended to read:

**"81-23-403. Disposition of fines.** (1) All fines assessed by a court *other than a justice's court* for violation of this chapter shall be paid by the court to the department.

(2) All fines received by the department shall be deposited with the state treasurer and shall be placed by him in the state special revenue fund. Fines assessed for violations of this chapter are earmarked for the purposes of this chapter."

Section 59. Section 85-2-123, MCA, is amended to read:

**"85-2-123. Deposit of fees and penalties.** Except as provided in 85-2-124 and 85-2-241, all fees and penalties collected under this chapter shall be deposited in the water right appropriation account established in 85-2-318. All penalties or fines imposed by any court *other than a justice's court* for a violation of this chapter shall be deposited in the general fund of the county where the court presides and shall be disposed of in the same manner as any other penalty or fine."

Section 60. Section 85-3-213, MCA, is amended to read:

**"85-3-213. State special revenue fund.** All license and permit fees and fines collected under this chapter, *other than those collected in a justice's court*, shall be deposited in the state special revenue fund for use by the department in the administration of this chapter."

Section 61. Section 85-15-502, MCA, is amended to read:

**"85-15-502. Deposit of penalties and costs.** All penalties and costs collected under this chapter, *other than those collected in a justice's court*, must be deposited in the state general fund."

Section 62. Section 87-1-601, MCA, is amended to read:

**"87-1-601. Use of fish and game money.** (1) All money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source shall be turned over to the state treasurer and placed by him in the state special revenue fund to the credit of the department. Any money received from federal sources shall be deposited in the federal special revenue fund to the credit of the department.

(2) That money shall be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. That money shall be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) All money collected or received from fines and forfeited bonds, *except money collected or received by a justice's court*, relating to violations of state fish and game laws under Title 87 shall be deposited by the state



treasurer and credited to the department of fish, wildlife, and parks in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution shall be paid to the county where the trial was held in any case where the fine is not imposed in addition to the costs of prosecution.

(5) Money received by the department from the sale of surplus real property; exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and from leases of interests in department real property not contemplated at the time of acquisition shall be deposited in an account within the nonexpendable trust fund of the state treasury. The interest derived therefrom, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department, and only upon appropriation by the legislature. If the use of money as set forth herein would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in such violation."

Section 63. Section 87-4-808, MCA, is amended to read:

**"87-4-808. Fines, bonds, penalties, and fees.** Fines, bonds, or penalties, *except those obtained by a justice's court*, shall be administered and disposed of in accordance with the provisions of 87-1-601. Fees obtained under this part shall be deposited with the state treasurer and credited to the state special revenue fund, fish and game account."

Section 64. **Repealer.** Section 3-10-603, MCA, is repealed.

Section 65. **Extension of authority.** Any existing authority of any department or other executive branch office or entity to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 66. **Coordination instruction.** (1) If House Bill No. 679, including the section of that bill amending 46-18-235, is not passed and approved, subsection (4)(g) of 3-10-601, as amended by this bill, is void and subsection (4) of 3-10-601 shall read as follows:

"(4) The state treasurer shall distribute money received under subsection (3) as follows:

- (a) 23% to the state general fund;
- (b) 10% to the fish and game account in the state special revenue fund;
- (c) 13% to the state highway account in the state special revenue fund;
- (d) 36% to the traffic education account in the state special revenue fund;
- (e) 1% to the department of livestock account in the state special revenue fund; and
- (f) 17% to the crime victims compensation account in the state special revenue fund."

(2) If House Bill No. 28, including the section of that bill amending 61-10-148, is passed and approved, the amendment to 61-10-148 in this bill shall read: "This subsection does not apply to fines and forfeited bonds paid to justices' courts."

Section 67. **Effective date.** This act is effective July 1, 1987.

Approved April 20, 1987.

## CHAPTER NO. 558

[HB 741]

AN ACT TO GENERALLY REVISE THE LAW RELATING TO HEALTH SERVICE CORPORATIONS; AMENDING SECTIONS 33-1-102, 33-1-201, 33-30-102, 33-30-105, 33-30-204, 33-30-301, 33-30-307, 33-30-312, AND 33-30-1007, MCA; AND PROVIDING AN APPLICABILITY DATE AND A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-1-102, MCA, is amended to read:

**"33-1-102. Compliance required — exceptions — health service corporations.** (1) No person shall transact a business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) No provision of this code shall apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code *applies* to health service corporations *as prescribed in 33-30-102*. The existence of such corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated."

Section 2. Section 33-1-201, MCA, is amended to read:

**"33-1-201. Definitions — insurance in general.** For the purposes of this code, the following definitions apply unless the context requires otherwise:

(1) An "alien insurer" is one formed under the laws of any country other than the United States, its states, districts, territories, and commonwealths.

(2) An "authorized insurer" is one duly authorized by subsisting certificate of authority issued by the commissioner to transact insurance in this state.

(3) A "domestic insurer" is one incorporated under the laws of this state.

(4) A "foreign insurer" is one formed under the laws of any jurisdiction other than this state. Except where distinguished by context, foreign insurer includes also an alien insurer.

(5) "Insurance" is a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.

(6) "Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance. *The term also includes a health service corporation in the provisions listed in 33-30-102.*

(7) A "resident domestic insurer" is an insurer incorporated under the laws of this state and:

(a) if a mutual company, not less than one-half of the policyholders are natural persons who are residents of this state; or

(b) if a stock insurer, not less than one-half of the shares are owned by natural persons who are residents of this state and all of the directors and officers of the insurer are residents of this state.

(8) "State", when used as to jurisdiction, means a state, the District of Columbia, or a territory, commonwealth, or possession of the United States.

(9) "Transact", with respect to insurance, includes any of the following:

(a) solicitation and inducement;

(b) preliminary negotiations;

(c) effectuation of a contract of insurance;

(d) transaction of matters subsequent to effectuation of the contract of insurance and arising out of it.

(10) An "unauthorized insurer" is one not authorized by subsisting certificate of authority issued by the commissioner to transact insurance in this state."

Section 3. Section 33-30-102, MCA, is amended to read:

**"33-30-102. Application of this chapter — construction of other related laws.** (1) All health service corporations heretofore or hereafter organized are subject to the provisions of this chapter. *In addition to the provisions contained in this chapter, other chapters and provisions of this title apply to health service corporations as follows: 33-17-212 through 33-17-214 and chapters 1, 15, 18, 19, and 22, except 33-22-111.*

(2) A law of this state other than the provisions of this chapter applicable to health service corporations shall be construed in accordance with the fundamental nature of a health service corporation, and in the event of a

conflict between that law and the provisions of this chapter, the latter shall prevail."

Section 4. Section 33-30-105, MCA, is amended to read:

**"33-30-105. Examination of a health service corporation.** (1) If the commissioner believes a health service corporation is unable or potentially unable to fulfill its contractual obligations to its members, the commissioner may conduct an examination of that corporation.

(2) In addition to the examination authorized in subsection (1), at least once every 4 years, the commissioner shall conduct an examination of each health service corporation to determine if the corporation is fulfilling its contractual obligations by prompt satisfaction of claims at the highest monetary level consistent with reasonable dues or fees, and that the corporation's management exercises appropriate fiscal controls, operations, and personnel policies to assure that efficient and economic administration restrains overhead costs for the benefit of its members.

(3) Each health service corporation examined, its officers, employees, and agents, shall produce and make available to the commissioner or his examiners the accounts, records, documents, files, information, assets, and matters in its possession or control relating to the subject of the examination.

(4) The commissioner or his examiner shall make a verified report of the examination.

(5) The report shall comprise only facts appearing from the books, papers, records, or documents of the corporation examined or ascertained from the testimony, under oath, of individuals concerning its affairs and conclusions and recommendations as warranted by those facts.

(6) The commissioner shall furnish a copy of the proposed report to the corporation examined not less than 20 days prior to its filing in his office. If the corporation requests a hearing, in writing, within the 20-day period, the commissioner shall grant one with respect to the report and shall not file the report until after the hearing and after modifications, if any, the commissioner deems proper.

(7) *The health service corporation shall pay for each examination conducted pursuant to subsections (1) and (2) in accordance with 33-1-413."*

Section 5. Section 33-30-204, MCA, is amended to read:

**"33-30-204. Fees.** (1) Every health service corporation subject to the provisions of this chapter shall pay the following fees to the commissioner for enforcement of the provisions of this chapter:

(a) enrollment representative's license:

(i) application for original license and issuance of license ..... \$15

(ii) annual renewal ..... \$15

(iii) examination for license, for each examination ..... \$15

(b) filing any other statement or report ..... \$ 1

- (c) for a certified copy of any document or other paper filed in the office of the commissioner, per page ..... \$50
  - (d) for the certificate and for affixing the seal thereto ..... \$10
  - (e) filing of a membership contract ..... \$25
  - (f) filing of a membership contract package ..... \$100
  - (g) filing annual report, *other than as part of application for original license* ..... \$25
  - (h) *issuance of health service corporation license* ..... \$300
  - (i) *annual continuation of health service corporation license* ..... \$300
- (2) The commissioner shall promptly deposit with the state treasurer, to the credit of the *insurance regulatory trust account provided for in 17-2-121*, all fees and license fees received by him under this section."

Section 6. Section 33-30-301, MCA, is amended to read:

**"33-30-301. Forms — filing, approval.** A copy of all forms of the membership contract or any type of endorsement or rider shall be filed with *and approved by the commissioner of this state and the insurance regulator of the state of domicile of the health service corporation in accordance with chapter 1, part 5.*"

Section 7. Section 33-30-307, MCA, is amended to read:

**"33-30-307. Notice of rate increases.** (1) A health service corporation must inform members covered under individual plans of any rate increase at least 45 days prior to such increase.

(2) The premium rate for an individual policy converted from a group plan in accordance with 33-30-1007(3) may not be increased during the first 6 months of coverage of the individual policy."

Section 8. Section 33-30-312, MCA, is amended to read:

**"33-30-312. Enrollment representative — filing with and approval by commissioner — license.** (1) Each corporation subject to the provisions of this chapter shall notify the commissioner through its proper officer or agent of the name, title, and address of each person it desires appointed as an enrollment representative. The notice shall be accompanied by a written application, upon a form furnished by the commissioner, from the appointee. The commissioner shall issue to that appointee a license which states that the person named is a constituted enrollment representative of the corporation in this state if, upon receipt of this written notice, when accompanied by the proper fee, it appears that:

(a) the appointee is a competent and suitable person who intends to hold himself out in good faith as the corporation's enrollment representative; and

(b) he qualifies under the provisions of this section.

(2) For appointees who have not acted as an enrollment representative for a health service corporation for a period of 2 years prior to July 1, 1975,

if he considers it desirable, the commissioner may require an appointee to submit to an examination to determine the qualifications of the appointee to act as an enrollment representative in this state. This examination *must be the same as given to applicants for a disability insurance agent license as provided for in 33-17-212 through 33-17-214.*

(3) Upon receipt by the commissioner of notification from a health service corporation that the corporation desires a particular individual to be appointed as its enrollment representative, that person has a temporary enrollment representative's license until the commissioner notifies the corporation of action taken upon the application. If the commissioner rejects the application, the prospective appointee's eligibility to act as an enrollment representative ceases on the day the corporation is notified of rejection."

Section 9. Section 33-30-1007, MCA, is amended to read:

**"33-30-1007. Conversion on termination of eligibility.** (1) The group hospital or medical service plan contract issued or renewed by a health service corporation after October 1, 1981, shall contain a provision that if the insurance or any portion of it on a person, his dependents, or family members covered under the policy ceases because of termination of his employment or of his membership in the class or classes eligible for coverage under the policy, as a result of an employer discontinuing his business, *or as a result of an employer discontinuing the policy issued by the health service corporation and not providing for any other group disability insurance or plan*, such person shall, provided he has been insured for a period of 3 months, be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of hospital or medical service insurance on himself, his dependents, or family members, provided application for the individual policy shall be made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) The individual policy shall, at the option of the insured, be on any of the forms then customarily issued by the insurer to individual policyholders with the exception of those whose eligibility is determined by their affiliation other than by employment with a particular entity.

(3) The premium on the individual policy shall be at the insurer's then customary rate applicable to the coverage of the individual policy but may not be greater than 150% of the insurer's highest group rate for a policy with the same benefits as the conversion policy."

**Section 10. License required.** (1) No person may act as a health service corporation and no health service corporation may conduct business in this state except as authorized by a license issued by the commissioner.

(2) Such license may be issued by the commissioner only after the person has complied with the applicable provisions of this title.

(3) A health service corporation is entitled to a continuation of its license upon payment of the annual continuation fee specified in 33-30-204(1)(i) and upon continued compliance with the provisions of this title.

(4) A license issued or continued under this section may be revoked or suspended by the commissioner for violation of this title.

**Section 11. Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 12. Codification instruction.** Section 10 is intended to be codified as an integral part of Title 33, chapter 30, part 1, and the provisions of Title 33, chapter 30, part 1, apply to section 10.

**Section 13. Applicability.** Section 8 applies to individuals appointed as enrollment representatives on or after the effective date of this act.

**Section 14. Effective date.** This act is effective January 1, 1988.

Approved April 20, 1987.

## CHAPTER NO. 559

[HB 748]

AN ACT TO ALLOW A CORPORATION OR ASSOCIATION IN ITS ARTICLES OF INCORPORATION TO ELIMINATE OR LIMIT A DIRECTOR'S PERSONAL LIABILITY TO THE CORPORATION, ASSOCIATION, OR SHAREHOLDERS OF THE CORPORATION OR MEMBERS OF THE ASSOCIATION FOR MONETARY DAMAGES FOR BREACH OF FIDUCIARY DUTY AS A DIRECTOR; AMENDING SECTIONS 35-1-202, 35-2-202, 35-15-201, 35-16-202, 35-17-202, 35-18-203, AND 35-20-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 35-1-202, MCA, is amended to read:

**"35-1-202. Articles of incorporation.** (1) The articles of incorporation shall set forth:

- (a) the name of the corporation;
- (b) the period of duration, which may be perpetual;
- (c) the purpose or purposes for which the corporation is organized, which may be stated to be or to include the transaction of any or all lawful business for which corporations may be incorporated under this chapter;
- (d) the aggregate number of shares which the corporation shall have authority to issue and, if such shares are to be divided into classes, the number of shares of each class;
- (e) if the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect of the shares of each class;

(f) if the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(g) any provision granting to shareholders the preemptive right to acquire additional shares of the corporation;

(h) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;

(i) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify;

(j) the name and address of each incorporator.

(2) In addition to provisions required therein, the articles of incorporation may also contain provisions not inconsistent with law regarding:

(a) the direction of the management of the business and the regulation of the affairs of the corporation;

(b) the definition, limitation, and regulation of the powers of the corporation, the directors, and the shareholders or any class of the shareholders, including restrictions on the transfer of shares;

(c) the par value of any authorized shares or class of shares;

(d) any provision that, under this chapter, is required or permitted to be set forth in the bylaws;

*(e) the elimination or limitation of the personal liability of a director to a corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except:*

*(i) for a breach of a director's duty of loyalty to a corporation or its shareholders;*

*(ii) for acts or omissions that constitute willful misconduct, recklessness, or a knowing violation of law;*

*(iii) under 35-1-409; or*

*(iv) for a transaction from which a director derives an improper personal benefit. A provision under this subsection may not eliminate or limit the liability of a director for an act or omission occurring before the effective date of the provision. For purposes of this subsection, "director" includes a member of a governing body of a corporation that is not authorized to issue capital stock.*

(3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter."



Section 2. Section 35-2-202, MCA, is amended to read:

**"35-2-202. Articles of incorporation — control over bylaws.** (1) The articles of incorporation shall set forth:

- (a) the name of the corporation;
- (b) the period of duration, which may be perpetual;
- (c) the purpose or purposes for which the corporation is organized;
- (d) any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;
- (e) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;
- (f) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;
- (g) the name and address of each incorporator.

(2) *In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).*

(3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(4) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling."

Section 3. Section 35-15-201, MCA, is amended to read:

**"35-15-201. Incorporation.** (1) Whenever any number of persons, not less than three or more than seven, may desire to become incorporated as a cooperative association for the purpose of trade or of prosecuting any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands setting forth:

- (a) the name of the proposed corporation;
- (b) its capital stock;
- (c) its location;
- (d) the duration of the association; and
- (e) the particular branch or branches of industry which they intend to prosecute.

(2) *In addition to provisions required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).*

(3) The statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of \$20."

Section 4. Section 35-16-202, MCA, is amended to read:

**"35-16-202. Petition for incorporation — contents and filing — bond.** (1) Such persons must prepare, sign, acknowledge, and file a petition with the clerk of the district court of the county in which the lands or the greater portion of the lands included in the petition are situate, such petition to state:

- (a) the name of the corporation or district proposed to be formed;
- (b) the purpose for which it is formed;
- (c) the place where its principal business is to be transacted;
- (d) the number of its directors or trustees, which shall not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. Such directors or trustees shall at all times be resident freeholders in the state of Montana.
- (e) the names and addresses of the petitioners applying for such incorporation or district, with a description of the lands which each owns and proposed to be submitted to said corporation or district and the character of the same and their production, also a consent of the owners to submit the lands to the provisions hereof;
- (f) the assessed valuation of the land;
- (g) the term for which it is to exist, not exceeding 40 years;
- (h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing the same in either value, acreage, or production.

(2) *In addition to provisions required in subsection (1), the petition for incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).*

(3) Such petition shall be accompanied by a map giving location of the lands sought to be included in such corporation or district, nothing herein to be construed as requiring such lands to be contiguous.

(4) A bond in the sum of \$1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of such corporation or district, shall be filed with the petition."

Section 5. Section 35-17-202, MCA, is amended to read:

**"35-17-202. Articles of incorporation — contents — filing — articles or copies as prima facie evidence.** (1) Each association formed under this chapter must prepare and file articles of incorporation setting forth:

- (a) the name of the association;
- (b) the purposes for which it is formed;
- (c) the place where its principal business will be transacted;
- (d) the term for which it is to exist, which may be perpetual;
- (e) the number of its directors or trustees, which shall not be less than 5 or more than 13, and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;
- (f) if organized without capital stock, whether the property rights and interest of each member shall be equal or unequal, and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed. The association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.

(2) *In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).*

(3) The articles must be subscribed by the incorporators and shall be filed in accordance with the provisions of the general corporation law of this state, and when so filed the articles of incorporation or certified copies thereof shall be received in all the courts of this state and other places as prima facie evidence of the facts contained therein and of the due incorporation of such association."

Section 6. Section 35-18-203, MCA, is amended to read:

**"35-18-203. Articles of incorporation.** (1) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed by each of the incorporators, and shall state:

- (a) the name of the cooperative;
- (b) the address of its principal office;
- (c) the names and addresses of the incorporators;
- (d) the names and addresses of the persons who shall constitute its first board of trustees; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

*(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).*

(3) Such articles of incorporation shall be submitted to the secretary of state for filing as provided in this chapter.

(4) It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter."

Section 7. Section 35-20-103, MCA, is amended to read:

**"35-20-103. Document of incorporation — contents — filing.**

(1) The chairman and secretary of such meeting shall within 5 days after the holding of the same make a written certificate, which shall state:

- (a) the names of the associates who attended such meeting;
- (b) the corporate name of the association determined upon by a majority of the persons who met;
- (c) the number of persons fixed upon to manage the concerns of the association;
- (d) the names of the trustees chosen at the meeting and their classification;
- (e) the day of the year fixed upon for the annual election of trustees and the manner of their election.

*(2) In addition to provisions required in subsection (1), the document of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e)*

(3) Such certificate shall be signed by the chairman and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause such certificate so acknowledged to be recorded in the office of the county clerk and recorder of the county in which said meeting was held, and a certified copy of such certificate so recorded shall be filed with the secretary of state of the state of Montana, who shall thereupon issue his certificate therefor without charge."

Section 8. **Effective date.** This act is effective on passage and approval.

Approved April 20, 1987.

**CHAPTER NO. 560**

[HB 751]

AN ACT TO EXEMPT FROM PROPERTY TAXATION NONPRODUCING MANUFACTURING IMPROVEMENTS TO REAL PROPERTY AND NONPRODUCING IMPROVEMENTS TO RAILROAD OPERATING PROPERTY THAT WOULD OTHERWISE BE DEMOLISHED, RATHER THAN BE SUBJECT TO PROPERTY TAX, AND THAT MAY BE RETURNED TO PRODUCTION IN THE FUTURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Nonproducing manufacturing and railroad operating property — tax-exempt status.** (1) Improvements permanently affixed to real property that were constructed and operated for a manufacturing industry that has ceased production or as an improvement to a railroad's operating property that has ceased production, for a period of at least 6 consecutive months, may be fully or partially exempted from taxation for each taxable year if the board of county commissioners finds that the improvements:

- (a) were used by the manufacturing industry or a railroad;
- (b) are no longer being used for production by manufacturing industry or a railroad;
- (c) could be used for production or transportation in the future; and
- (d) will be dismantled by the owner to avoid the payment of property taxes on the improvements.

(2) For the purposes of this section, "manufacturing industry" means an industry that engages in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget.

(3) For the purposes of this section, "railroad operating property" has the meaning provided in 15-23-202.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the benefit over which the governing body has sole discretion. In no case may the benefit described in subsection (1) apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, or otherwise required under state law.

**Section 2. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to section 1.

**Section 3. Effective date — applicability — termination.** (1) This act is effective on passage and approval and applies to tax years beginning after December 31, 1986.

(2) This act terminates December 31, 1989.

Approved April 20, 1987.

## CHAPTER NO. 561

[HB 772]

AN ACT GENERALLY REVISING THE PREVAILING WAGE RATE LAWS; PROVIDING FOR THE CREATION OF PREVAILING WAGE RATE DISTRICTS; DEFINING STANDARD PREVAILING WAGE RATE TO MEAN EITHER THE HEAVY HIGHWAY CONSTRUCTION WAGE RATE OR THOSE WAGES PAID IN THE PREVAILING WAGE RATE DISTRICT FOR WORK OF A SIMILAR CHARACTER; AND AMENDING SECTIONS 17-5-1526, 17-5-1527, 17-6-325, 18-2-401 THROUGH 18-2-403, AND 90-5-114, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Creation of prevailing wage rate districts.** (1) Without taking into consideration heavy highway construction wage rates, the commissioner shall divide the state into at least 10 prevailing wage rate districts.

(2) In initially determining the districts, the commissioner must:

(a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and

(b) publish the reasons supporting the creation of each district.

(3) A district boundary may not be changed except for good cause and in accordance with the rulemaking procedures in the Montana Administrative Procedure Act.

(4) The presence of collective bargaining agreements in a particular area may not be the sole basis for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular area be the sole basis for changing the boundaries of a district.

(5) For each prevailing wage rate district established under this section, the commissioner shall determine the standard prevailing rate of wages to be paid employees, as provided in 18-2-401 and 18-2-402.

**Section 2.** Section 18-2-401, MCA, is amended to read:

**"18-2-401. Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Labor" is hereby defined to be all services *in excess of \$25,000* performed in construction, maintenance, or remodeling in all state, county,

municipal, and school work and does not include engineering, superintendence, management, or office or clerical work.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) "Department" means the department of labor and industry provided for in 2-15-1701.

(4) "*District*" means a prevailing wage rate district established as provided in [section 1].

(5) A "bona fide resident of Montana" is hereby declared to be a person who, at the time of his employment and immediately prior thereto, has lived in this state in such a manner and for such time as is sufficient to clearly justify the conclusion that his past habitation in this state has been coupled with intention to make it his home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform such labor shall under no circumstance be deemed to be bona fide residents of Montana within the meaning and for the purpose of this part.

(6) "*Heavy highway construction wage rates*" means wage rates, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, determined and established statewide for heavy highway construction projects such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, or utility rights-of-way.

(7) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) *the heavy highway construction wage rates applicable to heavy highway construction projects; or*

(ii) *those wages, other than heavy highway construction wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, which are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages is a weighted average wage rate based on all of the hours worked on work of a similar character performed in the district.*

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, shall be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

(8) "*Work of a similar character*" means work on private or commercial projects as well as work on public projects."

Section 3. Section 18-2-402, MCA, is amended to read:

**"18-2-402. Standard prevailing rate of wages.** (1) The Montana commissioner of labor may determine the standard prevailing rate of wages

*applicable to public works contracts under this part. The commissioner shall undertake to keep and maintain copies of collective bargaining agreements and other information on which the rates are based.*

(2) The provisions of this part do not apply in those instances where the standard prevailing rate of wages is determined pursuant to federal law.

(3) In no instances where this part is applicable shall the standard prevailing rate of wage be determined to be greater than the applicable rate of wage in the area for the particular work in question as negotiated under existing and current collective bargaining agreements."

Section 4. Section 18-2-403, MCA, is amended to read:

**"18-2-403. Preference of Montana labor in public works — wages — federal exception.** (1) In any contract let for state, county, municipal, school, or heavy highway construction, services, repair, or maintenance work under any law of this state, there shall be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work.

(2) *All public works contracts under subsection (1), except those for heavy highway construction, must contain a provision requiring the contractor to pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, in effect and applicable to the district in which the work is being performed.*

(3) *In every contract for heavy highway construction, there must be inserted a provision to require the contractor to pay the heavy highway construction wage rates established statewide for such project.*

(4) No contract may be let to any person, firm, association, or corporation refusing to execute an agreement with the above-mentioned provisions in it, provided that in contracts involving the expenditure of federal-aid funds this part may not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

(5) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from his obligation to pay the standard prevailing wage rate and places such obligation on the public contracting agency."

Section 5. Section 17-5-1526, MCA, is amended to read:

**"17-5-1526. Procedure prior to financing projects.** (1) The board may finance projects [other than major projects] under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;



(b) the financing to be provided by the board for a project does not exceed either \$800,000 or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to 17-5-1519;

(e) an applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance such project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county must, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the board's guarantee under 17-5-1519 or the capital reserve account authorized by 17-5-1515."

Section 6. Section 17-5-1527, MCA, is amended to read:

**"17-5-1527. Procedure prior to financing major projects. (1)** The board may finance major projects under this part only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a project does not exceed either \$10 million or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project if the cost or appraised value is less than \$1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over \$1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to 17-5-1519;

(e) any contracts to construct the projects require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance such project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located shall be notified, and within 14 days must advise the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the

lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the board's guarantee under 17-5-1519 or the capital reserve account authorized by 17-5-1515."

Section 7. Section 17-6-325, MCA, is amended to read:

**"17-6-325. Preference of Montana labor.** Any contract to construct a project financed pursuant to this part must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

Section 8. Section 90-5-114, MCA, is amended to read:

**"90-5-114. Preference of Montana labor.** Any contract to construct a project financed pursuant to this part must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

Section 9. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 18, chapter 2, part 4, and the provisions of Title 18, chapter 2, part 4, apply to section 1.

Section 10. **Coordination instruction.** If Senate bill No. 103 and this act are both passed and approved, section (1)(c) of Senate Bill No. 103 is amended so that the language referring to "the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions applicable to the county or locality in which the work is being performed" will read "the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions applicable to the public works project".

Section 11. **Extension of authority.** Any existing authority of the commissioner of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 20, 1987.

**CHAPTER NO. 562**

[HB 789]

AN ACT DEFINING A HAZARDOUS WASTE TRANSFER FACILITY; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ESTABLISH REGULATORY REQUIREMENTS CONCERNING HAZARDOUS WASTE TRANSFER FACILITIES; AMENDING SECTIONS 75-10-403 AND 75-10-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-10-403, MCA, is amended to read:

**"75-10-403. Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any hazardous waste into or onto the land or water so that the hazardous waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(4) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(5) "Generation" means the act or process of producing waste material.

(6) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.

(7) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

(8) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(9) "*Hazardous waste transfer facility*" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and other similar areas used for the transfer and temporary storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10 days or less during the normal course of transportation up to but not including the point of ultimate treatment, storage, or disposal.

(10) "Manifest" means the shipping document originated and signed by the generator and which is used to identify the hazardous waste, its quantity, origin, and destination during its transportation.

(11) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(12) "Regulated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a hazardous waste under this part.

(13) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(14) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(15) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(16) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

(17) "Underground storage tank":

(a) means, except as provided in subsections (17)(b)(i) through (17)(b)(viii):

(i) any one or combination of tanks (including connected underground pipes) used to contain a regulated substance, the volume of which (including the volume of the connected underground pipes) is 10% or more beneath the surface of the ground; and

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely underground;

(b) does not include:

(i) a septic tank;

(ii) a pipeline facility (including gathering lines) regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(B) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); or

(C) state law comparable to the provisions of law referred to in subsection (17)(b)(ii)(A) or (17)(b)(ii)(B), if the facility is intrastate;

(iii) a surface impoundment, pit, pond, or lagoon;

(iv) a storm water or wastewater collection system;

(v) a flow-through process tank;

(vi) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(vii) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

(viii) any pipe connected to a tank described in subsections (17)(b)(i) through (17)(b)(vii)."

Section 2. Section 75-10-405, MCA, is amended to read:

**"75-10-405. Administrative rules.** (1) The department may adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

(a) identification and classification of those hazardous wastes subject to regulation and those that are not;

(b) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(d) requirements for the issuance, denial, renewal, modification, and revocation of permits for hazardous waste management facilities;

(e) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(f) requirements for training of facility personnel and for financial assurance of facility owners and operators;

(g) requirements for registration of generators and transporters;

(h) a schedule of fees for hazardous waste management facility permits and registration of hazardous waste generators;

(i) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining any state hazardous waste management facility authorized by 75-10-412; and

(j) other rules which are necessary to obtain and maintain authorization under the federal program.

(2) The department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended, except that the department may:

(a) require the registration of transporters not otherwise required to register with the state of Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(b) require generators and facilities to report on an annual rather than on a biennial basis;

(c) adopt requirements for the prevention of leakage from underground storage tanks, including:

(i) reporting by owners and operators;

(ii) financial responsibility;

(iii) release detection, prevention, and correction; and

(iv) standards for design, construction, and installation; and

*(d) adopt regulatory requirements for hazardous waste transfer facilities."*

**Section 3. Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Effective date.** This act is effective on passage and approval.

Approved April 20, 1987.

**CHAPTER NO. 563**

[HB 791]

AN ACT ESTABLISHING A TAX ON THE POSSESSION AND STORAGE OF DANGEROUS DRUGS; PROVIDING FOR THE ASSESSMENT AND COLLECTION OF THE TAX; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF REVENUE; PROVIDING FOR FUNDING OF THE ADMINISTRATION OF THE TAX; STATUTORILY APPROPRIATING THE ADMINISTRATIVE FUNDING; PROVIDING FOR DISPOSITION OF THE TAX COLLECTED; AND AMENDING SECTION 17-7-502, MCA.

WHEREAS, dangerous drugs are commodities having considerable value, and the existence in Montana of a large and profitable dangerous drug industry and expensive trade in dangerous drugs is irrefutable; and

WHEREAS, the state does not endorse the manufacturing of or trading in dangerous drugs and does not consider the use of such drugs to be acceptable, but it recognizes the economic impact upon the state of the manufacturing and selling of dangerous drugs; and

WHEREAS, it is appropriate that some of the revenue generated by this tax be devoted to continuing investigative efforts directed toward the identification, arrest, and prosecution of individuals involved in conducting illegal continuing criminal enterprises that affect the distribution of dangerous drugs in Montana.

THEREFORE, the Legislature of the State of Montana does not wish to give credence to the notion that the manufacturing, selling, and use of dangerous drugs is legal or otherwise proper, but finds it appropriate in view of the economic impact of such drugs to tax those who profit from drug-related offenses and to dispose of the tax proceeds through providing additional anticrime initiatives without burdening law abiding taxpayers.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** This act may be cited as the "Dangerous Drug Tax Act".

**Section 2. Definitions.** As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Dangerous drug" has the meaning provided in 50-32-101.

(2) "Department" means the department of revenue provided for in 2-15-1301.

(3) "Person" means an individual, firm, association, corporation, partnership, or any other group or combination acting as a unit.

**Section 3. Tax on dangerous drugs.** (1) There is a tax on the possession and storage of dangerous drugs. Except as provided in [section 4], each person possessing or storing dangerous drugs is liable for the tax. The



tax imposed is determined pursuant to subsection (2). The tax is due and payable on the date of assessment. The department shall add an administration fee of 5% of the tax imposed pursuant to subsection (2) to offset costs incurred in assessing value, in collecting the tax, and in any review and appeal process.

(2) The tax on possession and storage of dangerous drugs is the greater of:

(a) 10% of the assessed market value of the drugs, as determined by the department; or

(b) (i) \$100 per ounce of marijuana, as defined in 50-32-101, or its derivatives, as determined by the aggregate weight of the substance seized;

(ii) \$250 per ounce of hashish, as defined in 50-32-101, as determined by the aggregate weight of the substance seized;

(iii) \$200 per gram of any substance containing or purported to contain any amount of a dangerous drug included in Schedule I pursuant to 50-32-222(1), (2), (4), and (5), or Schedule II pursuant to 50-32-224(1) through (4), as determined by the aggregate weight of the substance seized;

(iv) \$10 per 100 micrograms of any substance containing or purported to contain any amount of lysergic acid diethylamide (LSD) included in Schedule I pursuant to 50-32-222(3), as determined by the aggregate weight of the substance seized;

(v) \$100 per ounce of any substance containing or purported to contain any amount of an immediate precursor as defined under Schedule II pursuant to 50-32-224(5), as determined by the aggregate weight of the substance seized; and

(vi) \$100 per gram of any substance containing or purported to contain any amount of dangerous drug not otherwise provided for in this subsection (2).

(3) The tax imposed pursuant to this section must be collected only after any state or federal fines or forfeitures have been satisfied.

**Section 4. Exemptions.** The tax imposed pursuant to [section 3] does not apply to any person authorized by state or federal law to possess or store dangerous drugs. The burden of proof of an exemption from [section 3] is on the person claiming it.

**Section 5. Administration and enforcement — department rules.** (1) All law enforcement personnel and peace officers shall promptly report each person subject to the tax to the department, together with such other information which the department may require, in a manner and on a form prescribed by the department.

(2) The deficiency assessment provisions of 15-53-105, the civil penalty and interest provisions of 15-53-111, the criminal penalty provisions of 15-30-321(3), the estimation of tax provisions of 15-53-112, and the statute of limitations provisions of 15-53-115 apply to this tax and are fully incorporated by reference in this chapter. The department may adopt such rules as are necessary to administer and enforce the tax.

**Section 6. Tax appeal.** A person aggrieved by an assessment pursuant to [section 3] or an exemption decision pursuant to [section 4] may appeal the assessment or exemption decision pursuant to Title 15, chapter 2, part 3.

**Section 7. Warrant for distraint.** If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien shall have precedence over any other claim, lien, or demand thereafter filed and recorded.

**Section 8. Accounts.** (1) There is an institutions evaluation special revenue account within the state treasury. One-half of the taxes collected under [section 9] shall be deposited in the account.

(2) There is a chemical abuse assessment special revenue account within the state treasury. One-half of the taxes collected under [section 9] shall be deposited in the account.

**Section 9. Disposition of proceeds.** (1) The department shall transfer all taxes collected pursuant to [this act], less the administrative fee authorized in [section 3(1)], to the state treasurer on a monthly basis.

(2) The state treasurer shall deposit one-half of the tax to the credit of the department of institutions to be used for the youth evaluation program and chemical abuse aftercare programs.

(3) The treasurer shall credit the remaining one-half of the tax proceeds as follows:

(a) 85% to the department of justice to be used for grants to youth courts to fund chemical abuse assessments and the detention of juvenile offenders in facilities separate from adult jails; and

(b) 15% to the special law enforcement assistance account created in 44-13-101 for the activities described in 44-13-103.

**Section 10. Special revenue account.** (1) There is created a special revenue fund to be called the dangerous drug tax administration fund.

(2) All administrative fees collected under [section 3(1)] shall be deposited by the department into the dangerous drug tax administration fund.

(3) The money in the dangerous drug tax administration fund may be expended by the department to administer the tax and pay any refund required by this chapter.

(4) The appropriation made in subsection (3) is a statutory appropriation as provided in 17-7-502.

**Section 11.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations:

- (a) 2-9-202;
- (b) 2-17-105;
- (c) 2-18-812;
- (d) 10-3-203;
- (e) 10-3-312;
- (f) 10-3-314;
- (g) 10-4-301;
- (h) 13-37-304;
- (i) 15-31-702;
- (j) 15-36-112;
- (k) 15-70-101;
- (l) 16-1-404;
- (m) 16-1-410;
- (n) 16-1-411;
- (o) 17-3-212;
- (p) 17-5-404;
- (q) 17-5-424;
- (r) 17-5-804;
- (s) 19-8-504;
- (t) 19-9-702;
- (u) 19-9-1007;
- (v) 19-10-205;
- (w) 19-10-305;
- (x) 19-10-506;
- (y) 19-11-512;

- (z) 19-11-513;
- (aa) 19-11-606;
- (bb) 19-12-301;
- (cc) 19-13-604;
- (dd) 20-6-406;
- (ee) 20-8-111;
- (ff) 23-5-612;
- (gg) 37-51-501;
- (hh) 53-24-206;
- (ii) 75-1-1101;
- (jj) 75-7-305;
- (kk) 80-2-103;
- (ll) 80-2-228;
- (mm) 90-3-301;
- (nn) 90-3-302;
- (oo) 90-15-103;
- (pp) Sec. 13, HB 861, L. 1985; and
- (qq) [section 10].

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments."

Section 12. **Codification instruction.** Sections 1 through 10 are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to sections 1 through 10.

Approved April 20, 1987.

## CHAPTER NO. 564

[HB 817]

**AN ACT TO ESTABLISH INDEPENDENT LIABILITY FUNDS FOR THE PROTECTION OF THE PUBLIC AND FOR SMALL BUSINESSES IN THE STATE OF MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.**

WHEREAS, the current crisis in the liability insurance industry has made it increasingly difficult, and often prohibitively expensive, for many small businesses in Montana to obtain comprehensive and adequate liability insurance; and

WHEREAS, some small businesses have found it impossible, in the current insurance market, to obtain coverage for their major areas of risk, particularly in connection with product liability and extra hazardous risks; and

WHEREAS, many small businesses have had no choice but to purchase inadequate insurance or to go without insurance and therefore have indiscriminately exposed themselves and all of their business assets to liability; and

WHEREAS, the general public would benefit from a system that would assure that money or assets are available to answer any justifiable claims made against small businesses in Montana; and

WHEREAS, the general public would benefit from a system that would encourage each small business within the State of Montana to minimize its exposure to liability claims.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 19] may be cited as the "Independent Liability Fund Act".

**Section 2. Purpose.** The purpose of [this act] is to create a means by which small businesses operating in Montana may establish independent liability funds to set aside assets or make investments to meet any liability claims that might be made against the small businesses by third parties.

**Section 3. Definitions.** As used in [this act], the following definitions apply:

(1) "Fiscal year" means the 12-month period used by a particular small business in preparing and filing its Montana individual income tax, corporate license tax, or corporate income tax return.

(2) "Independent liability fund" means a collection of money, assets, and investments that has been set aside by a small business to meet the needs of any liability claims, except workers' compensation claims, brought against it by third parties.

(3) "Liability claim" means any legal or extralegal action by a third party asserting a right to compensation for a wrong done to it by a small business with an independent liability fund.

(4) "Small business" means any commercial or nonprofit enterprise qualified to do business in the state and qualified as a small business under the criteria established by the federal small business administration on [the effective date of this act].

(5) "Third party" means a person other than an employee or the management of a small business or of a subsidiary or closely related enterprise of a small business.

**Section 4. Right to establish independent liability fund.** A small business operating in the state may establish an independent liability fund to provide for defense, settlement, or payment of any liability claims against it by a third party.

**Section 5. Establishment of independent liability fund.** A small business shall notify the commissioner, on a form supplied by the commissioner, of its intention to establish an independent liability fund. The small business shall fully and clearly designate the money, assets, or investments it is setting aside for its independent liability fund.

**Section 6. Additions to independent liability fund.** Within the limits provided in [section 7], a small business may make such additions to its independent liability fund as it considers appropriate.

**Section 7. Limit on the amount of fund.** The independent liability fund of any small business may not be greater than the larger of the following:

- (1) the total of all legally required liability insurance; or
- (2) five times the gross sales of the small business in its most recent fiscal year.

**Section 8. Composition of independent liability fund.** The money, assets, and investments contributed to an independent liability fund must meet the criteria established for investments by an insurance company in Title 33, chapter 2, part 8, and must be valued as such assets and investments would be valued.

**Section 9. Tax deductibility.** The amount of contributions made by a small business to its independent liability fund as defined in [this act] is deductible to that small business on its Montana individual income tax return for the taxable year in which the contributions are made to the fund.

**Section 10. Tax deductibility.** The amount of contributions made by a small business to its independent liability fund as defined in [this act] is deductible to that small business on its Montana corporate license tax or corporate income tax return for the taxable year in which the contributions are made to the fund.

**Section 11. Treatment of income on contents of independent liability fund.** Income on the money, assets, and investments in an independent liability fund as defined in [this act] may be contributed to the fund. If it is not so contributed, it is taxable in accordance with the applicable provisions of this chapter.

**Section 12. Inviolability of fund.** Once money, assets, or investments have been contributed to an independent liability fund, they may not be used or removed from the fund except in the manner prescribed by [sections 13 and 17].

**Section 13. Deduction of costs.** (1) The actual costs of administering an independent liability fund may be deducted from the fund or from income arising out of the money, assets, and investments in the fund. Such costs include the cost of defending against or negotiating a settlement of any liability claim, as well as the full amount of any claim paid.

(2) A small business may not deduct the cost of any in-house administration of its independent liability fund. The commissioner may review any

third-party arrangement for administration of an independent liability fund to ascertain whether such costs are deductible under this section.

**Section 14. Tax deductibility of administrative costs — exception.** Administrative costs under [section 13(1)], except those paid from the principal of an independent liability fund, are deductible on Montana individual income tax returns for the fiscal year in which they are paid or accrued.

**Section 15. Tax deductibility of administrative costs.** Administrative costs under [section 13(1)], except those paid from the principal of an independent liability fund, are deductible on the Montana corporate license tax or corporate income tax return for the taxable year in which they are paid or accrued.

**Section 16. Taxation of independent liability fund contributions.** The net value of independent liability fund contributions for any given fiscal year is taxed in accordance with 33-2-705(2).

**Section 17. Termination of independent liability fund.** (1) When a small business with an independent liability fund ceases its operations, either voluntarily or involuntarily, it shall provide a trust to administer any principal remaining in its fund and to pay any outstanding claims for the longest of the following applicable periods:

- (a) any statute of limitations applicable to operations of that particular small business;
- (b) any legally required period of insurance coverage; or
- (c) 15 years.

(2) The principal of an independent liability fund must remain inviolate, except as it is needed to pay just claims, for the full applicable termination period. However, income from the principal not needed for administrative costs may be paid during the termination period to the person or persons who are designated to ultimately receive the principal of the fund, and such income is taxable to that person or persons.

**Section 18. Taxable liability on termination of independent liability fund.** If an independent liability fund established pursuant to [this act] is terminated as provided in [section 17], the income from the principal distributed pursuant to [section 17(2)] is taxable to that person or persons under the applicable provisions of this chapter.

**Section 19. Rules.** (1) The commissioner has authority to implement [this act] and to make any rules and regulations required to carry out the purposes of [this act].

(2) The commissioner shall by rule establish criteria for ascertaining the inviolability and health of each independent liability fund and shall initiate sanctions against funds that are not secure or viable.

**Section 20. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act; however, any rules made

by the department of revenue must be consistent with rules promulgated under section 19.

**Section 21. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 22. Codification instructions.** (1) Sections 1 through 8, 12, 13, 16, 17, and 19 are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to sections 1 through 8, 12, 13, 16, 17, and 19.

(2) Sections 9, 11, 14, and 18 are intended to be codified as integral parts of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to sections 9, 11, 14, and 18.

(3) Sections 10, 11, 15, and 18 are intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to sections 10, 11, 15, and 18.

**Section 23. Effective date.** This act is effective on passage and approval.

Approved April 20, 1987.

## CHAPTER NO. 565

[SB 224]

AN ACT RAISING THE DEDUCTION FOR EVAPORATION WHEN CALCULATING THE AMOUNT DUE FOR THE GASOLINE DISTRIBUTOR'S LICENSE TAX; AND AMENDING SECTION 15-70-205, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-70-205, MCA, is amended to read:

**"15-70-205. Distributor's statement and payment.** (1) Each distributor shall, not later than the 25th day of each calendar month, render a true statement, duly signed, to the department of revenue of all gasoline distributed and received by him in this state during the preceding calendar month and containing such other information as the department may reasonably require in order to administer the gasoline license tax law. The statement shall be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under 15-70-226 and less 1% of the *total* tax which shall be deducted by the distributor as an



allowance for evaporation and other loss of gasoline distributed by such distributor; provided, however, that no such allowance shall be deducted from the 1 cent tax on aviation gasoline.

(2) Any distributor engaged in or carrying on his business at more than one place or location in this state may include all such places of business in one statement."

**Section 2. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 20, 1987.

## CHAPTER NO. 566

[SB 266]

AN ACT REGULATING DOMESTIC WINERIES; AUTHORIZING A WINERY TO PROVIDE, WITHOUT CHARGE, ITS PRODUCTS FOR CONSUMPTION ON ITS PREMISES; ALLOWING SALE FOR CONSUMPTION ON OR OFF THE PREMISES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Domestic winery.** A winery, located in Montana and registered pursuant to 16-4-107, may:

- (1) import in bulk, bottle, produce, blend, store, transport, or export wine it produces;
- (2) sell wine it produces at wholesale to the department or to wine distributors;
- (3) sell wine it produces at retail at the winery directly to the consumer for consumption on or off the premises;
- (4) provide, without charge, wine it produces for consumption at the winery;
- (5) purchase from the department or its licensees brandy or other distilled spirits for fortifying wine it produces; or
- (6) obtain a special event permit under 16-4-301.

**Section 2. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 16, and the provisions of Title 16 apply to section 1.

**Section 3. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Effective date.** This act is effective on passage and approval.

Approved April 20, 1987.

## CHAPTER NO. 567

[SB 374]

AN ACT TO AUTHORIZE THE STATE BANKING BOARD TO ISSUE A CERTIFICATE OF AUTHORITY WITHOUT HEARING IN CERTAIN CIRCUMSTANCES; AMENDING SECTION 32-1-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 32-1-204, MCA, is amended to read:

**"32-1-204. Hearings — notice.** (1) A hearing shall be conducted upon all applications for new bank certificates of authorization, in accordance with the Montana Administrative Procedure Act relating to a contested case, whether or not any protest to the application is filed.

(2) A notice of the filing of an application for a new bank certificate of authorization shall be mailed to all banks within 100 miles of the proposed location, measured in a straight line.

(3) A hearing shall be conducted no sooner than 30 days and not later than 90 days following the mailing of such notice.

(4) Any bank filing a written protest with the board prior to the date of the hearing shall be admitted as a "party", as defined in the Montana Administrative Procedure Act, with full rights of a party, including the right of subpoena of witnesses and written materials, the right of cross-examination, the right to have a transcript, and the right to receive all notices, copy of the application, all orders, and the right of judicial review and appeal.

(5) All applications for mergers, consolidations, or relocations of banks shall likewise require a hearing, and all of the rights and procedures stated herein shall apply to these matters.

(6) *Notwithstanding the requirements of subsections (1) through (5), when the deposit liability of any closed bank is to be transferred to or assumed by a state bank being organized for that purpose, the board is*

*empowered to issue a certificate of authorization without notice or hearing, according to rules adopted by the board."*

**Section 2. Effective date.** This act is effective on passage and approval.

Approved April 20, 1987.

## CHAPTER NO. 568

[HB 157]

AN ACT TO TRANSFER TOUR BOATS FROM CLASS SIXTEEN PROPERTY TO CLASS FIVE PROPERTY AND TAX THEM AT 3 PERCENT OF MARKET VALUE; AMENDING SECTIONS 15-6-135 AND 15-6-146, MCA; PROVIDING A COORDINATION INSTRUCTION AND A CONTINGENT TERMINATION DATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-6-135, MCA, is amended to read:

**"15-6-135. Class five property — description — taxable percentage.** (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in subsection (1)(c) of 15-6-137;

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

(e) *tour boats as defined in this section.*

(2) (a) "Air and water pollution equipment" means facilities, machinery, or equipment used to reduce or control water or atmospheric pollution or contamination by removing, reducing, altering, disposing, or storing pollutants, contaminants, wastes, or heat. The department of health and environmental sciences shall determine if such utilization is being made.

(b) The department of health and environmental sciences' determination as to air and water pollution equipment may be appealed to the board of health and environmental sciences and may not be appealed to either a county tax appeal board or the state tax appeal board. However, the appraised value of the equipment as determined by the department of revenue may be appealed to the county tax appeal board and the state tax appeal board.

(3) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials; or

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget.

(5) New industrial property does not include:

(a) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions;

(b) a plant that will create adverse impact on existing state, county, or municipal services; or

(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

(6) *"Tour boat" means a watercraft, not less than 40 feet in length, designed and employed to accommodate passengers for a fee for the purpose of sightseeing, with or without food and beverage service, and intended primarily for tourism promotion.*

(7) Class five property is taxed at 3% of its market value."

Section 2. Section 15-6-146, MCA, is amended to read:

**"15-6-146. Class sixteen property — description — taxable percentage.** (1) Class sixteen property includes:

(a) watercraft *other than tour boats*;

(b) all-terrain vehicles [not registered under 61-3-301];

(c) harness, saddlery, and other tack equipment;

(d) all other property used for noncommercial purposes which is not real property or an improvement to real property and which is not included in another class or exempt from taxation under Title 15, chapter 6, part 2.

(2) Class sixteen property is taxed at 11% of its market value."

**Section 3. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Coordination.** If this act and House Bill No. 658 are both passed and approved, this act terminates January 1, 1988.

**Section 5. Effective date — applicability.** (1) This act is effective on passage and approval.

(2) This act applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1986.

Approved April 20, 1987.

## CHAPTER NO. 569

[HB 210]

AN ACT TO REQUIRE THE DEPARTMENT OF FISH, WILDLIFE,  
AND PARKS TO INVESTIGATE GAME DAMAGE COMPLAINTS  
WITHIN 48 HOURS; AND AMENDING SECTION 87-1-225, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-1-225, MCA, is amended to read:

**"87-1-225. Regulation of wild animals damaging property.** *Within 48 hours after receiving a request or complaint from any landholder or person in possession and having charge of any land in the state that wild animals of the state, protected by the fish and game laws and regulations, are doing damage to the property or crops thereon, the department shall investigate and arrange to study the situation with respect to damage and depredation. The department may then decide to open a special season on the game or, if the special season method be not feasible, the department may destroy the animals causing the damage. The department may authorize and grant the holders of said property permission to kill or destroy a specified number of the animals causing the damage. No wild ferocious animal damaging property or endangering life shall be covered by this section.*"

**Section 2. Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 20, 1987.

**CHAPTER NO. 570**

[HB 286]

AN ACT REGULATING THE DUTIES AND LIABILITIES OF IRRIGATION DISTRICTS AND PRIVATE PERSONS OR ENTITIES OWNING OR OPERATING IRRIGATION DITCHES IN REGARD TO PERSONAL INJURY AND PROPERTY DAMAGE; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Irrigation ditches — duties relating to safety.** An irrigation district or private person or entity owning or operating irrigation ditches must keep irrigation ditches in good general repair and condition, but for the purpose of protecting persons and property from injury or damage has no duty to:

- (1) erect fences;
- (2) install grates or other protective devices where a ditch goes underground or under a bridge or other object; or
- (3) prevent access to ditches by persons or animals.

**Section 2. Irrigation ditches — nonliabilities.** An irrigation district or private person or entity owning or operating irrigation ditches is not liable for:

- (1) personal injury or property damage resulting from floodwaters caused by rainfall or other weather conditions or acts of nature;
- (2) personal injury or property damage occurring on another's land and caused by water seepage that existed or began before the injured person first arrived on or obtained an interest in the land or before the damaged property was first placed on the land, if the seepage does not carry toxic chemicals onto the land;
- (3) injury to a person or property while, without authorization of the district or private person or entity, the person or property is on land or water controlled by the district or private person or entity, unless the irrigation district or private person or entity engaged in willful or wanton misconduct; or
- (4) death from a drowning, unless the irrigation district or private person or entity was grossly negligent or engaged in willful or wanton misconduct.

**Section 3. Requirement for approval of provisions for nonliability for personal injury, death, and property damage.** Because sections 1 and 2 limit the duty and liability of irrigation districts, a two-thirds vote of each house of the legislature is required for enactment of sections 1 and 2. If sections 1 and 2 are approved, but not by the required vote, they shall read as follows:

**"Section 1. Irrigation ditches — duties relating to safety.** A private person or entity owning or operating irrigation ditches must keep the irrigation ditches in good general repair and condition, but for the purpose of protecting persons and property from injury or damage has no duty to:

- (1) erect fences;
- (2) install grates or other protective devices where a ditch goes underground or under a bridge or other object; or
- (3) prevent access to ditches by persons or animals.

**Section 2. Irrigation ditches — nonliabilities.** A private person or entity owning or operating irrigation ditches is not liable for:

- (1) personal injury or property damage resulting from floodwaters caused by rainfall or other weather conditions or acts of nature;
- (2) personal injury or property damage occurring on another's land and caused by water seepage that existed or began before the injured person first arrived on or obtained an interest in the land or before the damaged property was first placed on the land, if the seepage does not carry toxic chemicals onto the land;
- (3) injury to a person or property while, without authorization of the private person or entity, the person or property is on land or water controlled by the private person or entity, unless the private person or entity engaged in willful or wanton misconduct; or
- (4) death from a drowning, unless the private person or entity was grossly negligent or engaged in willful or wanton misconduct."

**Section 4. Applicability.** This act applies only to claims filed after the effective date of this act.

Approved April 20, 1987.

## CHAPTER NO. 571

[HB 592]

**AN ACT ESTABLISHING THE CONDUCT REQUIRED BY THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Implied covenant of good faith and fair dealing.** The conduct required by the implied covenant of good faith and fair dealing is honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

**Section 2. Applicability.** This act applies to causes of action arising after the effective date of this act.

**Section 3. Effective date.** This act is effective on July 1, 1987.

Approved April 20, 1987.

**CHAPTER NO. 572**

[HB 610]

AN ACT REQUIRING THE DEPARTMENT OF INSTITUTIONS AND PROBATION AND PAROLE OFFICERS TO STUDY AND RECOMMEND TO THE LEGISLATURE IF IT IS APPROPRIATE AND NECESSARY FOR A PROBATION OR PAROLE OFFICER TO CARRY A FIREARM; AND PROVIDING A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Study of carrying of firearms by probation and parole officers and training in their use — recommendations to legislature.** (1) The department of institutions, together with state probation and parole officers, shall determine, based upon an evaluation of the job-related duties and situations, if it is appropriate and necessary for a probation or parole officer to carry a firearm.

(2) If the results of the study show that carrying of firearms by probation or parole officers is appropriate and necessary, the department shall recommend legislation to implement such findings, including:

(a) authorization for carrying of firearms by probation and parole officers;

(b) proper training requirements necessary for authorization; and

(c) administrative rules required to implement the legislation.

(3) The results of the study and any recommended legislation must be submitted to the 51st legislature by December 1, 1988.

**Section 2. Termination date.** This act terminates December 1, 1988.

Approved April 20, 1987.

**CHAPTER NO. 573**

[HB 702]

AN ACT ESTABLISHING A LEGISLATIVE REORGANIZATION AND IMPROVEMENT COMMISSION TO CONDUCT A STUDY OF THE LEGISLATIVE BRANCH OF STATE GOVERNMENT; PROVIDING FOR THE SELECTION OF 12 MEMBERS TO SERVE ON THE COMMISSION; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE; AND PROVIDING AN APPROPRIATION.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Legislative reorganization and improvement commission.** (1) There is a 12-member legislative reorganization and improvement commission consisting of three members appointed by the president of the



senate, three members appointed by the senate republican leader, three members appointed by the speaker of the house of representatives, and three members appointed by the house minority leader. At least one person appointed by each legislative leader must be a current legislator serving in the same house and of the same political party, and at least one person must be a person not currently serving in the legislature.

(2) Any vacancy occurring on the commission must be filled in the same manner as the original appointment.

(3) The members shall select a chairman from among themselves.

**Section 2. Meetings.** (1) The chairman shall schedule meetings of the commission as considered necessary, but meetings must be held at least bimonthly. The chairman shall give notice of the time and place of the meetings to members of the commission. The director shall report progress on the study to date at each meeting.

(2) The commission may adopt any necessary rules of procedure for the conduct of its meetings.

**Section 3. Reimbursement of expenses.** Members of the commission must be reimbursed in accordance with 2-18-501 for actual and necessary expenses incurred in attending meetings or conducting business.

**Section 4. Staff and facilities.** (1) The commission shall appoint a director and fix his salary and compensation. The director, subject to the approval of the commission, shall hire the necessary staff and fix their compensation, and he may contract with consultants as needed.

(2) The department of administration shall provide necessary meeting facilities in the capitol for the commission and office space, equipment, and supplies for its staff.

**Section 5. Powers and duties — recommendations — report.** (1) The commission shall make a detailed and thorough study of the legislative branch of state government and of the reorganization thereof. For this purpose the commission is authorized to secure directly from any legislative or executive agency, board, or commission or from any independent organization any information, suggestions, estimates, and statistics, and each such agency, board, commission, or organization shall furnish such information upon request made by the chairman of the commission.

(2) The commission shall prepare a written report, which shall include recommendations for any necessary implementing legislation on the recommended reorganization or improvement of the legislative branch of state government.

(3) Any recommendation of the commission must be approved by a vote of at least seven members of the commission before being adopted. Recommendations, if any, adopted by the commission must be reported in written form and made available to the members of the 51st legislature no later than December 1, 1988, or to any special session of the legislature prior to December 1, 1988.

**Section 6. Appropriation.** There is appropriated \$15,000 from the general fund to the commission created by this act for the biennium ending

June 30, 1989, to be used only as needed to supplement federal or private funds available for the conduct of a study of the legislative branch of state government. All appropriated general funds not specifically required for the purposes of this act shall revert to the general fund. The commission may receive gifts, grants, or donations for the purpose of researching the effective operation of the legislative branch, and may spend such funds for the purpose.

**Section 7. Effective date and termination date.** (1) This act is effective on passage and approval.

(2) This act terminates on December 31, 1988.

Approved April 20, 1987.

## CHAPTER NO. 574

[HB 709]

AN ACT TO GENERALLY REVISE THE PROPERTY TAX INCENTIVE FOR NEW AND EXPANDING INDUSTRY; DEFINING THE TERMS "NEW", "EXPANSION", AND "INDUSTRY"; AMENDING SECTIONS 15-24-1401 AND 15-24-1402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-24-1401, MCA, is amended to read:

**"15-24-1401. Definitions.** The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) *"Expansion"* means that the industry has added *after July 1, 1987, at least \$250,000 worth of* qualifying improvements or modernized processes to its property within the same jurisdiction *either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.*

(2) *"Industry"* includes but is not limited to a firm that engages in the:

(a) mechanical or chemical transformation of materials or substances into products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget;

(b) *extraction or harvesting of minerals, ore, or forestry products; or*

(c) *processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products.*

(3) *"New"* means that the industry is new to the jurisdiction approving the resolution provided for in 15-24-1402(3) and has invested *after July 1, 1987, at least \$500,000 worth of* qualifying improvements or modernized

*processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. New industry does not include property treated as new industrial property under 15-6-135.*

*(4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in taxable value under 15-24-1401 and 15-24-1402."*

Section 2. Section 15-24-1402, MCA, is amended to read:

**"15-24-1402. New or expanding industry — assessment.** (1) In the first 5 years after a construction permit is issued, *qualifying* improvements or modernized processes that represent new industry or expansion of an existing industry, as designated in the approving resolution, shall be taxed at 50% of their taxable value. Each year thereafter, the percentage shall be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property shall be taxed at 100% of its taxable value.

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the governing body of the affected county or the incorporated city or town must have approved by *separate* resolution for each project, following due notice as defined in 76-15-103 and a public hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction. *The governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.*

(b) The governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied an industrial facility that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) shall include a definition of the improvements or modernized processes that qualify for the tax treatment that is to be allowed in the taxing jurisdiction. *The resolution may provide that real property other than land, personal property, improvements, or any combination thereof are eligible for the tax benefits described in subsection (1).*

(3) The taxpayer must apply to the county assessor on a form provided by the department of revenue for the tax treatment allowed under subsection (1). The application by the taxpayer must first be approved by the governing body of the appropriate local taxing jurisdiction, and the governing body must indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. Upon receipt of the form with the approval of the governing body of the affected taxing jurisdiction, the assessor shall make the assessment change pursuant to this section.

*(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the benefit over which the governing body has sole discretion. In no case may the benefit described in*

*subsection (1) apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, or otherwise required under state law."*

**Section 3. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Effective date — applicability.** This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1986.

Approved April 20, 1987.

## CHAPTER NO. 575

[HB 714]

AN ACT TO REQUIRE AN ADJUSTMENT FOR INFLATION TO THE INCOME REQUIREMENTS APPLICABLE TO THE LOW-INCOME PROPERTY TAX REDUCTION PROVISIONS FOR OWNER-OCCUPIED RESIDENCES; AND AMENDING SECTIONS 15-6-134 AND 15-6-142, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-6-134, MCA, is amended to read:

**"15-6-134. Class four property — description — taxable percentage.** (1) Class four property includes:

- (a) all land except that specifically included in another class;
- (b) all improvements except those specifically included in another class;
- (c) the first \$35,000 or less of the market value of any improvement on real property and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 10 months a year as the primary residential dwelling of any person whose total income from all sources including otherwise tax-exempt income of all types is not more than \$10,000 for a single person or \$12,000 for a married couple, as adjusted according to subsection (2)(b)(ii);

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least 9 holes and not less than 3,000 lineal yards.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402 or 15-24-1501, property described in subsections (1)(a) and (1)(b) is taxed at 3.86% of its market value.

(b) (i) Property described in subsection (1)(c) is taxed at 3.86% of its market value multiplied by a percentage figure based on income and determined from the following table:

| Income<br>Single Person | Income<br>Married Couple | Percentage<br>Multiplier |
|-------------------------|--------------------------|--------------------------|
| \$0 - \$1,000           | \$0 - \$1,200            | 0%                       |
| 1,001 - 2,000           | 1,201 - 2,400            | 10%                      |
| 2,001 - 3,000           | 2,401 - 3,600            | 20%                      |
| 3,001 - 4,000           | 3,601 - 4,800            | 30%                      |
| 4,001 - 5,000           | 4,801 - 6,000            | 40%                      |
| 5,001 - 6,000           | 6,001 - 7,200            | 50%                      |
| 6,001 - 7,000           | 7,201 - 8,400            | 60%                      |
| 7,001 - 8,000           | 8,401 - 9,600            | 70%                      |
| 8,001 - 9,000           | 9,601 - 10,800           | 80%                      |
| 9,001 - 10,000          | 10,801 - 12,000          | 90%                      |

(ii) *The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department of revenue. The adjustment to the income levels is determined by:*

(A) *multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1986; and*

(B) *rounding the product thus obtained to the nearest whole dollar amount.*

(iii) *"PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.*

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a).

(3) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate for class four property until a revaluation has been made as provided in 15-7-111.

(4) Within the meaning of comparable property as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property, and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

Section 2. Section 15-6-142, MCA, is amended to read:

**"15-6-142. Class twelve property — description — taxable percentage.** (1) Class twelve property includes:

(a) a trailer or mobile home used as a residence except when:

(i) held by a distributor or dealer of trailers or mobile homes as his stock in trade; or

(ii) specifically included in another class;

(b) the first \$35,000 or less of the market value of a trailer or mobile home used as a residence and actually occupied for at least 10 months a

year as the primary residential dwelling of any person whose total income from all sources including otherwise tax-exempt income of all types is not more than \$10,000 for a single person or \$12,000 for a married couple, as adjusted according to 15-6-134(2)(b)(ii).

(2) Class twelve property is taxed as follows:

(a) Property described in subsection (1)(a) that is not of the type described in subsection (1)(b) is taxed at 3.86% of its market value.

(b) Property described in subsection (1)(b) is taxed at 3.86% of its market value multiplied by a percentage figure based on income and determined from the table established in subsection (2)(b)(i) of 15-6-134."

**Section 3. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 20, 1987.

## CHAPTER NO. 576

[HB 806]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE MONTANA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT; AMENDING SECTIONS 33-10-201, 33-10-202, 33-10-204, 33-10-219, 33-10-220, 33-10-224, 33-10-227, AND 33-10-230, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-10-201, MCA, is amended to read:

**"33-10-201. Short title, purpose, scope, and construction.** (1) This part shall be known and may be cited as the "Montana Life and Health Insurance Guaranty Association Act".

(2) The purpose of this part is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment of the insurer issuing such policies or contracts.

(3) To provide this protection:

(a) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages;

(b) members of the association are subject to assessment to provide funds to carry out the purpose of this part; and

(c) the association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments.

(4) This part shall apply to direct life insurance policies, health insurance policies, annuity contracts, and contracts supplemental to life and health insurance policies and annuity contracts issued by persons authorized to transact insurance in this state at any time.

(5) *This part shall provide coverage for covered policies:*

(a) *to persons who are owners of or certificate holders under such covered policies, and who:*

(i) *are residents; or*

(ii) *are not residents, but only under all of the following conditions:*

(A) *the insurers that issued the policies are domiciled in this state;*

(B) *the insurers have not held a license or certificate of authority in the state in which the persons reside;*

(C) *the states have associations similar to the association created under this part; and*

(D) *the persons are not eligible for coverage by those associations; and*

(b) *to persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under subsection (5)(a).*

(6) This part shall not apply to:

(a) any such policies or contracts or any part of such policies or contracts under which the risk is borne by the policyholder;

(b) any such policy or contract or part thereof assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.

(7) This part shall be liberally construed to effect the purpose under subsections (2) and (3) which shall constitute an aid and guide to interpretation.

(8) Nothing in this part shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired insurer operating under a plan with assessment liability."

Section 2. Section 33-10-202, MCA, is amended to read:

**"33-10-202. Definitions.** As used in this part, the following definitions apply:

(1) "Account" means any of the three accounts created under 33-10-203.

(2) "Association" means the Montana life and health insurance guaranty association created under 33-10-203.

(3) "Contractual obligation" means any obligation under covered policies.

(4) "Covered policy" means any policy or contract within the scope of this part under subsections (4) through (6) of 33-10-201.

(5) "Impaired insurer" means:

(a) an insurer which after July 1, 1974, becomes insolvent and is placed under a final order of liquidation, rehabilitation, or supervision by a court of competent jurisdiction; or

(b) an insurer deemed by the commissioner after July 1, 1974, to be unable or potentially unable to fulfill its contractual obligations.

(6) "Member insurer" means any person authorized to transact in this state any kind of insurance to which this part applies under subsections (4) and (6) of 33-10-201.

(7) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(8) "Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers. As used in 33-10-227, "premiums" are those for the calendar year preceding the determination of impairment.

(9) "Resident" means any person who resides in this state at the time the impairment is determined and to whom contractual obligations are owed."

Section 3. Section 33-10-204, MCA, is amended to read:

**"33-10-204. Board of directors — commissioner approval — compensation.** (1) The board of directors of the association shall consist of five members serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the manner described in the plan of operation. In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(2) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors, but members of the board may not otherwise be compensated by the association for their services. *However, any designated representatives of members of the board who are not full-time employees of the member insurers that designated them may receive reasonable compensation for their services on the board of directors upon annual approval by the members of the association.*"

Section 4. Section 33-10-219, MCA, is amended to read:

**"33-10-219. Impaired insurer — association's powers prior to liquidation.** If an insurer is an impaired insurer, the association may,



prior to an order of liquidation or rehabilitation and subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer and approved by the impaired insurer and the commissioner:

(1) guarantee or reinsure or cause to be guaranteed, assumed, or reinsured all the covered policies of the impaired insurer;

(2) provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate *this section* and assure payment of the contractual obligations of the impaired insurer pending action under subsection (1); and

(3) loan money to the impaired insurer."

Section 5. Section 33-10-220, MCA, is amended to read:

**"33-10-220. Impaired insurer — association's powers during liquidation.** (1) If *an* insurer is an impaired insurer under an order of liquidation or rehabilitation, the association shall, subject to the approval of the commissioner:

(a) guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of the impaired insurer;

(b) assure payment of the contractual obligations of the impaired insurer; and

(c) provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

(2) If the association fails to act within a reasonable period of time, the commissioner shall have the powers and duties of the association under this part with respect to such domestic, foreign, or alien impaired insurer.

(3) In carrying out its duties under *subsection* (1), the association may request that there be imposed policy liens, contract liens, moratoriums on payments, or other similar means; and such liens, moratoriums, or similar means may be imposed if the commissioner:

(a) finds that the amounts which can be assessed under this part are less than the amounts needed to assure full and prompt performance of the impaired insurer's contractual obligations or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, moratoriums, or similar means to be in the public interest; and

(b) approves the specific policy liens, contract liens, moratoriums, or similar means to be used.

(4) Before being obligated under *subsection* (1), the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans, and such temporary moratoriums and liens may be imposed if they are approved by the commissioner.

(5) The association shall have no liability under 33-10-219 or this section for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides by statute or regulation for residents of this state protection substantially similar to that provided by this part for residents of other states.

(6) (a) *If proceeding under 33-10-220, the association may, with respect to life and health insurance policies:*

*(i) assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies of the insolvent insurer for claims incurred;*

*(A) with respect to group policies, not later than the earlier of the next renewal date under the policy or contract or 45 days, but in no event less than 30 days, after the date on which the association becomes obligated with respect to the policies;*

*(B) with respect to individual policies, not later than the earlier of the next renewal date, if any, under the policies or 1 year, but in no event less than 30 days, from the date on which the association becomes obligated with respect to the policies;*

*(ii) make diligent efforts to provide all known insureds, or group policyholders with respect to group policies, 30 days notice of the termination of the benefits provided; and*

*(iii) make available substitute coverage on an individual basis in accordance with subsection (6)(b) to each known insured, or owner if other than the insured, of an individual policy and to any individual formerly insured under a group policy who is not eligible for replacement group coverage, if the insured had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.*

*(b) (i) In providing the substitute coverage required under subsection (6)(a)(iii), the association may offer to reissue the terminated coverage or issue an alternative policy.*

*(ii) Reissued or alternative policies must be offered without requiring evidence of insurability and may not provide for any waiting period or exclusion that would not have applied under the terminated policy.*

*(iii) The association may reinsure any reissued or alternative policy.*

*(c) (i) Alternative policies adopted by the association are subject to the approval of the commissioner. The association may adopt policies of various types for future reissuance without regard to any particular impairment or insolvency.*

*(ii) Alternative policies must contain at least the minimum statutory provisions required in this state and provide benefits that are not unreasonable in relation to the premium charged. The association shall set the*

*premium in accordance with a table of rates that it shall adopt. The premium must reflect the amount of insurance to be provided and the age and class of risk of each insured, but may not reflect any changes in the health of the insured after the original policy was last underwritten.*

*(iii) Alternative policies issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.*

*(d) If the association elects to reissue terminated coverage at a premium different from that charged under the terminated policy, the premium must be set by:*

*(i) the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner; or*

*(ii) a court of competent jurisdiction.*

*(e) The association's obligation with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy ceases on the date the coverage or policy is replaced by another similar policy by the policyholder, insured, or association."*

Section 6. Section 33-10-224, MCA, is amended to read:

**"33-10-224. Extent of liability.** The contractual obligations of the impaired insurer for which the association becomes or may become liable shall be as great as but no greater than the contractual obligations of the impaired insurer would have been in the absence of an impairment unless such obligations are reduced as permitted by 33-10-220(3), but the association shall have no liability with respect to any portion of a covered policy to the extent that the death benefit coverage on any one life exceeds an aggregate of \$300,000."

Section 7. Section 33-10-227, MCA, is amended to read:

**"33-10-227. Assessments — abatement — basis for ratesetting.**

(1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessments after 30 days' written notice to the member insurers before payment is due.

(2) There shall be *two* classes of assessments, as follows:

(a) Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer.

(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under 33-10-219 and 33-10-220(1) with regard to an impaired insurer.

(3) (a) The amount of any Class A assessment for each account shall be determined by the board. The amount of any Class B assessment shall be divided among the accounts in the proportion that the premiums

received by the impaired insurer on the policies covered by each account bear to the premiums received by such insurer on all covered policies.

(b) *Class B* assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account bear to such premiums received on business in this state by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to an impaired insurer shall not be made until necessary to implement the purposes of this part. Classification of assessments under subsection (2) and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed 2% of such insurer's premiums in this state on the policies covered by the account.

(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection (4), the amount by which such assessment is abated or deferred shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in either account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this part.

(6) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(7) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this part, to consider the amount reasonably necessary to meet its assessment obligations under this part.

(8) The association shall issue to each insurer paying an assessment under this part a certificate of contribution, in a form prescribed by the commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve."

Section 8. Section 33-10-230, MCA, is amended to read:

**"33-10-230. Tax — writeoffs of certificates of contribution.** (1) Unless a longer period has been allowed by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution for a Class B assessment only as an asset in the form approved by the commissioner pursuant to 33-10-227(8), at percentages of the original face amount approved by the commissioner, for calendar years as follows:

- (a) 100% for calendar year of issuance;
- (b) 80% for the first calendar year after year of issuance;
- (c) 60% for second calendar year after year of issuance;
- (d) 40% for third calendar year after year of issuance;
- (e) 20% for fourth calendar year after year of issuance.

(2) The insurer may offset the amount written off by it in the calendar year under subsection (1) above against its premium tax liability to this state accrued with respect to business transacted in such year.

(3) Any sums acquired by refund, pursuant to 33-10-227(6), from the association which have therefore been written off by contributing insurers and offset against premium taxes as provided in subsection (2) above and are not then needed for purposes for this part shall be paid by the association to the commissioner and by him deposited with the state treasurer for credit to the general fund of this state."

**Section 9. Extension of authority.** Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 10. Applicability.** Sections 1 through 8 apply to all occurrences that result from legal actions instituted after the effective date of this act.

**Section 11. Effective date.** This act is effective on passage and approval.

Approved April 20, 1987.

## CHAPTER NO. 577

[HB 814]

AN ACT ESTABLISHING A STATE MEAT INSPECTION PROGRAM; PROVIDING FOR ITS ENFORCEMENT AND APPLICATION BY THE BOARD OF LIVESTOCK; PROVIDING FOR LICENSING OF MEAT ESTABLISHMENTS; APPROPRIATING MONEY TO OPERATE THE PROGRAM; AMENDING SECTIONS 7-21-4202, 81-2-102, 81-9-112, 81-9-114 THROUGH 81-9-116, AND 81-9-201, MCA; AND REPEALING SECTIONS 81-9-101 THROUGH 81-9-103, 81-9-117, AND 81-9-203 THROUGH 81-9-207, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 16] may be cited as the "Meat and Poultry Inspection Act".

**Section 2. Definitions.** As used in [sections 1 through 16], the following definitions apply:

(1) "Adulterated" means the term applied to meat if:

(a) it bears or contains a poisonous or deleterious substance that may render it injurious to health, except that if the substance is not an added substance, the product may not be considered adulterated if the quantity of the substance is insufficient to ordinarily render it injurious to health;

(b) it bears or contains, by reason of administration of any substance to the meat, an added poisonous or added deleterious substance other than a color additive, a food additive, or a pesticide chemical in or on a raw agricultural commodity, any of which may in the board's judgment make the meat unfit for human food;

(c) it is in whole or in part a raw agricultural commodity and bears or contains a pesticide chemical that is unsafe as provided in the Federal Food, Drug and Cosmetic Act;

(d) it bears or contains a food additive that is unsafe as provided in the Federal Food, Drug and Cosmetic Act;

(e) it bears or contains a color additive that is unsafe as provided in the Federal Food, Drug and Cosmetic Act; provided that the meat that is not otherwise considered adulterated under subsection (1)(c), (1)(d), or (1)(e) of this section is considered adulterated if use of the pesticide chemical, food additive, or color additive in or on the article is prohibited by rule of the board;

(f) it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(g) it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or rendered injurious to health;

(h) it is in whole or in part the product of an animal, including poultry, that has died otherwise than by slaughter;

(i) its container is composed in whole or in part of any poisonous or deleterious substance that may render the contents injurious to health;

(j) it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to 21 U.S.C. 348; or

(k) any valuable constituent has been in whole or in part omitted or abstracted therefrom, any substance has been substituted wholly or in part therefor, damage or inferiority has been concealed in any manner, or any substance has been added to it or mixed or packed with it so as to increase its bulk or weight, or make it appear better or of greater value than it is.

(2) "Chief" means the chief meat inspector appointed as provided in [section 3].

(3) "Federal Food, Drug and Cosmetic Act" means 21 U.S.C. 301 through 392, as that law reads on [the effective date of this act].

(4) "Livestock" means cattle, buffalo, sheep, swine, goats, rabbits, horses, mules or other equines, and game farm animals as defined in 87-4-406 whether alive or dead.

(5) "Livestock product" or "poultry product" means a product capable of use as human food that is wholly or partially made from meat and is not specifically exempted by rule of the board.

(6) "Meat" means the edible flesh of livestock or poultry and includes livestock and poultry products.

(7) "Misbranded" means the term applied to meat:

- (a) if its labeling is false or misleading in any particular;
- (b) if it is offered for sale under the name of another food;
- (c) if it is an imitation of a meat product, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter the name of the food being imitated;
- (d) if its container is so made, formed, or filled as to be misleading;
- (e) if it does not bear a label showing:
  - (i) the name and place of business of the manufacturer, packer, or distributor; and
  - (ii) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count. The board may adopt rules exempting small meat packages, meat not in containers, and other reasonable variations.
- (f) if any word, statement, or other information required by [sections 1 through 16] to appear on the label is not prominently placed thereon, as compared with other words, statements, designs, or devices in the labeling, and is not stated in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (g) if it is represented as a food for which a definition and standard of identity or composition has been prescribed by the rules of the board, unless:
  - (i) it conforms to the definition and standard; and
  - (ii) its label bears the name of the food specified in the definition and standard and, insofar as required by the rules, the common names of optional ingredients present in such food, other than spices, flavoring, and coloring;
- (h) if it is represented as a food for which a standard of fill of container has been prescribed by rules of the board and it falls below the standard of fill of container applicable thereto, unless its label bears, in the manner and form as the rules specify, a statement that it falls below the standard;
- (i) if it is not subject to the provisions of subsection (7)(g), unless its label bears:
  - (i) the common or usual name of the food, if any; and

(ii) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient, except that spices, flavorings, and colorings may, when authorized by the board, be designated as spices, flavorings, and colorings without naming each. To the extent that compliance with the requirements of this subsection (ii) is impracticable or results in deception or unfair competition, exemptions must be established by rules promulgated by the board.

(j) if it purports to be for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the board, after consultation with the U.S. secretary of agriculture, by rule prescribes as necessary in order to fully inform purchasers as to its value for such uses;

(k) if it bears or contains an artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact, provided that to the extent that compliance with the requirements of this subsection (k) is impracticable, exemptions must be established by rules promulgated by the board; or

(l) if it fails to bear directly thereon and on its containers, as the board may by rule prescribe, the official inspection legend and establishment number of the establishment where the product was prepared and other information as the board may require to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the meat in a wholesome condition.

(8) "Official establishment" means an establishment licensed by the board at which inspection of the slaughter of livestock or poultry or the preparation of meat food products is maintained under [sections 1 through 16].

(9) "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" have the same meanings as provided in 21 U.S.C. 321.

(10) "Poultry" means any domesticated bird, whether alive or dead.

(11) "Prepared" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

**Section 3. Chief meat inspector — deputies — qualifications.** (1) There is a chief meat inspector, who must be appointed by the board and shall serve at its pleasure. Such person must be a veterinarian licensed in Montana who has practiced veterinary medicine for 5 years or longer.

(2) The chief shall supervise the state meat inspection program established in [sections 1 through 16] and shall enforce the provisions of [sections 1 through 16] to assure the public that only pure, wholesome, and unadulterated meat or meat food products are offered for sale.

(3) Upon recommendation of the chief, the board shall appoint veterinary meat inspectors and lay meat inspectors, who must be responsible to the chief and who shall conduct ante-mortem and post-mortem inspections, enforce sanitary requirements, and perform other necessary meat inspection duties.



(4) An inspector assigned to an official establishment may not be related to the management of the establishment or have any financial interest therein.

**Section 4. Rules.** The board, upon the recommendation of the chief, shall adopt rules consistent with the requirements of the rules of the U.S. department of agriculture governing meat inspection. The rules must:

(1) require ante-mortem and post-mortem inspections, quarantines, segregation, and reinspections with respect to the slaughter of livestock and poultry and the preparation of livestock and poultry products at all official establishments;

(2) require the identification of livestock and poultry and the marking and labeling of livestock or poultry products as "Montana Inspected and Passed" if they are found upon inspection not to be adulterated;

(3) require the destruction for food purposes of all livestock, poultry, livestock products, and poultry products that have been found to be adulterated;

(4) set standards for ingredients of livestock products, meat, and poultry products;

(5) set standards for labeling, marking, or branding of meat, livestock products, and poultry products;

(6) set standards for the weights or measures of meats, livestock products, and poultry products not inconsistent with standards established under Title 30, chapter 12;

(7) set standards for the filling of containers for meat, livestock products, and poultry products;

(8) regulate the false or fraudulent advertising of meat, livestock products, and poultry products;

(9) provide for periodic investigations of the sanitary conditions of each official establishment and withdraw or otherwise refuse to license and inspect those establishments where the sanitary conditions are such as to render adulterated any meat products prepared or handled therein;

(10) prescribe sanitation requirements for all official establishments;

(11) require all persons subject to [sections 1 through 16] to maintain full and complete records of all transactions involving meat, livestock products, or poultry products and to make the records available on request to the chief or his inspectors at any reasonable time; and

(12) prescribe additional standards, methods, and procedures as are necessary to effect the purposes of [sections 1 through 16].

**Section 5. Application for state meat inspection service — assignment of establishment number.** (1) Any meat establishment licensed under 81-9-201 may apply to the board for state meat and poultry inspection service. The application must include:

(a) the name and address of the establishment;

- (b) the type of establishment;
- (c) a complete description of the facilities and equipment;
- (d) the day of the week and hours of the day when the establishment is in operation; and
- (e) other information required by the chief.

(2) The chief, upon receipt of the application, shall inspect the applicant's facilities and equipment. If the establishment is found to be clean and sanitary and if it meets the requirements of [sections 1 through 16], the board shall authorize the granting of state meat inspection service to the applicant. The board shall then assign an official establishment number to the approved establishment to be used to mark the meat of the carcasses and parts of carcasses that are offered for sale.

**Section 6. Inspection stamps.** (1) The board shall provide meat inspection stamps to all official establishments, which must contain the words "Montana Inspected and Passed". The inspection stamps must be designed by the board so as to be not in conflict with inspection stamps of the U.S. department of agriculture.

(2) Approved official establishments may use symbols of the inspection stamps on the processed meats and meat food products they offered for sale if they are in compliance with the provisions of [sections 1 through 16].

(3) The meat inspection stamps must at all times be under the jurisdiction of the chief.

**Section 7. Assignment of inspectors.** (1) The chief shall assign inspectors to each official establishment and may assign one inspector to two or more establishments.

(2) No establishment may slaughter or process any cattle, buffalo, sheep, swine, goats, or poultry unless there is an assigned inspector present. The hours of the day and days of each week, including holidays or weekends, when the establishment is slaughtering or processing meat must be satisfactorily arranged between the chief and each establishment. Establishments shall pay overtime fees to the board when services are rendered in excess of 8 hours a day or on holidays or weekends.

**Section 8. Ante-mortem and post-mortem inspection required.** (1) Official establishments must have an ante-mortem inspection. The inspector assigned to each establishment shall examine each animal immediately prior to slaughter for the purpose of eliminating all unfit animals and segregating for more thorough examination all animals suspected of being affected with a condition that might influence their disposition on post-mortem inspection. The unfit animals may not enter the slaughtering facilities of the plant. The suspected animals which after inspection are permitted to be slaughtered must be handled separately from the regular kill and given a special post-mortem examination.

(2) Official establishments must have a post-mortem inspection. The post-mortem inspection must be made at the time the animals are slaughtered. The inspectors shall examine the cervical lymph glands, the skeletal

lymph glands, the viscera and organs, with their lymph glands, and all exposed surfaces of the carcasses of all cattle, buffalo, sheep, swine, and goats. The examination must be conducted in the slaughtering facilities of the establishment during the slaughtering operations.

(3) The chief or any of his inspectors may have a laboratory designated by the board make pathogenic examination of animals or parts thereof for completion of ante-mortem or post-mortem inspection.

**Section 9. Condemnation and appeal.** The inspector at an official establishment shall condemn all diseased or otherwise unfit carcasses and parts of carcasses, including the viscera. The condemned parts must be removed from the slaughtering facilities of the plant in equipment designated for that purpose and must be destroyed for food purposes under the supervision of the inspector. If an establishment wishes to appeal a decision of an inspector as to carcasses or parts of carcasses that have been condemned, the establishment may appeal the decision to the chief or any veterinarian the chief may designate. If the establishment is not satisfied and wishes to make a further appeal, it may submit an appeal to the board, whose decision is final unless the person aggrieved, within 10 days after the date of the decision, appeals to the district court of the district in which the licensed premises are located.

**Section 10. Regulation of equine, game farm animal, or rabbit carcasses or products.** (1) Equines, game farm animals, and rabbits and their carcasses, parts thereof, and meat food products must be slaughtered and prepared in establishments separate from the establishments where cattle, buffalo, sheep, swine, or goats are slaughtered or their carcasses, parts thereof, or meat food products are prepared.

(2) The board may by rule otherwise limit the entry of equine, game farm animal, or rabbit carcasses, parts of carcasses, meat food products, and other materials into any establishment where inspection under [sections 1 through 16] is maintained, under conditions as it may prescribe to assure that allowing the entry of the articles into inspected establishments will be consistent with the purposes of [sections 1 through 16].

**Section 11. Exemptions.** The following persons are exempt from [sections 1 through 16] and 81-9-201:

(1) a person who slaughters livestock or poultry or prepares or processes livestock or poultry products for his own personal or household use;

(2) a person engaged in custom slaughtering of livestock and preparation of the carcasses and parts and meat food products thereof only with respect to the slaughter of livestock delivered by the owner for custom slaughter and the preparation of the carcasses for use by the owner in his own household or by members of his household or nonpaying guests; and

(3) a person who transports dead, dying, or diseased animals or poultry for the purpose of treatment, burial, or disposal in a manner that would prevent the carcasses from being used as human food.

**Section 12. Cooperation with state and federal authorities.** (1) In carrying out the provisions of [sections 1 through 16], the chief shall consult with the department of health and environmental sciences and any

appropriate state laboratory in matters relating to potability of water, sewage systems, and other sanitary conditions of slaughtering and meat processing establishments that might endanger public health. If any official establishment is failing to meet minimum applicable requirements of the department of health and environmental sciences, inspection service to the establishment must be suspended as provided in [section 14] until the condition is remedied.

(2) The board is designated as the agency responsible for cooperating with the U.S. secretary of agriculture in receiving advisory assistance in developing the state program, technical and laboratory assistance and training, and financial assistance for administration of the program.

**Section 13. Violations — penalties.** (1) Except as provided in [sections 1 through 16], no person may:

(a) slaughter livestock or poultry or prepare livestock products or poultry products for human consumption;

(b) sell or transport adulterated, misbranded, condemned, or uninspected meats, livestock products, or poultry products;

(c) falsely represent that an article has been inspected and passed or is exempted under [sections 1 through 16] or knowingly make a false statement in any certificate provided for by rules prescribed by the board;

(d) sell or transport slaughtered poultry from which the blood, feathers, feet, head, or viscera have not been removed;

(e) fail to keep any records required by [sections 1 through 16];

(f) forge an official stamp, mark, or certificate;

(g) use, alter, deface, detach, or destroy an official stamp, mark, or certificate without authorization;

(h) fail to use or fail to detach, deface, or destroy an official stamp, mark, or certificate contrary to rules prescribed by the board;

(i) knowingly possess a counterfeit certificate, stamp, or label or the carcass or parts of the carcass of an animal bearing a counterfeit or improperly altered official mark;

(j) sell or transport an equine carcass or parts thereof unless they are conspicuously marked or otherwise identified to show the kind of animal from which they were derived;

(k) buy, sell, or transport livestock products or poultry products not intended for human food unless they are naturally inedible by humans or are denatured or identified as required by rules prescribed by the board;

(l) engage in the business of buying, selling, or transporting dead, dying, disabled, or diseased animals or parts of the carcasses of animals that died otherwise than by slaughter, or buy, sell, or transport dead, dying, disabled, or diseased livestock or poultry or the products of such livestock or poultry that died otherwise than by slaughter unless in accordance with rules adopted under 81-9-302 to assure that such livestock or poultry or the

unwholesome parts or products thereof will be prevented from being used for human food purposes.

(2) A person who violates [sections 1 through 16] or rules adopted under [sections 1 through 16] for which no other criminal penalty is provided is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than 1 year or by a fine of not more than \$1,000, or both. If the violation involves intent to defraud or any distribution or attempted distribution of an article that is adulterated, such person is guilty of a felony and upon conviction is punishable by imprisonment for not more than 3 years or by a fine of not more than \$10,000, or both.

**Section 14. Suspension or revocation of inspection service or establishment number — hearing — appeal.** (1) Any license issued by the board or any state meat inspection service or establishment number may be suspended or revoked by the board for noncompliance with [sections 1 through 16] or any rule adopted pursuant to [sections 1 through 16].

(2) State meat inspection service or establishment numbers may be suspended or revoked only after a hearing before the board upon reasonable notice. Notice must be given the licensee by service of the complaint upon him.

(3) The decision of the board is final in any matter relating to renewal, suspension, or revocation of state meat inspection service or an establishment number unless the person aggrieved, within 10 days after the date of the decision, appeals to the district court of the district in which the licensed premises are located. The court shall hear and determine the matter within 10 days after the date of filing the appeal. After such decision, the person aggrieved may, in compliance with the statutory provisions relating thereto, appeal the decision of the district court to the supreme court of the state, but the suspension or revocation of state meat inspection service or an establishment number remains in effect pending the outcome of the appeal.

**Section 15. Injunction.** In addition to remedies provided in [sections 1 through 16], the board is authorized to apply to the district court for and the court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating a provision of [sections 1 through 16], whether or not there exists an adequate remedy at law.

**Section 16. Application.** The provisions of [sections 1 through 16] apply to persons, establishments, animals, and articles regulated under the federal Meat Inspection Act, 21 U.S.C. 601 through 695, or the federal Poultry Products Inspection Act, 21 U.S.C. 451 through 470, as those acts read on [the effective date of this act], only to the extent provided for therein.

**Section 17.** Section 7-21-4202, MCA, is amended to read:

**“7-21-4202. Regulation of foodstuffs.** The city or town council has power to provide for and regulate the inspection of flour, meal, and all provisions and oils; to regulate the inspection of milk, water, butter, lard,

and other provisions; to regulate the vending of meat, poultry, fish, game, and vegetables; to restrain and punish the forestalling of provisions."

Section 18. Section 81-2-102, MCA, is amended to read:

**"81-2-102. Powers of department.** (1) The department may:

(a) supervise the sanitary conditions of livestock in this state, under the provisions of the constitution and statutes of this state and the rules adopted by the department. The department may quarantine a lot, yard, land, building, room, premises, enclosure, or other place or section in this state which is or may be used or occupied by livestock and which in the judgment of the department is infected or contaminated with an infectious, contagious, communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated. The department may quarantine livestock in this state when the livestock is affected with or has been exposed to disease or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules which are necessary and proper to circumscribe, extirpate, control, or prevent the disease.

(b) foster, promote, and protect the livestock industry in this state by the investigation of diseases and other subjects related to ways and means of prevention, extirpation, and control of diseases or to the care of livestock and its products and to this end may establish and maintain a laboratory, may make or cause to be made biologic products, curatives, and preventative agents, and may perform any other acts and things as may be necessary or proper in the fostering, promotion, or protection of the livestock industry in this state;

(c) impose and collect such fees as the department considers appropriate for the tests and services performed by it at the laboratory or elsewhere and for biologic products, curatives, and preventative agents made or caused to be made by the department. In fixing these fees the department shall take into consideration the costs, both direct and indirect, of the tests, services, products, curatives, and agents. All fees shall be deposited in the state special revenue fund for the use of the animal health functions of the department.

(d) adopt rules and orders which it considers necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock in this state and to this end may adopt rules and orders necessary or proper governing inspections and tests of livestock intended for importation into this state before it may be imported into this state;

(e) adopt rules and orders which it considers necessary or proper for the inspection, testing, and quarantine of all livestock imported into this state;

(f) adopt rules and orders which it considers necessary or proper for the supervision, inspection, and control of the standards and sanitary conditions of slaughterhouses, meat depots, meat and meat food products, dairies, milk depots, milk and its byproducts, barns, dairy cows, factories, and other places and premises where meat or meat foods, milk or its products, or any byproducts thereof intended for sale or consumption as food are

produced, kept, handled, or stored. An authorized representative of the department may take samples of a product so produced, kept, handled, or stored for analysis or testing by the department. The records of the samples and their analysis and test, when identified as to the sample by the oath of the officer taking it and verified as to the analysis or test by the oath of the chemist or bacteriologist making it, are prima facie evidence of the facts set forth in them when offered in evidence in a prosecution or action at law or in equity for violation of part 1, 2, or 3 of this chapter, 81-9-201, 81-20-101, 81-21-102, 81-21-103, or a rule or order of the board adopted thereunder. These standards, insofar as they relate to dairies or milk and its byproducts, may not include standards of weight or measurement.

(g) adopt rules and orders which seem necessary or proper for the supervision and control of manufactured and refined foods for livestock and the manufacture, importation, sale, and method of using a biologic remedy or curative agent for the treatment of diseases of livestock. However, as far as practicable the standards approved by the United States department of agriculture shall be adopted.

(h) install an adequate system of meat inspection *in accordance with [sections 1 through 16]* which shall provide ways and means for shipping home-grown and home-killed meats into any city in this state. As far as practicable, the rules shall conform with the meat-inspection requirements of the United States department of agriculture.

(i) slaughter or cause to be slaughtered any livestock in this state known to be affected with or which has been exposed to an infectious, contagious, communicable, or dangerous disease, when such slaughter is necessary for the protection of other livestock, and destroy or cause to be destroyed all barns, stables, sheds, outbuildings, fixtures, furniture, or personal property infected with any such infectious, contagious, communicable, or dangerous disease when they cannot be thoroughly cleaned and disinfected and the destruction is necessary to prevent the spreading of the disease;

(j) indemnify the owner of any property destroyed by order of the department or pursuant to any rules adopted by the department under parts 1, 2, or 3 of this chapter, 81-20-101, 81-21-102, 81-21-103;

(k) require persons, firms, and corporations engaged in the production or handling of meat, meat food products, dairy products, or any byproducts thereof to furnish statistics of the quantity and cost of the food and food products produced or handled and the name and address of persons supplying them any of the products.

(2) When in the exercise of its powers or the discharge of its duties it becomes necessary for employees of the department to investigate facts and conditions, they may administer oaths, take affidavits, and compel the attendance and testimony of witnesses."

Section 19. Section 81-9-112, MCA, is amended to read:

**"81-9-112. Inspection and marking of hides and meat of slaughtered cattle — records — bill of sale — when inspection not necessary.** (1) All *slaughtering establishments required to be licensed under*

81-9-201 shall maintain the hide of an animal in its entirety with tail and ears attached for each animal slaughtered until inspected by a state or deputy state stock inspector in the county where the animal was slaughtered. The inspector shall mark the hide in the manner prescribed by the department. This inspection may be waived for those animals inspected by a state or deputy state stock inspector on a preslaughter inspection.

(2) Each dressed carcass of such animal shall be stamped with an ink stamp in a manner specified by the department. The inspector shall keep a record and issue a certificate of inspection as specified by the department, giving the name *and address of the establishment or person*, the serial number of the inspection of the hide, the brand on the hide, the date of inspection, and the place where the inspection was made. The inspector shall forward a copy of the inspection certificate to the department and issue one copy to the person requesting the inspection.

(3) When ownership of the carcass and hide presented is claimed on a bill of sale, the officer making the inspection shall demand and receive the original bill of sale, which shall be attached to the inspector's certificate sent to the county clerk and recorder. When the bills of sale cover cattle not included in the inspection, the inspector shall issue to the owner of the bill of sale a receipt for the bill of sale. The receipt shall describe the balance of the cattle covered by the original bill of sale.

(4) Any person who kills beef or veal in good faith for his own use shall not be required to have such meat inspected or stamped."

Section 20. Section 81-9-114, MCA, is amended to read:

**"81-9-114. Duty to report violations.** *A person required to be licensed under 81-9-201 shall report any violation of 81-9-112 to the sheriff of the county wherein such violation occurred and of which such person has knowledge. Upon failure to do so, the person shall suffer a revocation of his license and no license shall again be issued to such person until the expiration of 1 year from the date of such revocation.*"

Section 21. Section 81-9-115, MCA, is amended to read:

**"81-9-115. Unlawful to purchase uninspected hide or carcass — exception.** *No person, firm, corporation, or association may purchase the hide or carcass or any part thereof of any beef or veal without the inspection or identification herein provided for. The provision of this section does not apply to any person who purchases from a licensed meat establishment beef or veal in quantities less than one quarter of an animal.*"

Section 22. Section 81-9-116, MCA, is amended to read:

**"81-9-116. Officers' authority concerning enforcement — seizure and sale of meat held in violation.** Any officer having authority to make the inspection herein provided for may enter into and inspect *meat establishments required to be licensed under 81-9-201* or places where beef is handled in quantities, for the purpose of determining whether the provisions of this part have been complied with. In case meat is found which is being held in violation of the provisions of this part, the officers may seize the same. All meat so seized shall be sold under the direction of



a stock inspector, sheriff, or other officer authorized, at either public or private sale, for the best price obtainable, and the proceeds shall be paid to the county treasurer of the county in which said meat is seized for the benefit of the general fund of said county."

Section 23. Section 81-9-201, MCA, is amended to read:

**"81-9-201. Meat establishment license — fees and renewals.** (1) It is unlawful for a person, firm, or corporation to *engage in the business of slaughtering livestock or poultry or processing, storing, or wholesaling the meat products of either* without having a license issued by the department. The department shall establish an annual fee for a license issued under this section, to be paid into the state special revenue fund for the use of the department.

(2) All licenses expire on December 31 of the year in which they are issued and shall be renewed by the department on request of the licensee. However, when the department finds that the *establishment* for which the license is issued is not conducted in accordance with the rules and orders of the board made under 81-2-102, the department shall revoke the license and may not renew it until the *establishment* is in a sanitary condition in accordance with department rules.

(3) *A person, firm, or corporation violating this section or any rule or order promulgated by authority of 81-2-102 is guilty of a misdemeanor and upon conviction shall be fined not to exceed \$500."*

Section 24. **Repealer.** Sections 81-9-101 through 81-9-103, 81-9-117, and 81-9-203 through 81-9-207, MCA, are repealed.

Section 25. **Codification instruction.** Sections 1 through 16 are intended to be codified as an integral part of Title 81, chapter 9, part 2, and the provisions of Title 81 apply to sections 1 through 16.

Section 26. **Appropriation.** (1) There is appropriated the following amounts from the general fund to the board of livestock to match federal funds available to establish and operate a state meat inspection program:

- |                                      |           |
|--------------------------------------|-----------|
| (a) fiscal year ending June 30, 1988 | \$139,400 |
| (b) fiscal year ending June 30, 1989 | 136,900   |

(2) There is appropriated the following amounts from the federal special revenue fund to the board of livestock to establish and operate a state meat inspection program:

- |                                      |           |
|--------------------------------------|-----------|
| (a) fiscal year ending June 30, 1988 | \$139,400 |
| (b) fiscal year ending June 30, 1989 | 136,900   |

Approved April 20, 1987.

**CHAPTER NO. 578**

[HB 813]

AN ACT ESTABLISHING A FEE IN LIEU OF TAX FOR OFF-HIGHWAY VEHICLES; PROVIDING FOR DISTRIBUTION OF THE PROCEEDS; AMENDING SECTION 15-6-146, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** As used in [sections 1 through 7 and 9], unless the context clearly indicates otherwise, the following definitions apply:

(1) (a) "Off-highway vehicle" means a self-propelled vehicle used for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) Off-highway vehicle does not include:

- (i) vehicles designed primarily for travel on, over, or in the water;
- (ii) snowmobiles; or
- (iii) vehicles otherwise licensed under the laws of the state.

(2) "Department" means the department of fish, wildlife, and parks.

**Section 2. Exemptions.** (1) The provisions of [sections 1 through 7 and 9] do not apply to an off-highway vehicle:

(a) owned or used by the United States or another state or an agency or political subdivision thereof;

(b) registered in a country other than the United States, temporarily used within this state for not more than 30 days; or

(c) registered in another state of the United States, temporarily used within this state for not more than 30 days.

**Section 3. Fee in lieu of tax on off-highway vehicles — disposition of fees.** (1) There is a fee in lieu of tax on off-highway vehicles to be paid to the county treasurer of the county in which the owner of the off-highway vehicle resides.

(a) The fee for an off-highway vehicle less than 3 years old is \$25. In all other cases the fee is \$15.

(b) The age of an off-highway vehicle is determined by subtracting the manufacturer's designated model year from the current calendar year.

(2) The county treasurer shall distribute all fees in lieu of tax collected on off-highway vehicles pursuant to [section 3] in the relative proportions

required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

**Section 4. Decal required.** Except as provided in [section 2], no off-highway vehicle may be operated by any person in Montana unless there is displayed in a conspicuous place a decal, in a form prescribed by the department, as visual proof that the fee in lieu of tax provided for in [section 3] has been paid for the current year. The decal will be serially numbered and have the expiration date of December 31 of the appropriate year printed thereon.

**Section 5. Identification of off-highway vehicle to which fee applies.** (1) When the owner of an off-highway vehicle pays the fee in lieu of tax provided for in [section 3], he shall furnish to the county treasurer, upon a form furnished by the department for this purpose, the following information about the off-highway vehicle:

- (a) name of the owner;
- (b) residence or mailing address of the owner, by town and county;
- (c) name of the manufacturer;
- (d) model number or name; and
- (e) identification number.

(2) The application must be signed by at least one owner or by a properly authorized agent of the owner.

(3) Upon payment of the fee in lieu of tax and completion of the identification form, the county treasurer shall deliver the decal provided for in [section 4].

**Section 6. Enforcement.** The department's enforcement personnel, sheriffs and their deputies, the Montana highway patrol, and the police of each municipality shall enforce the provisions of [sections 1 through 7 and 9].

**Section 7. Penalty — disposition.** (1) The failure to display a current decal indicating that the fee in lieu of tax has been paid on the off-highway vehicle for the current year as provided in [section 4] is a misdemeanor punishable by a fine equal to five times the fee in lieu of tax that is due on the off-highway vehicle for the current year.

(2) All fines collected under this section must be transmitted to the state treasurer, who shall deposit the money in the earmarked revenue fund to the credit of the department to be used for off-highway vehicle safety and education.

**Section 8.** Section 15-6-146, MCA, is amended to read:

**"15-6-146. Class sixteen property — description — taxable percentage.** (1) Class sixteen property includes:

- (a) watercraft;
- (b) harness, saddlery, and other tack equipment;

(c) all other property used for noncommercial purposes which is not real property or an improvement to real property and which is not included in another class or exempt from taxation under Title 15, chapter 6, part 2.

(2) Class sixteen property is taxed at 11% of its market value."

**Section 9. Regulation by local government precluded.** No political subdivision may prescribe further licensing or registration of off-highway vehicles, and no political subdivision may levy fees or charges for use or operation of off-highway vehicles within the subdivision.

**Section 10. Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 11. Codification instruction.** Sections 1 through 7 and 9 are intended to be codified as an integral part of Title 23, chapter 2, and the provisions of Title 23, chapter 2, apply to sections 1 through 7 and 9.

**Section 12. Effective dates.** (1) Section 10 and this section are effective on passage and approval.

(2) Sections 1 through 9 are effective January 1, 1988.

Approved April 20, 1987.

## CHAPTER NO. 579

[HB 888]

AN ACT AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO PROVIDE CHILD CARE ASSISTANCE TO FORMER AFDC RECIPIENTS; APPROPRIATING TO THE DEPARTMENT \$50,000 FOR THE 1989 BIENNIUM FOR A PILOT INCENTIVE PROGRAM FOR OPERATORS OF THE DISPLACED HOMEMAKER PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [This act] may be cited as the "New Horizons Act".

**Section 2. Appropriation.** There is appropriated to the department of labor and industry \$50,000 from the general fund to finance a pilot incentive program for selected operators of the displaced homemaker program, as provided in section 4.

**Section 3. Definitions.** In [sections 3 through 7] the following definitions apply:

(1) "AFDC" means the aid to families with dependent children program provided for in Title 53, chapter 4, part 2.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

**Section 4. Incentive program.** (1) During the biennium ending on June 30, 1989, the department shall pay to selected operators of the displaced homemaker program a \$350 cash bonus for each client who received AFDC benefits for at least 9 consecutive months before entering employment and who has completed at least 6 consecutive months of gainful employment.

(2) A program operator whose client qualified him for a cash bonus under subsection (1) shall receive a second \$350 cash bonus after the same client has completed 1 year of gainful employment.

**Section 5. Child care assistance — eligibility — costs.** (1) For the purpose of assisting AFDC recipients to obtain or retain gainful employment, the department shall provide child care assistance during the biennium ending June 30, 1989, to persons enrolled in selected displaced homemaker programs.

(2) Eligibility for assistance under subsection (1) is limited to persons who have received AFDC for at least 9 months and currently are not eligible for AFDC but would be eligible if they were not gainfully employed.

(3) Assistance under subsection (1) must be provided on an as-needed basis for no longer than the first 6 months of employment and may not exceed \$200 a month per child.

(4) Administrative costs paid to subcontractors may not exceed 10% of the money provided for child care assistance and must be used exclusively for follow-up activities conducted for the program evaluation required by [section 6].

**Section 6. Program evaluation.** (1) The department shall evaluate the extent to which the incentive program and the child care assistance described in [sections 4 and 5] increase:

(a) the number of AFDC recipients who obtain gainful employment; and

(b) the number of former AFDC recipients who continue to be gainfully employed for at least 6 months.

(2) Program evaluation must include a determination, every 6 months from the beginning of employment until June 30, 1989, of the employment status of each person who qualifies a program operator for a cash bonus under [section 4] or who receives child care assistance under [section 5].

**Section 7. Rulemaking authority.** The department shall adopt rules necessary for administering the incentive program provided for in [section 4] and the child care assistance provided for in [section 5]. The rules must establish methods for:

(1) selecting the operators of the displaced homemaker program who may participate in the pilot cash incentive program described in [section 4];

(2) selecting the displaced homemaker programs whose clients may receive child care assistance under [section 5];

- (3) determining eligibility for child care assistance under [section 5];
- (4) determining the employment status of former AFDC recipients as required by [section 6];
- (5) coordinating the child care assistance program with other programs intended to assist AFDC recipients to obtain and retain employment; and
- (6) evaluating the effect of the incentive program and child care assistance on the employment and continued employment of former AFDC recipients.

**Section 8. Codification instruction.** Sections 1 and 3 through 7 are intended to be codified as an integral part of Title 39, chapter 7, and the provisions of Title 39, chapter 7, apply to sections 1 and 3 through 7.

**Section 9. Effective date.** This act is effective July 1, 1987.

Approved April 21, 1987.

## CHAPTER NO. 580

[HB 901]

AN ACT DELETING THE REQUIREMENT OF A GENERAL FUND TRANSFER TO PAY FOR CERTAIN COPIES OF ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER; AMENDING SECTIONS 2-4-312 AND 2-4-313, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-4-312, MCA, is amended to read:

**"2-4-312. Publication and arrangement of register.** (1) The secretary of state shall publish in the register all notices, rules, and interpretations filed with him at least once a month or as directed by the administrative code committee but not more often than twice a month.

(2) He shall send the register without charge to each person listed in 2-4-313(1) and to each member of the legislature requesting the same. He shall send the register to any other person who pays a subscription fee which he shall fix in accordance with 2-4-313(4).

(3) The register must contain three sections, a rules section, a notice section, and an interpretation section:

(a) The rules section of the register must contain all rules filed since the compilation and publication of the preceding issue of the register, together with the concise statement of reasons required under 2-4-305(1).

(b) The notice section of the register must contain all rulemaking notices filed with the secretary of state pursuant to 2-4-302 since the compilation and publication of the preceding register.

(c) The interpretation section of the register must contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

(4) Each issue of the register must contain the issue number and date of the register and a table of contents. Each page of the register must contain the issue number and date of the register of which it is a part. The secretary of state may include with the register information to help the user in relating the register to ARM."

Section 2. Section 2-4-313, MCA, is amended to read:

**"2-4-313. Distribution, costs, and maintenance.** (1) The secretary of state shall distribute copies of ARM and supplements or revisions thereto to the following:

- (a) attorney general, one copy;
- (b) clerk of United States district court for the district of Montana, one copy;
- (c) clerk of United States court of appeals for the ninth circuit, one copy;
- (d) county commissioners or governing body of each county of this state, for use of county officials and the public, at least one but not more than two copies, which may be maintained in a public library in the county seat or in the county offices as the county commissioners or governing body of the county may determine;
- (e) state law library, one copy;
- (f) state historical society, one copy;
- (g) each unit of the Montana university system, one copy;
- (h) law library of the university of Montana, one copy;
- (i) legislative council, two copies;
- (j) library of congress, one copy;
- (k) state library, one copy.

(2) The secretary of state, each county in the state, and the librarians for the state law library and the university of Montana law library shall maintain a complete, current set of ARM, including supplements or revisions thereto. Such persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall also maintain a permanent set of the registers.

(3) The secretary of state shall make copies of and subscriptions to ARM and supplements or revisions thereto and the register available to any person at prices fixed in accordance with subsection (4).

(4) The secretary of state, in consultation with the administrative code committee, shall determine the cost of supplying copies of ARM and supplements or revisions thereto and the register to persons not listed in

*subsection (1).* The cost shall be the approximate cost of publication of such copies, including indexing, printing or duplicating, and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of ARM and supplements or revisions thereto and the register.

(5) The secretary of state shall deposit all fees he collects in an account within the state special revenue fund created for paying the expenses of publication of ARM and the register.

(6) The secretary of state may charge agencies a filing fee for all material to be published in ARM or the register. He shall fix, in consultation with the administrative code committee, the fee to cover the costs of supplying copies of ARM and supplements or revisions thereto and the register to the persons listed in subsection (1). The cost shall be the approximate cost of publication of such copies, including indexing, printing or duplicating, and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of ARM and supplements or revisions thereto and the register."

Section 3. **Effective date.** This act is effective July 1, 1987.

Approved April 21, 1987.

## CHAPTER NO. 581

[SB 298]

AN ACT CREATING A NEW BOARD OF INVESTMENTS BY ABOLISHING THE MONTANA ECONOMIC DEVELOPMENT BOARD AND THE BOARD OF INVESTMENTS; TRANSFERRING TO THE NEW BOARD OF INVESTMENTS THE FUNCTIONS OF THE ABOLISHED BOARDS; ALLOCATING THE NEW BOARD OF INVESTMENTS TO THE DEPARTMENT OF COMMERCE; AMENDING SECTIONS 2-18-103, 7-6-1103, 7-7-2259, 7-7-4259, 17-5-1502, 17-5-1503, 17-5-1604, 17-5-1605, 17-5-1630, 17-6-201, 17-6-302, 80-14-102, 90-6-104, AND 90-8-104, MCA; REPEALING SECTIONS 2-15-1005 AND 2-15-1805 THROUGH 2-15-1807, AND 17-6-307, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Board of investments — allocation — composition — quasi-judicial.** (1) There is a board of investments within the department of commerce.

(2) Except as otherwise provided in this subsection, the board is allocated to the department for administrative purposes as prescribed in 2-15-121. The board may employ an investment officer, an assistant investment officer, and an executive director who have general responsibility for selection and management of the board's staff and for direct investment and economic development activities. The investment officer, assistant



investment officer, and executive director serve at the pleasure of the board. The board shall prescribe the duties and annual salaries of the investment officer, assistant investment officer, executive director, and three professional staff positions.

(3) The board is composed of nine members appointed by the governor as prescribed in 2-15-124. The members are:

(a) one member from the public employees' retirement board provided for in 2-15-1009 and one member from the teachers' retirement board provided for in 2-15-1010. If either member ceases to be a member of the retirement board, the position of that member on the board of investments is vacant, and the governor shall fill the vacancy in accordance with 2-15-124.

(b) seven members who will provide a balance of professional expertise and public interest and accountability and who are informed and experienced in the subject of investments and who are representative of:

- (i) the financial community;
- (ii) small business;
- (iii) agriculture; and
- (iv) labor.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124.

**Section 2. Montana economic development board abolished — functions transferred.** The Montana economic development board, created by 2-15-1805, is abolished, and its functions are transferred to the board of investments created in section 1.

**Section 3. Board of investments abolished — functions transferred.** The board of investments, created by 2-15-1005, is abolished, and its functions are transferred to the board of investments created in section 1.

**Section 4.** Section 7-6-1103, MCA, is amended to read:

**"7-6-1103. Issuance and sale of short-term obligations — procedure.** (1) The issuance of short-term obligations must be authorized by an ordinance of the governing body that fixes the maximum amount of the obligations to be issued or, if applicable, the maximum amount which may be outstanding at any time, the maximum term and interest rate or rates to be borne thereby, the manner of sale, maximum price, form including bearer or registered as provided in Title 17, chapter 5, part 11, terms, conditions, and the covenants of the obligations. Short-term obligations issued under this section shall bear such fixed or variable rate or rates of interest as the governing body considers to be in the best interests of the local government. Variable rates of interest may be fixed in relationship to such standard or index as the governing body designates.

(2) The governing body may sell the short-term obligations at par or at a discount:

(a) at private negotiated sale to the board of *investments* as provided in Title 17, chapter 5, part 16; or

(b) at public sale to any other person. Any public sale must be noticed as provided in 7-7-4434(2)."

Section 5. Section 7-7-2259, MCA, is amended to read:

**"7-7-2259. Delivery of bonds.** (1) If the board of investments is the purchaser of the bonds, the county treasurer shall forward the registered bonds to the department of *commerce*. The department shall deliver them to the state treasurer, and payment therefor shall be made in the manner provided by law.

(2) If the bonds are purchased by other investors, the county treasurer shall deliver the bonds to the purchaser upon receiving full payment therefor."

Section 6. Section 7-7-4259, MCA, is amended to read:

**"7-7-4259. Delivery of bonds.** (1) If the board of investments is the purchaser of the bonds, the city treasurer or town clerk shall forward the registered bonds to the department of *commerce*. The department shall deliver them to the state treasurer, and payment therefor shall be made in the manner provided by law.

(2) If the bonds are purchased by other investors, the city treasurer or town clerk shall deliver the bonds to the purchaser upon receiving full payment therefor."

Section 7. Section 17-5-1502, MCA, is amended to read:

**"17-5-1502. Legislative declaration.** (1) It is the policy of the state of Montana, in the interest of promoting the health, safety, and general welfare of all the people of the state, to increase job opportunities and to retain existing jobs by making available, through the board of *investments*, funds for industrial, commercial, manufacturing, natural resource, agricultural, livestock, recreational, tourist, and health care development.

(2) The legislature finds that:

(a) a vigorous, diversified, and growing economy is the basic source of job opportunities;

(b) protection against unemployment and its economic burdens and the spread of economic stagnation can best be provided by promoting, attracting, stimulating, and revitalizing a diversified economy with contributions from industry, manufacturing, commerce, natural resource development, agriculture, livestock, recreation, tourism, and health care facilities; and

(c) the state of Montana has a responsibility to help create a favorable climate for new and improved job opportunities and a stable, growing, and healthy economy for its citizens by encouraging the development of business."

Section 8. Section 17-5-1503, MCA, is amended to read:

**"17-5-1503. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

- (1) "Board" means the board of *investments* created in [section 1].
- (2) "Bond" means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the board pursuant to this part.
- (3) "Department" means the department of commerce provided for in 2-15-1801.
- (4) "Financial institution" means any bank, savings and loan association, credit union, development credit corporation, insurance company, investment company, trust company, savings institution, or other financial institution approved by the board and maintaining an office in the state.
- (5) "Local government" means the city in which the project is located, if the project is located within an incorporated municipality, or the county if the project is located within the county but outside the boundaries of an incorporated municipality.
- (6) "Major project" means a project whose cost or appraised value exceeds \$800,000.
- (7) "Project" means a project as defined in 90-5-101.
- (8) "Project costs" means the costs of acquiring or improving any project, including the following:
  - (a) the actual cost of acquiring or improving real estate for any project;
  - (b) the actual cost of construction of all or any part of a project, including architects' and engineers' fees;
  - (c) all expenses in connection with the authorization, sale, and issuance of the bonds to finance such acquisition or improvement;
  - (d) bond reserves and premiums for insurance or guaranty of loan payments or lease rentals pledged to pay the bonds; and
  - (e) the interest on such bonds for a reasonable time prior to construction, during construction, and not exceeding 6 months after completion of construction."

Section 9. Section 17-5-1604, MCA, is amended to read:

**"17-5-1604. Definitions.** As used in this part, the following definitions apply:

- (1) "Board" means the board of *investments* created in [section 1].
- (2) "Department" means the department of commerce created in 2-15-1801.
- (3) "Local government unit" means any municipal corporation or political subdivision of the state, including without limitation any city, town, county, school district, or other special taxing district.

(4) "Reserve fund" means the municipal finance consolidation act reserve fund created in 17-5-1630."

Section 10. Section 17-5-1605, MCA, is amended to read:

**"17-5-1605. Montana board of investments to implement.** The Montana board of *investments* may make and enforce orders, rules, and bylaws that are necessary or desirable for the implementation of this part."

Section 11. Section 17-5-1630, MCA, is amended to read:

**"17-5-1630. Reserve fund.** (1) The board shall establish and maintain a municipal finance consolidation act reserve fund, to which there shall be deposited or transferred:

(a) all money appropriated by the legislature for the purposes of the fund in accordance with the provisions of subsection (4);

(b) all proceeds of bonds required to be deposited in the fund by terms of a contract between the board and its bondholders or a resolution of the board with respect to the proceeds of bonds;

(c) the proceeds of any bond issue of the state that is authorized for such purpose;

(d) all other money appropriated by the legislature to the reserve fund; and

(e) any other money or funds of the board that it decides to deposit in the fund.

(2) All money held in the reserve fund shall be used solely for the payment of the principal of or interest on the bonds or notes secured in whole or in part by the fund or the debt service fund payments with respect to the bonds or notes, the purchase or redemption of the bonds or notes, the payment of interest on the bonds or notes, or the payment of any redemption premium required to be paid when the bonds or notes are redeemed prior to maturity. Money in the reserve fund may not be withdrawn at any time in an amount that reduces the fund to an amount less than the sum of minimum reserve requirements established in the resolutions or indentures of the board for the fund except, with respect to bonds or notes secured in whole or in part by the fund, for the purpose of making payment when due of principal, interest, redemption premiums, and debt service fund payments for the payment of which other money pledged is not available.

(3) Money in the reserve fund in excess of the required reserve may be withdrawn at any time by the board and transferred to another fund or account of the board established for purposes of this part, but not to any other fund or account.

(4) Nothing in this section creates a debt or liability of the state.

(5) Notwithstanding any provision of Title 17, chapter 6, the board may lend money for deposit to the reserve fund in an amount equal to any deficiency in the required debt service reserve. The loans shall be made on

such reasonable terms and conditions as the board considers proper, including without limitation terms and conditions providing that the loans need not be repaid until the obligations of the board secured and to be secured by the reserve fund are no longer outstanding."

Section 12. Section 17-6-201, MCA, is amended to read:

**"17-6-201. Unified investment program — general provisions.**

(1) The unified investment program directed by Article VIII, section 13, of the 1972 Montana constitution to be provided for public funds shall be administered by the board of investments in accordance with the prudent expert principle, which requires any investment manager to:

(a) discharge his duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so; and

(c) discharge his duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) Retirement funds may be invested in common stocks of any corporation provided that no investment may be made at any time which would cause the book value of such investments in any retirement fund to exceed 50% of the book value of such fund or would cause the stock of one corporation to exceed 2% of the book value of such retirement fund.

(3) Nothing contained in this section prevents the investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana, if the investment meets the standard of care required by this section. In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(4) The board has the sole authority to invest state funds. No other agency may invest such state funds. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to such fund and a record of the participation of each treasury fund account therein.

(6) The board may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received therefor;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(7) The cost of administering and accounting for each investment fund shall be deducted from the income therefrom, except that such costs of the nonexpendable trust funds shall be paid from income otherwise receivable from the pooled investment fund, and the amounts required for this purpose shall be appropriated by the legislature from the respective investment funds."

Section 13. Section 17-6-302, MCA, is amended to read:

**"17-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of *investments created in [section 1]*.

(2) "Clean and healthful environment" means an environment that is relatively free from pollution which threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(3) "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

(4) "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

(5) "Loan participation" means loans or portions thereof bought from a financial institution.

(6) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests are owned and controlled by residents of Montana.

(7) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenues in the future to the people of Montana, either directly or indirectly.

(8) "Montana economy" means any business activity in the state of Montana, including those which continue existing jobs or create new jobs in Montana.

(9) "Montana in-state investment fund" means the fund established by 17-6-305.

(10) "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund."

Section 14. Section 80-14-102, MCA, is amended to read:

**"80-14-102. (Temporary) Definitions.** As used in this chapter, the following definitions apply:

(1) "Board" means the board of investments established under [section 1].

(2) "Eligible agricultural operation" means any person, corporation, partnership, or other entity which is engaged in the production of agricultural, livestock, poultry, dairy, or fruit or other horticultural products and which:

(a) derives at least 70% of its gross income from such production; and

(b) has total financial liabilities exceeding 30% of its total assets.

(3) "Eligible lending institution" means a financial institution that:

(a) is eligible to make commercial loans;

(b) is a public depository of state funds; and

(c) agrees to participate in the linked deposit program established by this chapter.

(4) "Linked deposit" means an agreement between the board and an eligible financial institution whereby a certificate of deposit for a term not exceeding 6 months is placed by the board with an eligible lending institution at a rate 1% below the current market rate for such a deposit, as determined by the board, provided the institution agrees to lend the value of such deposit, pursuant to the deposit agreement provided in 80-14-202, to eligible agricultural operations at an interest rate not exceeding 2 percentage points greater than the rate payable on the certificate of deposit. (Terminates March 15, 1987—sec. 9, Ch. 5, Sp. L. March 1986.)"

Section 15. Section 90-6-104, MCA, is amended to read:

**"90-6-104. General powers of the board.** The board may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this part, including rules concerning its mortgage, construction, and temporary lending programs;

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under this part;

(5) enter into agreements or other transactions with any federal, state, or local governmental agency, any persons, and any domestic or foreign

partnership, corporation, association, or organization in carrying out this part;

(6) enter into agreements under its rules with sponsors, mortgagors, or lending institutions for the purpose of regulating the analysis, planning, development, and management of housing developments financed in whole or in part by the proceeds of its loans or securities and mortgage purchase programs;

(7) enter into agreements or other transactions with, and accept grants and the cooperation of, any governmental agency in furtherance of this part, including but not limited to the development, leasing, maintenance, operation, and financing of any housing development;

(8) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out this part;

(9) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise; hold, sell, assign, lease, encumber, mortgage, or otherwise dispose thereof; hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or custody; release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption; do any of the foregoing by public or private sale, with or without public bidding; commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement; bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests and the holders of its bonds or notes and consistent with any agreement with such holders;

(10) service and contract and pay for the servicing of loans;

(11) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of housing developments for persons and families of lower income where these services are not otherwise available;

(12) provide general consultative services to housing developments for persons and families of lower income and the residents thereof with respect to counseling and training in management, home ownership, and maintenance where these services are not otherwise available;

(13) invest any funds not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except all investment income from funds of the board less the cost for investment as prescribed by law shall be deposited in the housing authority enterprise fund;

(14) sell its loans or securities to the federal national mortgage association or any other agency or instrumentality of the United States and invest in the capital stock issued by the association or other agency or instrumentality to the extent, if any, required as a condition of such sale;



(15) consent, whenever it deems it necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal or interest, security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(16) collect reasonable interest, fees, and charges in connection with making and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness and in connection with providing technical, consultative, and project assistance services. Interest fees and charges shall be limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses which may be incurred.

(17) procure insurance against any loss in connection with its mortgages and mortgage loans and other assets or property in amounts and from insurers as the board considers desirable or necessary;

(18) act as agent for governmental agencies concerning acquisition, construction, leasing, operation, or management of a housing development;

(19) issue notes and bonds and replace lost, destroyed, or mutilated notes and bonds;

(20) develop special programs for housing developments for veterans of the armed forces of the United States who are unable to acquire safe and sanitary housing through lending institutions by conventional means; and

(21) lend money to the board of *investments* to establish the Montana economic development guaranty fund created by 17-5-1520."

Section 16. Section 90-8-104, MCA, is amended to read:

**"90-8-104. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of *investments* provided for in [section 1].

(2) "Capital base" means equity capital or net worth.

(3) "Certified Montana capital company" means:

(a) a development credit corporation created pursuant to Title 32, chapter 4; or

(b) a profit or nonprofit entity organized and existing under the laws of Montana, created for the purpose of making venture or risk capital available for qualified investments and that has been certified by the board.

(4) "Montana business" means a business which is located or principally based within Montana.

(5) "Qualified investment" means a debt or equity financing of or a purchase and leaseback financing of a Montana business that meets both of the following criteria:

(a) the business is engaged in one or more of the following activities:

- (i) manufacturing;
- (ii) agricultural, fishery, or forestry production and processing;
- (iii) mineral production and processing, except for conventional oil and gas exploration;
- (iv) recognized nonfossil forms of energy generation as defined in 15-32-102(5);
- (v) transportation;
- (vi) research and development of products or processes associated with any of the activities enumerated in (i) through (v) above;
- (vii) wholesale or retail distribution activities for which products produced in Montana comprise 50% or more of the gross sales receipts;
- (viii) any activity conducted in the state for which 50% or more of the gross receipts are derived from the sale of products or services outside Montana; and
- (ix) tourism; and

(b) the business is a small business as defined in rules adopted by the board.

(6) "Qualified Montana capital company" means a certified Montana capital company that has been designated a qualified capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202."

Section 17. Section 2-18-103, MCA, is amended to read:

**"2-18-103. Officers and employees excepted.** Parts 1 and 2 do not apply to the following positions in state government:

- (1) elected officials;
- (2) county assessors and their chief deputy;
- (3) officers and employees of the legislative branch;
- (4) judges and employees of the judicial branch;
- (5) members of boards and commissions appointed by the governor, appointed by the legislature, or appointed by other elected state officials;
- (6) officers or members of the militia;
- (7) agency heads appointed by the governor;
- (8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;
- (10) teachers under the authority of the department of institutions;

(11) investment officer, assistant investment officer, *executive director*, and *three professional staff positions* of the board of investments; and

(12) four professional staff positions under the board of oil and gas conservation."

**Section 18. Repealer.** Sections 2-15-1005, 2-15-1805 through 2-15-1807, and 17-6-307, MCA, are repealed.

**Section 19. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, part 18, apply to section 1.

**Section 20. Effective date.** This act is effective July 1, 1987.

Approved April 22, 1987.

## CHAPTER NO. 582

[HB 455]

AN ACT ESTABLISHING THE RIGHTS OF RESIDENTS OF LONG-TERM CARE FACILITIES; PROVIDING THAT A RESIDENT MUST BE INFORMED OF HIS RIGHTS; REQUIRING THAT THESE RIGHTS BE POSTED IN LONG-TERM CARE FACILITIES; AND REQUIRING THAT FACILITY STAFF BE TRAINED TO IMPLEMENT THESE RIGHTS.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [This act] may be cited as the "Montana Long-Term Care Residents' Bill of Rights".

**Section 2. Findings and purpose.** (1) The legislature finds and declares that many residents of long-term care facilities are isolated from the community and lack the means to assert their rights.

(2) The purpose of [this act] is to:

(a) establish and recognize the fundamental civil and human rights to which residents of long-term care facilities are entitled; and

(b) provide for the education of residents and staff regarding these rights.

**Section 3. Definitions.** In [this act] the following definitions apply:

(1) "Administrator" means a person who is licensed as a nursing home administrator under Title 37, chapter 9, and who administers, manages, or supervises a long-term care facility.

(2) "Authorized representative" means:

(a) a person holding a general power of attorney for a resident;

(b) a person appointed by a court to manage the personal or financial affairs of a resident;

(c) a representative payee;

(d) a resident's next of kin; or

(e) a sponsoring agency.

(3) "Department" means the department of health and environmental sciences.

(4) "Facility" or "long-term care facility" means a facility or part thereof licensed under Title 50, chapter 5, to provide skilled nursing care, intermediate nursing care, or personal care.

(5) "Long-term care ombudsman" means the individual appointed to fulfill the requirement of 42 U.S.C. 3027(a)(12) that the state provide an advocate for residents of long-term care facilities.

(6) "Resident" means a person who lives in a long-term care facility.

**Section 4. Rights of long-term care facility residents.** (1) The state adopts by reference for all long-term care facilities the rights for long-term care facility residents applied by the federal government to facilities that provide skilled nursing care or intermediate nursing care and participate in a medicaid or medicare program (42 U.S.C. 1395x(j) and 1396d(c), as implemented by regulation).

(2) In addition to the rights adopted under subsection (1), the state adopts for all residents of long-term care facilities the following rights:

(a) A resident or his authorized representative must be informed by the facility at least 30 days in advance of any changes in the cost or availability of services, unless to do so is beyond the facility's control.

(b) Regardless of the source of payment, each resident or his authorized representative is entitled, upon request, to receive and examine an explanation of his monthly bill.

(c) Residents have the right to organize, maintain, and participate in resident advisory councils. The facility shall afford reasonable privacy and facility space for the meetings of such councils.

(d) A resident has the right to present a grievance on his own behalf or that of others to the facility or the resident advisory council. The facility shall establish written procedures for receiving, handling, and informing residents or the resident advisory council of the outcome of any grievance presented.

(e) A resident has the right to ask a state agency or a resident advocate for assistance in resolving grievances, free from restraint, interference, or reprisal.

(f) During his stay in a long-term care facility, a resident retains the prerogative to exercise decisionmaking rights in all aspects of his health care, including placement and treatment issues such as medication, special diets, or other medical regimens.

(g) The resident's authorized representative must be notified in a prompt manner of any significant accident, unexplained absence, or significant change in the resident's health status.

(h) A resident has the right to be free from verbal, mental, and physical abuse, neglect, or financial exploitation. Facility staff shall report to the department and the long-term care ombudsman any suspected incidents of abuse under the Montana Elder Abuse Prevention Act, Title 53, chapter 5, part 5.

(i) Each resident has the right to privacy in his room or portion of the room. If a resident is seeking privacy in his room, staff members should make reasonable efforts to make their presence known when entering the room.

(j) In case of involuntary transfer or discharge, a resident has the right to reasonable advance notice to ensure an orderly transfer or discharge. Reasonable advance notice requires at least 21 days' written notification of any interfacility transfer or discharge except in cases of emergency or for medical reasons documented in the resident's medical record by the attending physician.

(k) If clothing is provided to the resident by the facility, it must be of reasonable fit.

(l) A resident has the right to reasonable safeguards for his personal possessions brought to the facility. The facility shall provide a means for safeguarding the resident's small items of value in his room or in another part of the facility where he must have reasonable access to the items.

(m) The resident has the right to have all losses or thefts of personal possessions promptly investigated by the facility. The results of the investigation must be reported to the affected resident.

(3) The administrator of the facility shall adopt whatever additional measures are necessary to implement the residents' rights listed in subsections (1) and (2) and meet any other requirements relating to residents' health and safety that are conditions of participation in a state or federal program of medical assistance.

**Section 5. Long-term care facility to adopt and post residents' rights.** (1) The administrator of each long-term care facility shall:

(a) adopt a written statement of rights applicable to all residents of its facility, including as a minimum the rights listed in [section 4];

(b) provide each resident, at the time of his admission to the facility, a copy of the facility's statement of residents' rights, receipt of which the resident or his authorized representative shall acknowledge in writing;

(c) provide each resident with a written statement of any change in residents' rights at the time the change is implemented, receipt of which the resident or his authorized representative shall acknowledge in writing; and

(d) train and involve staff members in the implementation of residents' rights as expressed in the statement adopted by the facility.

(2) Each staff member shall affirm in writing that he has read and understands the facility's statement of residents' rights.

(3) The administrator of the facility shall post in a conspicuous place visible to the public a copy of the facility's statement of residents' rights, presented in a format that can be read easily by the residents and by the public.

**Section 6. Resident's rights devolve to authorized representative.** The rights and responsibilities listed in [sections 4 and 5] devolve to the resident's authorized representative when the resident:

- (1) exhibits a communication barrier;
- (2) has been found by his physician to be medically incapable of understanding these rights; or
- (3) has been adjudicated incompetent by a district court.

**Section 7. Enforcement of residents' rights.** The requirements of [sections 4, 5, and 6] are included in the minimum standards considered by the department in reviewing applications for license, as provided in 50-5-204.

**Section 8. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 9. Codification instruction.** Sections 1 through 7 are intended to be codified as an integral part of Title 50, chapter 5, and the provisions of Title 50, chapter 5, apply to sections 1 through 7.

**Section 10. Extension of authority.** Any existing authority of the department of health and environmental sciences to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 22, 1987.

## CHAPTER NO. 583

[SB 22]

AN ACT TO AMEND THE MONTANA CAPITAL COMPANY ACT TO REDEFINE "CAPITAL BASE"; TO ALTER CERTIFICATION REQUIREMENTS; TO INCREASE THE AMOUNT OF TAX CREDITS AVAILABLE TO A SINGLE COMPANY AND ALL COMPANIES; TO CONTINUE THE AVAILABILITY OF TAX CREDITS UNTIL JUNE 30, 1991; AMENDING SECTIONS 90-8-104, 90-8-201, 90-8-202, AND 90-8-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 90-8-104, MCA, is amended to read:

**"90-8-104. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the Montana economic development board provided for in 2-15-1805.

(2) "Capital base" means equity capital raised by a certified Montana capital company for which tax credits were claimed under this chapter and additions to net worth caused by increases in retained earnings.

(3) "Certified Montana capital company" means:

(a) a development credit corporation created pursuant to Title 32, chapter 4; or

(b) a profit or nonprofit entity organized and existing under the laws of Montana, created for the purpose of making venture or risk capital available for qualified investments and that has been certified by the board.

(4) "Montana business" means a business which is located or principally based within Montana.

(5) "Qualified investment" means:

(a) a debt or equity financing of a Montana business that meets both of the following criteria:

(i) the business is engaged in one or more of the following activities:

(A) manufacturing;

(B) agricultural, fishery, or forestry production and processing;

(C) mineral production and processing, except for conventional oil and gas exploration;

(D) recognized nonfossil forms of energy generation as defined in 15-32-102(5);

(E) transportation;

(F) research and development of products or processes associated with any of the activities enumerated in (A) through (E) above;

(G) wholesale or retail distribution activities for which products produced in Montana comprise 50% or more of the gross sales receipts;

(H) any activity conducted in the state for which 50% or more of the gross receipts are derived from the sale of products or services outside Montana; and

(I) tourism; and

(ii) the business is a small business as defined in rules adopted by the board; or

(b) a debt or equity financing of a business outside Montana if such investment is likely to produce a qualified investment in Montana, as long as such investment does not exceed 25% of the capital base of the capital company.

(6) "Qualified Montana capital company" means a certified Montana capital company that has been designated a qualified capital company

under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202."

Section 2. Section 90-8-201, MCA, is amended to read:

**"90-8-201. Certification of Montana capital companies.** (1) Every 6 months, commencing January 1, 1984, or 3 months after rules are adopted to implement this chapter, whichever occurs first, the board shall certify Montana capital companies. A company seeking to be certified as a Montana capital company must make written application to the board on forms provided by the board. The application must contain the information required by 90-8-204 and such other information as the board requires. The application and certificate must specify the level of capitalization that the company expects to qualify for the tax credits provided for in 90-8-202.

(2) The application must show that the applicant's purpose is to *increase the general economic welfare of the state of Montana by:*

(a) *making investment capital available to businesses in Montana; and*

(b) *allowing for investment of up to 25% of its capital base in businesses outside Montana if there is a substantial likelihood that such investment will produce a qualified investment in Montana.*

(3) Certifiable applicants include but are not limited to local and community development corporations, small business administration 503 corporations, and small business investment companies.

(4) Certification is a prerequisite to and must be completed before seeking designation as a qualified capital company."

Section 3. Section 90-8-202, MCA, is amended to read:

**"90-8-202. Designation of qualified Montana capital companies — tax credit.** (1) The board shall designate as qualified Montana capital companies those certified companies that have been privately capitalized at a minimum level of \$200,000. A certified company seeking designation as a qualified Montana capital company must make written application to the board on forms provided by the board. The application must contain the information required by 90-8-204 and such other information as the board requires.

(2) (a) The total amount of tax credits authorized for a single qualified company may not exceed \$1,500,000. In the event the capitalization of the company is later increased, the company may apply for authorization of additional tax credits within the foregoing limitation.

(b) The total credits authorized for all companies may not exceed a total of \$1 million prior to June 30, 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may not exceed \$1 million plus any portion of the \$1 million available for authorization before June 30, 1985, that is allocated to qualified companies. *The total credits authorized for all companies between July 1, 1987, and June 30, 1989, may not exceed \$3 million plus any portion of the credits available for authorization before June 30, 1987, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1989, and June*



*30, 1991, may not exceed \$3 million plus any portion of the credits available for authorization before June 30, 1989, that is allocated to qualified companies.*

(3) The credits shall be allocated to qualified companies in the order that completed applications for designation as qualified capital companies are received by the board, and the board shall certify to each such company its appropriate allocation.

(4) Investors in a qualified Montana capital company are entitled to the tax credits provided for in subsection (5). Funds invested in a certified company prior to designation as a qualified Montana capital company may, at the discretion of the investor, be placed in an escrow account in a Montana financial institution pending designation of the company as a qualified Montana capital company.

(5) Subject to the provisions of subsection (2), an individual, small business corporation, partnership, or corporate taxpayer who makes a capital investment in a qualified Montana capital company is entitled to a tax credit equal to 50% of the investment, up to a maximum credit of \$150,000 per taxpayer. The credit may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30 or 31. The credit for investments by a small business corporation electing to be taxed under 15-31-202 or a partnership may be claimed by the small business corporation shareholders or the partners.

(6) The tax credit allowed under subsection (5) is to be credited against the taxpayer's income tax liability for the taxable year in which the investment in a qualified Montana capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be carried back or carried forward in accordance with the provisions of section 46(b) of the Internal Revenue Code, as amended.

(7) The tax credit provided for in this section is available only to those taxpayers who invest in a qualified Montana capital company within 4 years of July 1, 1987."

Section 4. Section 90-8-301, MCA, is amended to read:

**"90-8-301. Qualified investments — penalty.** (1) A qualified Montana capital company receiving investments for which a taxpayer has applied and received a tax credit must use its capital base to make qualified investments according to the following schedule:

(a) at least 30% of its capital base *raised through investments for which tax credits were taken* within 3 years of the date on which the certified company was designated as a qualified capital company by the board, and *at least 30% of its capital base caused by increases in retained earnings within 3 years of the end of the fiscal year during which the retained earnings were earned;*

(b) at least 50% of its capital base *raised through investments for which tax credits were taken* within 4 years of the date on which the certified company was designated as a qualified capital company by the board, and

*at least 50% of its capital base caused by increases in retained earnings within 4 years of the end of the fiscal year during which the retained earnings were earned; and*

*(c) at least 70% of its capital base raised through investments for which tax credits were taken within 5 years of the date on which the certified company was designated as a qualified capital company by the board, and at least 70% of its capital base caused by increases in retained earnings within 5 years of the end of the fiscal year during which the retained earnings were earned.*

(2) Following each annual examination, the commissioner of financial institutions shall notify the department of revenue of any companies that are not in compliance with this section.

(3) A qualified Montana capital company that fails to make qualified investments pursuant to subsection (1) shall pay to the department of revenue a penalty equal to all of the tax credits allowed to the taxpayers investing in that company during that time period, with interest at 1% a month from the date the tax credits were certified as allocated to the qualified Montana capital company. The department of revenue may abate the penalty if the capital company establishes reasonable cause for the failure to make qualified investments pursuant to subsection (1) and that the failure was not due to neglect on the part of the company. The department of revenue shall deposit any amount received under this subsection to the credit of the state general fund."

**Section 5. Extension of authority.** Any existing authority of the Montana economic development board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 6. Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

**Section 7. Effective date.** This act is effective July 1, 1987.

Approved April 23, 1987.

## CHAPTER NO. 584

[SB 44]

**AN ACT TO TRANSFER LARGER TRUCKS AND TRAILERS FROM CLASS TEN PROPERTY TO CLASS EIGHT PROPERTY FOR TAXATION PURPOSES; AMENDING SECTIONS 15-6-138 AND 15-6-140, MCA; AND PROVIDING AN EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-6-138, MCA, is amended to read:

**"15-6-138. Class eight property — description — taxable percentage.** (1) Class eight property includes:

- (a) all agricultural implements and equipment;
- (b) all mining machinery, fixtures, equipment, tools, and supplies except:
  - (i) those included in class five; and
  - (ii) coal and ore haulers;
- (c) all manufacturing machinery, fixtures, equipment, tools, and supplies except those included in class five;
- (d) all trailers, *including those prorated under 15-24-102*, except those subject to a fee in lieu of property tax;
- (e) aircraft;
- (f) all goods and equipment intended for rent or lease, except goods and equipment specifically included and taxed in another class;
- (g) *trucks having a rated capacity of more than 1 ½ tons, including those prorated under 15-24-102; and*
- (h) all other machinery except that specifically included in another class.

(2) Class eight property is taxed at 11% of its market value."

Section 2. Section 15-6-140, MCA, is amended to read:

**"15-6-140. Class ten property — description — taxable percentage.** (1) Class ten property includes:

- (a) radio and television broadcasting and transmitting equipment;
- (b) cable television systems;
- (c) coal and ore haulers;
- (d) theater projectors and sound equipment; and
- (e) all other property not included in any other class in this part except that property subject to a fee in lieu of a property tax.

(2) Class ten property is taxed at 16% of its market value."

**Section 3. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Effective date.** This act is effective July 1, 1987.

Approved April 23, 1987.

**CHAPTER NO. 585**

[SB 100]

AN ACT TO CLARIFY THE TYPES OF VEHICLES SUBJECT TO NEW CAR SALES TAX BY EXCLUDING TRAILERS, SEMITRAILERS, AND HOUSETRAILERS; AMENDING SECTIONS 61-3-502 AND 61-3-605, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-3-502, MCA, is amended to read:

**"61-3-502. Sales tax on new motor vehicles — exemptions.** (1) In consideration of the right to use the highways of the state, there is imposed a tax upon all sales of new motor vehicles, *excluding trailers, semitrailers, and housetrailers*, for which a license is sought and an original application for title is made. The tax shall be paid by the purchaser when he applies for his original Montana license through the county treasurer.

(2) Except as provided in subsection (4), the sales tax shall be:

(a) 1 ½% of the f.o.b. factory list price or f.o.b. port-of-entry list price, during the first quarter of the year or for a registration period other than a calendar year or calendar quarter;

(b) 1 ½% of the list price during the second quarter of the year;

(c) ¾ of 1% during the third quarter of the year;

(d) ¾ of 1% during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the f.o.b. factory list price or f.o.b. port-of-entry list price, the department may use published price lists.

(4) The new car sales tax on vehicles subject to the provisions of 61-3-313 through 61-3-316 is 1 ½% of the f.o.b. factory list price or f.o.b. port-of-entry list price regardless of the month in which the new vehicle is purchased.

(5) The proceeds from this tax shall be remitted to the state treasurer every 30 days for credit to the state highway account of the state special revenue fund.

(6) The new vehicle is subject to the light vehicle license fee, if applicable, but is not subject to any other assessment, taxation, or fee in lieu of tax during the calendar year in which the original application for title is made.

(7) (a) The applicant for original registration of any new and unused motor vehicle, or a new motor vehicle furnished without charge by a dealer to a school district for use as a traffic education motor vehicle by a school district operating a state-approved traffic education program within the state, whether or not previously licensed or titled to the school district

(except a mobile home as defined in 15-1-101(1)), acquired by original contract after January 1 of any year, is required, whenever the vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by this section irrespective of whether the vehicle was in the state of Montana on January 1 of the year.

(b) No motor vehicle may be registered or licensed under the provisions of this subsection unless the application for registration is accompanied by a statement of origin to be furnished by the dealer selling the vehicle, showing that the vehicle has not previously been registered or owned, except as otherwise provided herein, by any person, firm, corporation, or association that is not a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(8) (a) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from such limits are exempt from subsection (1).

(b) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are also exempt from subsection (1).

(c) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from subsection (1) when moving to or from a dealer's place of business when unloaded or loaded with dealer's property only, and in the case of vehicles having a gross loaded weight of less than 24,000 pounds, while being demonstrated in the course of the dealer's business."

Section 2. Section 61-3-605, MCA, is amended to read:

**"61-3-605. Penalty for nonpayment of sales tax.** Any owner or operator of a *motor vehicle* who violates any provision of 61-3-502 is guilty of a misdemeanor and shall be punished by a fine of not more than \$300, or by a sentence of not more than 60 days in the county jail, or both."

Section 3. **Effective date.** This act is effective July 1, 1987.

Approved April 23, 1987.

## CHAPTER NO. 586

[SB 118]

AN ACT TO CLARIFY THAT THE DIVISION OF WORKERS' COMPENSATION MAY CONCURRENTLY PURSUE CIVIL AND CRIMINAL ACTIONS AGAINST AN UNINSURED EMPLOYER; TO CREATE THE CRIMINAL OFFENSE OF EMPLOYER MISCONDUCT; TO IMPOSE PENALTIES FOR THE COMMISSION OF EMPLOYER MISCONDUCT; AMENDING SECTION 39-71-507, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-71-507, MCA, is amended to read:

**"39-71-507. Division to order uninsured employer to cease operations — noncompliance with order a misdemeanor — coordination of remedies.** (1) When the division discovers an uninsured

employer, it shall order him to cease operations until he has elected to be bound by a compensation plan.

(2) An employer who does not comply with the division's order to cease operations is guilty of a misdemeanor. *Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the division from enforcing its order by a civil action.*

(3) *The division may institute and maintain in the name of the state, through the attorney general or the county attorney of the county in which the violation occurs, an action for an injunction order or other civil remedy in district court to enforce its order to cease operations.*

(4) *The remedies provided in 39-71-506 and subsections (2) and (3) of this section are not mutually exclusive and may be pursued concurrently."*

**Section 2. Employer misconduct.** (1) A person who is an employer, as defined in 39-71-117, commits the offense of employer misconduct if he knowingly or purposely:

(a) avoids his responsibility to provide coverage for his employees as required by 39-71-401;

(b) misrepresents or falsifies employment records or information, including but not limited to understating the amount of payroll or the number of his employees; or

(c) refuses to pay premiums that he is obligated to pay under compensation plan No. 2, as provided in Title 39, chapter 71, part 22, or compensation plan No. 3, as provided in Title 39, chapter 71, part 23.

(2) A person convicted of the offense of employer misconduct shall be fined an amount not to exceed \$50,000 or imprisoned in the state prison for any term not to exceed 10 years, or both.

**Section 3. Extension of authority.** Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Codification instruction.** Section 2 is intended to be codified as an integral part of Title 45, chapter 7, and the provisions of Title 45, chapter 7, apply to section 2.

**Section 5. Effective date.** This act is effective July 1, 1987.

Approved April 23, 1987.

**CHAPTER NO. 587**

[SB 162]

AN ACT GENERALLY REVISING THE LAWS RELATING TO PROPERTY TAX COLLECTIONS, PROPERTY TAX DELINQUENCIES, AND THE TAX DEEDING PROCESS; AMENDING SECTIONS 7-6-4414, 7-21-2104, 15-16-101, 15-16-102, 15-16-111 THROUGH 15-16-115, 15-16-117, 15-16-301 THROUGH 15-16-303, 15-16-305, 15-16-401, 15-16-402, 15-16-404, 15-16-504, 15-16-601, 15-16-701 THROUGH 15-16-704, 15-23-704, 15-24-302, 20-15-403, 76-13-211, 85-7-2152, 85-7-2154 THROUGH 85-7-2156, AND 85-7-2163, MCA; REPEALING SECTIONS 15-16-116, 15-16-501, 15-16-502, 15-16-505, 15-17-101, 15-17-102, 15-17-111 THROUGH 15-17-113, 15-17-201 THROUGH 15-17-208, 15-17-301 THROUGH 15-17-305, 15-17-311, 15-17-312, 15-17-901 THROUGH 15-17-903, 15-18-101 THROUGH 15-18-108, 15-18-201 THROUGH 15-18-205, 15-18-301 THROUGH 15-18-309, AND 15-18-401 THROUGH 15-18-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** Except as otherwise specifically provided, when terms mentioned in [sections 1 through 26] are used in connection with taxation, they are defined in the following manner:

(1) "Certificate" or "tax sale certificate" means the document described in [section 6].

(2) "County" means any county government and includes those classified as consolidated governments.

(3) "Property tax lien" means a lien acquired by the payment at a tax sale of all outstanding delinquent taxes, including penalties, interest, and costs.

(4) "Purchaser" means any person, other than the person to whom the property is assessed, who pays at the tax sale the delinquent taxes, including penalties, interest, and costs, and receives a certificate representing a lien on the property or who is otherwise listed as the purchaser. An assignee is a purchaser.

(5) "Tax", "taxes", or "property taxes" means all ad valorem property taxes, property assessments, fees related to property, and assessments for special improvement districts and rural special improvement districts.

(6) "Tax sale" means:

(a) with respect to real property and improvements, the offering for sale by the county treasurer of a property tax lien representing delinquent taxes, including penalties, interest, and costs; and

(b) with respect to personal property, the offering for sale by the county treasurer of personal property on which the taxes are delinquent or other personal property on which the delinquent taxes are a lien.

**Section 2. Notice of pending tax sale.** (1) The county treasurer shall publish or post a notice of pending tax sale. The notice must include:

(a) the specific time, date, and place an interest in the property on which the taxes are delinquent will be offered for sale;

(b) a statement that the delinquent taxes, including penalties, interest, and costs, are a lien upon the property and that unless the delinquent taxes, penalties, interest, and costs are paid prior to the time of the tax sale, the lien will be offered for sale at the time and place specified in subsection (1)(a).

(2) The notice required in subsection (1) must also include a statement that a list of each property on which the taxes are delinquent is on file in the office of the county treasurer and open to inspection. The list must include:

(a) the name and address of the person to whom the delinquent taxes are assessed;

(b) the amounts of the delinquent taxes, all accrued penalties, interest, and other costs; and

(c) a statement that penalties, interest, and costs will be added to delinquent taxes.

(3) The notice must be published once a week for 3 consecutive weeks in the newspaper designated for county printing as provided in 7-5-2411. If no newspaper is published in the county, the notice must be posted by the county treasurer in three public places. The notice must be first published or posted on or before the last Monday in June.

(4) Except as provided in [section 5(2)], the sale may not be held less than 21 days or more than 28 days from the date of first publication or first day the notice is posted.

(5) The sale must be held at the county courthouse.

(6) Property on which taxes are delinquent but for which proper notification was not made may not be included in the current year's notice and sale. In the event of improper notification, the sale may be held on all property properly noticed.

**Section 3. Copy of notice to be filed with county clerk — affidavit.** (1) Immediately following publication or posting of the notice required in [section 2], the county treasurer shall file a copy of the notice with the county clerk. The copy must be accompanied by an affidavit signed by the county treasurer stating:

(a) the name of the newspaper and its address of publication; and

(b) the dates the notice was published.

(2) If no newspaper is published in the county, the affidavit must list the locations and date of the posting required by [section 2].

(3) The affidavit filed under subsection (1) or (2) is prima facie evidence of all the facts stated therein.



**Section 4. Irregular assessment.** If the county treasurer discovers, prior to the tax sale, that property on which the taxes are delinquent has been irregularly assessed, he may not offer the property or a property tax lien for sale. In such event, the taxes on the property must be listed on the assessment book as uncollected for the year in which they were due, and they must be assessed and collected during the succeeding year as taxes are regularly assessed and collected.

**Section 5. Conduct of tax sale.** (1) On the date and at the time and place specified in the notice, the county treasurer shall, except as provided in [section 4], begin the tax sale of all property described in the list required in [section 2(2)]. The tax sale must continue until the county treasurer declares it over, but must continue for a period of not less than 1 day. The treasurer is not required to read the list but shall make a copy of the list available for public inspection during regular business hours.

(2) The treasurer may postpone the day of commencing the sale on a day-to-day basis without publishing a new notice, provided that the sale is held within 3 weeks from the day first fixed.

(3) Property assessed under [section 12] that has not been sold to a purchaser other than the county may, at the discretion of the county treasurer, be offered for sale at tax sales subsequent to the sale at which it was first offered.

**Section 6. Tax sale certificate.** (1) Upon receipt of all delinquent taxes, penalties, interest, and costs, the county treasurer shall prepare a tax sale certificate that must contain:

- (a) the date on which the property taxes became delinquent;
- (b) the date on which a property tax lien was sold at a tax sale;
- (c) the name and address of record of the person to whom the taxes were assessed;
- (d) a description of the property on which the taxes were assessed;
- (e) the name and mailing address of the purchaser;
- (f) the amount paid to liquidate the delinquency, including a separate listing of the amount of the delinquent taxes, penalties, interest, and costs;
- (g) a statement that the certificate represents a lien on the property that may lead to the issuance of a tax deed for the property;
- (h) a statement specifying the date on which the purchaser will be entitled to a tax deed; and
- (i) an identification number corresponding to the tax sale certificate number recorded by the county treasurer as required in [section 7].

(2) The certificate must be signed by the county treasurer and delivered to the purchaser. A copy of the certificate must be filed by the treasurer in the office of the county clerk.

**Section 7. Treasurer to record tax sales.** Prior to delivering the tax sale certificate to the purchaser, the county treasurer shall make a record of the tax sale. The record must include:

- (1) the name and address of the purchaser;
- (2) the date on which the tax lien was purchased;
- (3) a description of the property on which the certificate is a lien, which description must correspond to the description listed on the certificate;
- (4) the amount paid to liquidate the delinquency, including a separate listing of the amount of the delinquent taxes, penalties, interest, and costs; and
- (5) a number identifying the tax sale certificate issued upon payment of the delinquency.

**Section 8. County as purchaser — assignment.** (1) If no person pays the delinquent taxes, including penalties, interest, and costs, on the first day of the tax sale, the county is considered to be the purchaser.

(2) (a) After the 21st day following the first day of the tax sale, the county treasurer shall identify and list all property that was sold at the tax sale. He shall also record that the county is the purchaser of all property remaining unsold and upon which the taxes remain delinquent.

(b) The record of the property in which the county is listed as the purchaser may be made by the treasurer by a separate tax sale certificate of each property or by reference to the property as recorded in the list required under 15-16-301.

(3) A property tax lien of the county in any property acquired by the county under subsection (1) must be assigned by the county treasurer as provided in [section 11] upon the payment of all delinquent taxes, including penalties, interest, and costs specified in [section 11].

**Section 9. Resale for nonpayment.** (1) If a purchaser other than the county does not pay the delinquent taxes, including penalties, interest, and costs, before 10 a.m. on the next business day following the day of purchase at a tax sale, the property must be made available for sale for the amount of the delinquent taxes, including penalties, interest, and costs, on the following business day of the sale, except as provided in subsection (2).

(2) If the sale was made on the last day of the tax sale and payment was not received as provided in subsection (1), the county is considered to be the purchaser as provided in [section 8].

**Section 10. Disposition of money from tax sale.** All money received from purchasers for delinquent taxes, penalties, interest, and costs must be deposited in the county treasury. The money received, other than costs, must be credited to the various funds to which the taxes would have originally been distributed and in the same proportion as the taxes would have originally been distributed. Any money received for costs or any money remaining after crediting the separate funds must be deposited to the credit of the county general fund.

**Section 11. Assignment of rights — form.** (1) Any tax sale certificate or other official record in which the county is listed as the purchaser must be assigned by the county treasurer to any person who pays to the

county the amount of the delinquent taxes, including penalties, interest, and costs, accruing from the date of delinquency.

(2) The assignment made under subsection (1) must be in the form of an assignment certificate in substantially the following form:

I, ....., the treasurer of .... County, state of Montana, hereby certify that a tax sale for tax year 19.., in the county of ....., was held on .... (date), for the purpose of liquidating delinquent assessments, and I further certify that a property tax lien for delinquent taxes in the following property: (insert property description) was offered for sale and that there was no purchaser of the property tax lien. Accordingly, the county was listed as the purchaser as required by [section 8], MCA. As of the date of this certificate, the delinquency, including penalties, interest, and costs amounting to \$...., has not been liquidated by the person to whom the property was assessed, nor has the delinquency been otherwise redeemed.

There having been no liquidation of the delinquency or other redemption, I hereby assign all rights, title, and interest of the county of ....., state of Montana, acquired in such property by virtue of the sale to .... (name and address of assignee) to proceed to obtain a tax deed to the property or receive payment in case of redemption as provided by law.

Witness my hand and official seal of office this .... day of ....., 19...

..... County Treasurer  
..... County

(3) An assignment made by a purchaser other than the county, by an assignee of the county, or by a previous assignee may be made for any consideration whatsoever. An assignment so made is legal and binding only upon filing with the county treasurer a statement that the purchaser's or other assignee's interest in the property has been assigned. The statement must contain:

- (a) the name and address of the new assignee;
- (b) the name and address of the original purchaser of the tax sale certificate;
- (c) the name and address of each previous assignee, if any;
- (d) a description of the property upon which the property tax lien was issued, which description must contain the same information as contained in the tax sale certificate or assignment certificate, as appropriate;
- (e) the signature of the party, be it purchaser or assignee, making the assignment;
- (f) the signature of the new assignee; and
- (g) the date on which the statement was signed.

(4) If the certificate described in subsection (1) or the statement described in subsection (3) is lost or destroyed, the county treasurer shall, upon adequate proof and signed affidavit by the assignee that loss or destruction has occurred, issue a duplicate certificate to the assignee.

(5) The provisions of this section apply to any sale of land for which a treasurer's deed was not issued on or before March 5, 1917, or for which a tax deed was not issued on or before [the effective date of this act], and the holder of any certificate described in subsection (1) has the same rights, powers, and privileges with regard to securing a deed as any purchaser of land at a tax sale may now have.

**Section 12. Assessment of property sold at tax sale.** (1) The assessment of property on which a tax sale certificate has been issued or for which the county is listed as the purchaser as provided in [section 8] continues in the same manner as other property is assessed.

(2) If any assessed taxes are not paid when due, they are delinquent.

**Section 13. Sale not voided by misnomer of ownership.** When a tax sale certificate is acquired as provided in [section 6] or when the county is listed as the purchaser as provided in [section 8] and the taxes were properly assessed on the property of a particular person, no misnomer of ownership or other mistake relating to ownership affects the sale or renders it void or voidable.

**Section 14. Voided sale — refund — limitation on action for royalty interest.** (1) If a tax sale held under the provisions of [sections 1 through 15] is declared void by a court for irregularity in the assessment, levy, or sale, the money paid by the purchaser at the sale or by any assignee must be refunded, with interest at the rate payable upon delinquencies as provided in 15-16-102 from the date of the payment, to the purchaser or owner of the tax sale certificate, together with any penalty paid by the purchaser.

(2) Following the payment of a refund as provided in subsection (1), the county is considered the purchaser and has a property tax lien upon the property for the legal taxes on the property accruing from the date of delinquency, plus penalties and interest as provided in 15-16-102. Any money refunded that was received as provided in [section 6] and distributed by the treasurer to the state or a city, town, or district, respectively, must be charged to the state, city, town, or district by the treasurer and deducted from the next money due the state, city, town, or district, respectively, on account of taxes paid or collected. A purchaser of a property tax lien or owner thereof by assignment where sales have been made by a city or town which by resolution or ordinance collects its own taxes instead of having the same collected by the county treasurer must be reimbursed in similar manner and in similar circumstances out of the city or town treasury upon order of the mayor or, where applicable, the city manager or chairman of the city commission. The city or town clerk or city or town treasurer, as appropriate, shall make proper charges and deductions against the respective funds of the city or town upon the next collection of taxes by the city or town.

(3) The purchaser has a lien upon the property for the amount of taxes, penalties, interest, and costs paid, with the interest to be at the rate specified for delinquencies in 15-16-102. If the purchaser is in possession of the property and resides thereon, he may not be ejected from the property until his lien has been liquidated.

(4) All affirmative defenses at law or equity, including but not limited to estoppel, laches, and adverse possession, may apply in a suit brought to challenge the title to a royalty interest in land claimed to have been acquired by a county by tax deed.

(5) An action against a county to recover a royalty interest in land acquired by the county by tax deed must be brought within the period prescribed in 27-2-210.

**Section 15. Sale of personalty for delinquent taxes — fee — disposition of proceeds — unsold property.** (1) The tax on personal property may be collected and payment enforced by the seizure and sale of any personal property in the possession of the person assessed. Seizure and sale are authorized at any time after the date the taxes become delinquent or by the institution of a civil action for its collection in any court of competent jurisdiction. A resort to one method does not bar the right to resort to any other method. Any of the methods provided may be used until the full amount of the tax is collected.

(2) The provisions of 15-16-113 and this section apply to a seizure and sale under subsection (1).

(3) A sale under subsection (1) must be at public auction. The minimum bid for any property offered for sale must be of a sufficient amount to pay the delinquent taxes, including penalties, interest, and costs.

(4) For seizing and selling personal property, the treasurer shall charge \$25, plus the mileage allowance provided by law to the sheriff, plus reasonable expenses for seizing, handling, keeping, or caring for any property so seized. The charge and other costs may only be charged when property is actually seized and offered for sale or sold.

(5) On payment of the price bid for any property sold as provided in this section, delivery of the property, with a bill of sale, vests the title of the property in the purchaser.

(6) (a) All money collected from the sale of property in liquidation of the delinquency, including delinquent taxes, penalties, and interest, but not costs, must be credited by the treasurer to the appropriate funds.

(b) Any money collected in excess of the delinquent tax penalties, interest, costs, and charges must be returned to the person owning the property prior to the sale, if known. If the person does not claim the excess immediately following the sale, the treasurer shall deposit the money in the county treasury for a period of 1 year from the date of sale. If the person has not claimed the excess within 1 year from the date of sale, the county treasurer shall deposit the amount in the county general fund and the person has no claim to it thereafter.

(7) Any property seized for the purpose of liquidating a delinquency by a tax sale that remains unsold following a sale may be left at the place of sale at the risk of the owner.

**Section 16. Time for redemption — interested party.** (1) Redemption of a property tax lien acquired at a tax sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest,

the occupant of the property, or any interested party within 36 months from the date of the first day of the tax sale or within 60 days following the giving of the notice required in [section 21], whichever is later.

(2) For the purposes of [sections 16 through 26], an "interested party" includes a mortgagee, vendor of a contract for deed or his successor in interest, lienholder, or other person who has a properly recorded interest in the property. A person having an interest in property on which there is a property tax lien but which interest is not properly recorded is not an interested party for the purposes of [sections 16 through 26].

**Section 17. Redemption from property tax lien.** In all cases where a property tax lien has been acquired, the purchaser may pay the subsequent taxes assessed against the property. Upon the redemption of the property from the property tax lien, the redemptioner shall, in addition to the amount for which the property tax lien was sold, including penalties, interest, and costs, pay the subsequent taxes paid by the purchaser with interest thereon, at the rate established for delinquent taxes in 15-16-102, from the date of the payment of the taxes, penalties, interest, and costs.

**Section 18. Treasurer to record redemptions.** Upon payment of all delinquent taxes, including penalties, interest, and costs, by the person to whom taxes were assessed or his agent to the county treasurer and refunded to the person listed as purchaser as provided in [section 6(1)(e)], [section 7], or [section 8] or distributed as provided in [section 19], the word "redeemed", the date, and the name of the redemptioner must be marked on the tax sale certificate or in the record required in [section 8] by the county treasurer.

**Section 19. Distribution of redemption proceeds.** (1) When a property tax lien for which the county is listed as purchaser is redeemed, the money received from the redemption, including penalties and interest but not costs, must be distributed to the credit of the various funds to which the taxes would have originally been distributed and in the same proportion as the taxes would have originally been distributed.

(2) (a) When a property tax lien for which the recorded purchaser is other than the county is redeemed, the money received from the redemption, including penalties and interest but not costs, must be distributed to the person listed as the purchaser on the tax sale certificate and in the record kept by the county treasurer.

(b) (i) The distribution must be made by certified mail by the county treasurer to the purchaser at the address listed on the tax sale certificate as provided in [section 6(1)(e)].

(ii) If the money distributed to the purchaser is returned unopened to the county treasurer, the treasurer shall publish once a week for 2 consecutive weeks in the official newspaper of the county a notice stating that:

(A) the county treasurer is in possession of money belonging to the purchaser for the redemption of the delinquency on the property named in the tax sale certificate;

(B) the money will be held by the county treasurer for a period of 1 year from the date of publication; and

(C) if the money is not claimed by the purchaser within the 1-year period, the purchaser relinquishes all claim to the money and the money will be credited to the county general fund.

(3) The publication required in subsection (2)(b)(ii) must be made at least annually, but the 1-year period described in subsection (2)(b)(ii)(B) may not begin until the date of publication.

(4) The county treasurer shall keep an accurate account of all money paid in redemption, including a separate accounting of other delinquent taxes, interest, penalties, and costs, and when and to whom distributed.

**Section 20. Tax deed — fee.** (1) Except as provided in subsection (3), if the property tax lien is not redeemed in the time allowed under [section 16], the county treasurer shall grant the purchaser a tax deed for the property. The deed must contain the same information as is required in a tax sale certificate under [section 6], except the description of the property must be the full legal description, and a statement that the property tax lien was not redeemed during the redemption period provided in [section 16].

(2) (a) Except as provided in subsection (2)(b), the county treasurer shall charge the purchaser \$25 plus all actual costs incurred by the county in giving the notice or assisting another purchaser or assignee in giving the notice required in [section 21] for making the deed, which fee must be deposited in the county general fund.

(b) If the purchaser is the county, no fee may be charged for making the deed.

(c) Reasonable costs incurred by the county in searching the county records to identify persons entitled to notice are considered part of the actual costs of the notice provided in subsection (2)(a).

(3) If the purchaser is the county and no assignment has been made, the county treasurer may not issue a tax deed to the county unless the board of county commissioners, by resolution, directs him to issue a tax deed.

(4) Deeds issued to purchasers must be recorded by the county clerk as provided in Title 7, chapter 4, part 26, except that when the county is the purchaser and subsequent tax deed holder, the county clerk may not charge a fee for recording the deed.

**Section 21. Notice — proof of notice — penalty for failure to notify.** (1) Not more than 60 days prior to and not more than 60 days following the expiration of the redemption period provided in [section 16], a notice must be given as follows:

(a) for each property for which there has been issued to the county a tax sale certificate or for which the county is otherwise listed as the purchaser or assignee, the county clerk shall notify all persons considered interested parties in the property and the current occupant of the property, if any, that a tax deed may be issued to the county unless the property tax lien is redeemed prior to the expiration date of the redemption period; or

(b) for each property for which there has been issued a tax sale certificate to a purchaser other than the county, or for which an assignment has been made, the purchaser or assignee, as appropriate, shall notify all persons considered interested parties in the property, if any, that a tax deed will be issued to the purchaser or assignee unless the property tax lien is redeemed prior to the expiration date of the redemption period.

(2) (a) Except as provided in subsection (2)(b), if the county is the purchaser, no assignment has been made, and the board of county commissioners has not directed the county treasurer to issue a tax deed during the period described in subsection (1), but the board of county commissioners at a time subsequent to the period described in subsection (1) does direct the county treasurer to issue a tax deed, the county clerk must provide notification to all interested parties and the current occupant, if any, in the manner provided in subsection (1)(a). The notification required under this subsection must be made not less than 60 days or more than 90 days prior to the date on which the county treasurer will issue the tax deed.

(b) If the county commissioners direct the county treasurer to issue a tax deed within 6 months after giving the notice required by subsection (1)(a), no additional notice need be given.

(3) (a) If a purchaser other than the county or an assignee fails or neglects to give notice as required by subsection (1)(b), which failure or neglect is evidenced by failure of the purchaser or assignee to file proof of notice with the county clerk as required in subsection (7), the county treasurer shall proceed to give notice in the manner provided in subsection (1)(a).

(b) Notice given under this subsection (3) must be given not less than 60 days or more than 90 days prior to the date on which the county treasurer will issue the tax deed.

(c) A purchaser or assignee who fails to give notice as required by subsection (1)(b), thereby forcing notification to be given under this subsection (3), must be charged a penalty of \$500 plus all actual costs of notification incurred by the county proceeding under this subsection (3).

(4) The notice required under subsections (1) through (3) must be made by certified mail to each interested party and the current occupant, if any, of the property. The address to which the notice must be sent is, for each interested party, the address disclosed by the records in the office of the county clerk and, for the occupant, the street address or other known address of the subject property.

(5) In all cases in which the address of an interested party is not known, the person required to give notice shall, within the period described in subsection (1), or not less than 60 days or more than 90 days prior to the date upon which the county treasurer will otherwise issue a tax deed, whichever is appropriate, publish once a week for 2 successive weeks in the official newspaper of the county or such other newspaper as the board of county commissioners may by resolution designate, a notice containing the information contained in subsection (6), plus:

(a) the name of the interested party for whom the address is unknown;



- (b) a statement that the address of the interested party is unknown;
  - (c) a statement that the published notice meets the legal requirements for notice of a pending tax deed issuance; and
  - (d) a statement that the interested party's rights in the property may be in jeopardy.
- (6) The notices required by subsections (1) through (3) and (5) must contain the following:
- (a) a statement that a property tax lien exists on the property as a result of a property tax delinquency;
  - (b) a description of the property on which the taxes are or were delinquent, which description must be the same as the description of the property on the tax sale certificate or in the record described in [section 8(2)(b)];
  - (c) the date that the property taxes became delinquent;
  - (d) the date that the property tax lien attached as the result of a tax sale;
  - (e) the amount of taxes due, including penalties, interest, and costs, as of the date of the notice of pending tax deed issuance, which amount must include a separate listing of the delinquent taxes, penalties, interest, and costs that must be paid for the property tax lien to be liquidated;
  - (f) the name and address of the purchaser;
  - (g) the name of the assignee if an assignment was made as provided in [section 11];
  - (h) the date that the redemption period expires or expired;
  - (i) a statement that if all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to the date on which the redemption period expires or on or prior to the date on which the county treasurer will otherwise issue a tax deed that a tax deed may be issued to the purchaser on the day following the date on which the redemption period expires or on the date on which the county treasurer will otherwise issue a tax deed; and
  - (j) the business address and telephone number of the county treasurer who is responsible for issuing the tax deed.
- (7) In all cases, proof of notice in whatever manner given must be filed by the county clerk, county treasurer, purchaser, or assignee, as appropriate, with the county clerk not less than 30 days following the mailing or publication of the notice. Once filed, the proof of notice is prima facie evidence of the sufficiency of the notice.
- (8) A county or any officer of a county may not be held liable for any error of notification.

**Section 22. Form of tax deed — prima facie evidence.** (1) The form of a tax deed issued under the provisions of [sections 16 through 26], executed by a county treasurer, must be made in substance as follows:

This deed is made by .... (name of county treasurer), county treasurer of the county of .... (name of county), in the state of Montana, to .... (name of purchaser, his agent, or assignee), as provided by the laws of the state of Montana:

Whereas, there was assessed for .... (year) the following real property: (description of the property); and

Whereas, the taxes for .... (year) levied against the property amounted to \$....; and

Whereas, the taxes were not paid and a property tax lien for the payment of the taxes attached and was sold to .... (name of purchaser, his agent, or assignee) on .... (date, including year) for the sum of \$...., which amount included delinquent taxes in the amount of \$...., penalties in the amount of \$...., interest in the amount of \$...., and other costs in the amount of \$....; and

Whereas, a tax sale certificate was duly issued and filed or the sale otherwise recorded as required by law; and

Whereas, not less than 60 days or more than 90 days prior to this date, notice was given to interested parties that the issuance of a tax deed was pending.

Now, therefore, I, .... (treasurer's name), county treasurer of the county of ...., in the state of Montana, in consideration of the sum of \$.... paid, hereby grant to .... (name of purchaser, his agent, or assignee) all the property situated in .... County, state of Montana, described herein above.

Witness my hand on this date .... (date, including year).

..... County Treasurer

..... County

(2) A tax deed executed in substantially the form provided in subsection (1) is prima facie evidence that:

- (a) the property was assessed as required by law;
- (b) the taxes were levied in accordance with law;
- (c) the taxes were not paid when due;
- (d) notice of tax sale was given and a property tax lien was sold at the proper time and place as provided by law;
- (e) the property was not redeemed, and proper notice of a pending tax deed issuance was made as required by law;
- (f) the person who executed the deed was legally authorized to do so; and

(g) if the real property was sold to pay delinquent taxes on personal property, the real property belonged to the person liable to pay the personal property tax.

**Section 23. Effect of deed.** (1) A deed issued under [sections 16 through 26] conveys to the grantee absolute title to the property described

therein as of the date of the expiration of the redemption period, free and clear of all liens and encumbrances, except:

- (a) when the claim is payable after the execution of the deed and:
    - (i) a property tax lien attaches subsequent to the tax sale; or
    - (ii) a lien of any special, rural, local improvement, irrigation, or drainage assessment is levied against the property;
  - (b) when the claim is an easement, servitude, covenant, restriction, reservation, or similar burden lawfully imposed on the property; or
  - (c) when an interest in the land is owned by the United States, this state, or a subdivision of this state.
- (2) Under the conditions described in subsection (1), the deed is prima facie evidence of the right of possession accrued as of the date of expiration of the period for redemption or the date upon which a tax deed was otherwise issued.

**Section 24. Action to quiet title to tax deed — notice.** (1) (a) In an action brought to set aside or annul any tax deed or to determine the rights of a purchaser to real property claimed to have been acquired through tax proceedings or a tax sale, the purchaser, upon filing an affidavit, may obtain from the court an order directed to the person claiming to:

- (i) own the property;
  - (ii) have any interest in or lien upon the property;
  - (iii) have a right to redeem the property; or
  - (iv) have rights hostile to the tax title.
- (b) The person described in subsections (1)(a)(i) through (1)(a)(iv) is hereafter referred to as the true owner.
- (c) The order described in subsection (1)(a) may command the true owner to:

- (i) deposit with the court for the use of the purchaser:

(A) the amount of all taxes, interest, penalties, and costs that would have accrued if the property had been regularly and legally assessed and taxed as the property of the true owner and was about to be redeemed by the true owner; and

(B) the amount of all sums reasonably paid by the purchaser following the order and after 3 years from the date of the tax sale to preserve the property or to make improvements thereon while in the purchaser's possession, as the total amount of the taxes, interest, penalties, costs, and improvements is alleged by the plaintiff and as must appear in the order; or

- (ii) show cause on a date to be fixed in the order, not exceeding 30 days from the date of the order, why such payment should not be made.

(2) The affidavit must list the name and address of the true owner and whether he is in the state of Montana, if known to the plaintiff, or state that the address of the true owner is not known to the plaintiff.

(3) (a) The order must be filed with the county clerk and a copy served personally upon each person shown in the affidavit claiming to be a true owner and who is, at that time, known to be in the state of Montana.

(b) Jurisdiction is acquired over all other persons by:

(i) publishing the order once in the official newspaper of the county;

(ii) posting the order in three public places in the county at least 10 days prior to the hearing; and

(iii) giving a copy to the county treasurer.

**Section 25. Procedure in tax deed quiet title action.** (1) Upon the hearing of the order to show cause, the court has jurisdiction to determine the amount to be deposited and to make an order that the same be paid to the court within a period not exceeding 30 days after the order is made.

(2) (a) Except as provided in subsection (2)(b), if the amount is not paid within the time fixed by the court, the true owner is considered to have waived any defects in the tax proceedings and any right of redemption. In the event of waiver, the true owner has no claim of any kind against the state or purchaser and a decree must be entered in the action quieting the title of the purchaser as against the true owner.

(b) The proceedings are void if the taxes were not delinquent or have been paid.

(3) If payment is made to the court and the true owner is successful in the action and the tax proceedings are declared void, the amount deposited with the court must be paid to the purchaser.

(4) If the purported true owner is not successful in the action and the title of the purchaser is sustained, the money must be returned to the purported true owner.

(5) In any action brought by a purchaser to quiet title, several tracts of land, whether contiguous or noncontiguous or owned by different defendants, may be set forth in one complaint. All persons claiming any title to, interest in, or lien upon any of the premises or any part thereof may be joined as defendants, even though their claims are independent, are not in common, and do not cover the same tracts. The procedure in such an action must follow, as nearly as practicable, the procedure specified in 70-28-101 through 70-28-109.

(6) In the final judgment, the court shall also determine the rights resulting from any additional taxes on the property accruing or being paid by either party during the pendency of the suit.

(7) In the quiet title action, the court has complete jurisdiction to fix the amount of taxes that should have been paid, including penalties, interest, and costs, and to determine all questions necessary in granting full relief, including the power to order any assessor or other tax officer to

make and certify to the court a corrected or new assessment or to do any other act necessary to enable the court to do complete justice. Errors may be reviewed on appeal from the final judgment.

**Section 26. Title conveyed by deed — defects.** (1) All deeds executed more than 3 years after the applicable tax sale convey to the grantee absolute title to the property described in the deed as of 3 years following the date of sale of the property interest at the tax sale.

(2) The conveyance includes:

(a) all right, title, interest, estate, lien, claim, and demand of the state of Montana and of the county in and to the property; and

(b) the right, if the tax deed, tax sale, or any of the tax proceedings upon which the deed may be based are attacked and held irregular or void, to recover the unpaid taxes, interest, penalties, and costs that would accrue if the tax proceedings had been regular and it was desired to redeem the property.

(3) The tax deed is free of all encumbrances except as provided in [subsections (1)(a) through (1)(c) of section 23].

(4) A tax deed is prima facie evidence of the right of possession accruing as of the date of the expiration of the redemption period described in [section 16].

(5) If any tax deed or deed purporting to be a tax deed is issued more than 3 years and 30 days after the date of the sale of the property interest at the applicable tax sale, the grantee may publish in the official newspaper of the county, once a week for 2 consecutive weeks, a notice entitled "Notice of Claim of a Tax Title". The notice must:

(a) describe all property claimed to have been acquired by a tax deed;

(b) contain an estimate of the amount due on the property for delinquent taxes, interest, penalties, and costs;

(c) contain a statement that for further specific information, reference must be made to the records in the office of the county treasurer;

(d) list the name and address of record of the person in whose name the property was assessed or taxed; and

(e) contain a statement that demand is made that the person assessed or taxed must, within 30 days after the first publication of the notice, pay to the claimant or to the county treasurer for use by the claimant the amount of taxes, interest, penalties, and costs as the same appear in the records of the county treasurer or bring a suit to quiet the true owner's title or to set aside the tax deed.

(6) A mistake in the amount or in any name specified in the notice does not invalidate the notice.

(7) (a) If within the 30-day period the taxes, interest, penalties, and costs are not paid or a quiet title action is not brought, all defects in the tax proceedings and any right of redemption is considered waived. Except

as provided in subsection (7)(b), after the 30-day period the title to the property described in the notice and in the tax deed is valid and binding, irrespective of any irregularities, defects, omissions, or total failure to observe any of the provisions of the laws of Montana regarding the assessment, levying of taxes, or sale of property for taxes and the giving of notices, whether or not such irregularities, defects, omissions, or failures could void the proceedings.

(b) The proceedings in subsection (7)(a) are void if the taxes were not delinquent or have been paid.

Section 27. Section 7-6-4414, MCA, is amended to read:

**"7-6-4414. Sales for delinquent taxes when county collects municipal tax.** (1) All publications of sales for delinquent taxes shall include city or town taxes. There is only one sale for each piece of property. The sale shall cover the aggregate of city or town, county, and state taxes, with the penalties, interest, and cost of advertising provided by law.

(2) All money received from sales, after a deed is given by the county treasurer as provided by law, shall be credited to the state, county, and city or town pro rata in the same proportions as provided in [section 10]."

Section 28. Section 7-21-2104, MCA, is amended to read:

**"7-21-2104. Lien arising from license.** (1) All property held or used in any trade, occupation, or profession for which a license is required by the provisions of this part is liable for such license and subject to a lien for the amount thereof. This lien has precedence of any other lien, claim, or demand.

(2) If any person fails or refuses to procure a license before the transaction of the business specified, the county treasurer must seize such property or any other property belonging to such person and sell the same in the manner provided in [section 15]."

Section 29. Section 15-16-101, MCA, is amended to read:

**"15-16-101. Treasurer to publish notice — manner of publication.** (1) Within 10 days after the receipt of the assessment book, the county treasurer must publish a notice specifying:

(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on November 30 next thereafter *or within 30 days after the notice is postmarked* and that unless paid prior to *that time* the amount then due will be delinquent and will draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% will be added to the delinquent taxes as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on May 31 next thereafter and that unless paid prior to *that time* the taxes will be delinquent and will draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% will be added to the delinquent taxes as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) He must send to the last-known address of each taxpayer written notice, postage prepaid, showing the amount of taxes and assessments due the current year and the amount due and delinquent for other years. The written notice shall include:

- (a) the taxable value of the property;
- (b) the total mill levy applied to that taxable value;
- (c) the value of each mill in that county;
- (d) itemized city services and special improvement district assessments collected by the county;
- (e) the number of the school district in which the property is located; and
- (f) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax.

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under subsection (2)(d) ready for mailing.

(4) The notice in every case must be published *once a week* for 2 weeks in a weekly or daily newspaper published in the county, if there is one, or if there is not, then by posting it in three public places. *Failure* to publish or post notices does not relieve the taxpayer from any of his liabilities. Any failure to give notice of the tax due for the current year or of delinquent tax will not affect the legality of the tax."

Section 30. Section 15-16-102, MCA, is amended to read:

**"15-16-102. Time for payment — penalty for delinquency.** All taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103 and assessments made on new production as provided in Title 15, chapter 23, part 6, and payable under 15-16-121, shall be payable as follows:

(1) One-half of the amount of such taxes shall be payable on or before 5 p.m. on November 30 of each year, *or within 30 days after the notice is postmarked, whichever is later*, and one-half on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of such taxes are paid on or before 5 p.m. on November 30 of each year, *or within 30 days after the notice is postmarked, whichever is later*, then such amount so payable shall become delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year shall be delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(4) *If the taxes become delinquent, the county treasurer may accept a partial payment equal to the delinquent taxes, including penalty and interest for one or more full taxable years provided both halves of the current tax year have been paid. Payment of delinquent taxes must be applied to the taxes that have been delinquent the longest."*

Section 31. Section 15-16-111, MCA, is amended to read:

**"15-16-111. Personal property — duty of department.** (1) It is the duty of the department of revenue or its agent, upon discovery of any personal property in the county the taxes upon which are not a lien upon real property sufficient to secure the payment of such taxes, to immediately and in any event not more than 5 days thereafter make a report to the treasurer, setting forth the nature, kind, description, and character of such property in such a definite manner that the treasurer can identify the same, the amount and assessed valuation of such property, where the same is located, the amount of taxes due thereon, and the name and address of the owner, claimant, or other person in possession of the same.

(2) Where such personal property is located in any city or town which has provided by ordinance for the collection of its taxes for general, municipal, and administrative purposes by its city treasurer or town clerk, the department also and at the same time shall furnish to the city treasurer or town clerk a duplicate of the notice to the county treasurer. For the purpose of determining the taxes due on personal property, the department or its agent must use the levy made during the previous year."

Section 32. Section 15-16-112, MCA, is amended to read:

**"15-16-112. Department report of personal property in assessment book.** The department of revenue or its agent must note on the assessment book, opposite the *name* of each person owning, claiming, or possessing personal property which is reported to the treasurer under 15-16-111, the fact that the report was made to the treasurer and the date when the report was made."

Section 33. Section 15-16-113, MCA, is amended to read:

**"15-16-113. Personal property — duty of treasurer — penalty.** (1) The county treasurer shall collect taxes on all personal property and, in the case provided in 15-16-111, shall immediately upon receipt of the report prescribed by 15-16-111 notify the person or persons against whom the tax is assessed and any person who has a properly perfected security interest of record with the department of justice that the amount of the tax is due and payable at the county treasurer's office.

(2) The county treasurer shall, at the time of receiving the report and in any event within 30 days from the receipt of such report, levy upon and take into his possession the personal property against which a tax is assessed or any other personal property in the hands of the delinquent taxpayer and proceed to sell the same in the same manner as property is sold on execution by the sheriff.

(3) The county treasurer shall, for the purpose of making the levy and sale, direct the sheriff to make the levy and sale. The sheriff, undersheriff,



or any deputy sheriff of the county is ex officio a deputy county treasurer for such purposes, and either may act and receive payment of such taxes. The sheriff may receive the same fees as he is entitled to in making a seizure and sale as provided in [section 15].

(4) The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the willful failure and neglect of the treasurer to levy upon and sell such personal property for the taxes levied thereon.

(5) *Failure by the sheriff, undersheriff, or deputy sheriff acting as a deputy county treasurer to make the levy and sale results in a levy against the official bond of the sheriff, undersheriff, or deputy sheriff for payment of the delinquent tax."*

Section 34. Section 15-16-114, MCA, is amended to read:

**"15-16-114. Rate of taxation — personal property.** (1) All rates of tax levy set by the board of county commissioners on the second Monday in August of each year shall apply permanently to this class of personal property during the ensuing tax year.

(2) *The treasurer shall, upon collection of any such taxes, immediately distribute the money so collected to the various and proper funds in his charge."*

Section 35. Section 15-16-115, MCA, is amended to read:

**"15-16-115. Treasurer's record of personal property taxes paid.** (1) *On or before December 1 of each year, the treasurer shall note on the assessment book, opposite the name of each person from whom taxes have been collected by him in pursuance of the report of the assessor, the amount of taxes received and the date of receipt.*

(2) *If the taxes have not been collected, the treasurer shall note in the assessment book the reason why collection was not made."*

Section 36. Section 15-16-117, MCA, is amended to read:

**"15-16-117. Personal property — treasurer's duty to collect certain taxes.** (1) The county treasurer *shall* demand payment of poor taxes, authorized by 53-2-321, and road taxes, authorized by 7-14-2206 or 7-14-2501 through 7-14-2504, of every person liable therefor whose name does not appear on the assessment lists. *On the neglect or refusal of any such person to pay the same, the treasurer shall collect the taxes by seizure and sale of any property owned by the person.*

(2) These taxes *must* be added upon the assessment lists to other *property* taxes of persons paying taxes upon real and personal property and paid to the county treasurer at the time of payment of other taxes.

(3) The procedure for the sale of such property by the county treasurer for such taxes *must* be regulated by 15-16-113 and [section 15]."

Section 37. Section 15-16-301, MCA, is amended to read:

**"15-16-301. Delinquent list — real property.** On the third Monday of December and on the third Monday of June of each year, the

county treasurer must make a report to the county clerk and recorder in detail, showing the amount of taxes collected and a complete list of all persons and property then owing taxes. *The* county clerk and recorder shall compare *the* report with the books of the county treasurer and shall keep a record of *the* report in his office."

Section 38. Section 15-16-302, MCA, is amended to read:

**"15-16-302. Tabulation and transmittal of real property delinquent list.** (1) The county treasurer must, at the time specified in 15-16-301, deliver to the county clerk and recorder a complete delinquent list of all persons and property then owing taxes.

(2) In the list so delivered, all matters and things contained in the assessment book and relating to delinquent persons or property must be set down in numerical or alphabetical order.

(3) The county clerk and recorder must carefully compare the list with the assessment book, and if satisfied that it contains a full and true statement of all taxes due and unpaid, he must total *the* amount of taxes remaining unpaid, credit the county treasurer therewith, make a final settlement with *the treasurer* of all taxes charged against *the treasurer* on the assessment book, and require from *the treasurer* an immediate account for any existing deficiency."

Section 39. Section 15-16-303, MCA, is amended to read:

**"15-16-303. Treasurer charged with delinquent taxes.** After settlement with the county treasurer as prescribed in 15-16-302, the county clerk and recorder must charge the treasurer with the amount of taxes due on the delinquent tax list and within 3 days thereafter deliver the list, duly certified, to the county treasurer."

Section 40. Section 15-16-305, MCA, is amended to read:

**"15-16-305. Disposition of delinquent list.** (1) *On* the third Monday of February, *the* county clerk and recorder must compare the lists with the assessments of persons and property not marked "paid" on the assessment book. *If the* taxes have been paid, *the county clerk and recorder* must note the fact in the appropriate column in the assessment book.

(2) The county clerk and recorder must then administer to the county treasurer an oath, to be written and subscribed in the delinquent list, that every person and all property assessed in the delinquent list on which taxes have been paid have been credited in the list with such payment.

(3) The county clerk and recorder must then *total* the amount of taxes remaining unpaid and credit the treasurer with the amount and have a final settlement with *the treasurer*. The delinquent list must remain in the county clerk and recorder's office.

(4) At the time mentioned in subsection (1) of this section, the treasurer must make an affidavit, endorsed on the list, that the taxes not marked "paid" have not been paid and that he has not been able to discover any property belonging to or in possession of the persons liable to pay the sum whereof to collect them."

Section 41. Section 15-16-401, MCA, is amended to read:

**"15-16-401. Tax due as a judgment or lien.** Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property in the possession of the person assessed from and after the date the assessment is made. The county treasurer may issue a writ of execution for delinquent personal property taxes and deliver the *writ* to the sheriff. The sheriff shall thereupon proceed upon the *writ* in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record and shall be entitled to the fees *provided for in [section 15]*. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof."

Section 42. Section 15-16-402, MCA, is amended to read:

**"15-16-402. Tax on personalty lien on realty — separate assessment.** (1) Every tax due upon personal property is a prior lien upon any or all of such property, which lien shall have precedence over any other lien, claim, or demand upon such property, and except as hereinafter provided, every tax upon personal property is also a lien upon the real property of the owner thereof *on and after January 1 of each year.*

(2) The taxes upon personal property based upon a taxable value up to and including \$1,000 shall be a first and prior lien upon the real property of the owner of such personal property. Taxes upon personal property based upon the taxable value thereof in excess of \$1,000 shall be a first and prior lien upon the real property of the owner unless the owner or holder of any mortgage or other lien upon said real property appearing of record in the office of the clerk and recorder of the county where such real property is situated, at or before the time such personal property tax attached thereto, shall have filed the notice hereinafter provided for, in which event the taxes upon such excess of \$1,000 of taxable value shall not be a lien on the real property of such owner. It shall be the duty of the county treasurer to issue to any mortgagee or lien holder, upon his request, a statement of the personal property tax due upon the taxable value up to and including \$1,000. Personal property taxes upon a taxable value up to \$1,000 may be paid, redeemed from a tax sale as by law provided, or discharged separately from any personal property taxes in excess of such amount. Payment of such taxes upon a taxable value up to \$1,000, as herein provided, shall operate to discharge the tax lien upon the personal property of the owner to the extent of such payment in the order that the person paying such tax shall direct.

(3) The holder of any mortgage or lien upon real property who desires to obtain the benefits of this section shall file in the office of the county treasurer of said county a notice giving:

- (a) the name and address of the mortgagee and holder of the mortgage or lien;
- (b) the name of the reputed owner of the land;
- (c) the description of the land;

- (d) the date of record and expiration of the mortgage or lien;
- (e) the amount thereof; and
- (f) a statement that he claims the benefit of the provisions of this section.

(4) Such notice shall be ineffectual as to any taxes which shall have become a lien on real property prior to the filing of such notice as aforesaid. If the mortgage be not paid at maturity, such notice shall thereafter be filed annually unless the mortgage be extended for a definite period to be stated in such notice.

(5) Any owner of a mortgage on real estate upon which personal property taxes are by this section made a lien, where the owner of such real estate and personal property has failed to pay taxes due upon such real estate and personal property for 1 or more years, may file with the department of revenue or its agent in the county in which such property is located a written request to have the personal property and real estate of the owner separately assessed. Such request must be made by registered or certified mail at least 10 days prior to January 1 in the year for which property is assessed. Upon receipt by the department or its agent of such request, it is hereby made the duty of the department or its agent to make a separate assessment of real and personal property of the owner thereof, and such personal taxes shall not be a lien upon the real estate so mortgaged of the owner thereof, and the personal property taxes shall be collected in the manner provided by law for other personal property."

Section 43. Section 15-16-404, MCA, is amended to read:

**"15-16-404. County lien on moneys of taxpayer.** The county has a general lien, dependent on possession, upon any moneys in its possession belonging to any taxpayer for any amounts due the county for any delinquent personal property taxes not a lien on real estate of the taxpayer. Due notice shall be given the lien holder, if *known*."

Section 44. Section 15-16-504, MCA, is amended to read:

**"15-16-504. Evidence at trial.** On the trial a certified copy of the assessment signed by the county clerk and recorder of the county where the *assessment* was made, with the affidavit of the treasurer thereto attached that the tax has not been paid, describing it as on the assessment book or delinquent list, is prima facie evidence that *the taxes, plus interest, penalties, and costs*, are due and entitles him to judgment unless the defendant proves that the tax was paid."

Section 45. Section 15-16-601, MCA, is amended to read:

**"15-16-601. Taxes or penalties illegally collected to be refunded.** (1) (a) Any taxes, *interest, penalties, or costs* paid more than once or erroneously or illegally collected or any amount of tax paid for which a taxpayer is entitled to a refund under 15-16-612 or any part or portion of taxes paid which were mistakenly computed on government bonus or subsidy received by the taxpayer may, by order of the board of county commissioners, be refunded by the county treasurer. Whenever any payment *has* been made to the state treasurer as provided in 15-1-504 and

it afterwards *appears* to the satisfaction of the board of county commissioners that a portion of the money so paid should be refunded as herein provided, the board of county commissioners may refund the portion of the taxes, *interest*, penalties, and costs so paid to the state treasurer, and upon the rendering of the report required by 15-1-505 the county clerk and recorder shall certify to the state auditor, in such form as the state auditor may prescribe, all amounts so refunded. *In* the next settlement of the county treasurer with the state, the state auditor shall give the county treasurer credit for the state's portion of the amounts so refunded.

(b) When any part of the taxes, *interest*, penalties, or costs hereinbefore referred to were levied in behalf of any school district or municipal or other public corporation and collected by the county treasurer, the same may be refunded upon the order of the board of county commissioners.

(c) No order for the refund of any taxes, *interest*, penalties, or costs under this section shall be made except upon a claim therefor, verified by the person who has paid the taxes, *interest*, penalties, or costs or his guardian or, in case of his death, by his executor or administrator, which claim must be filed within 10 years after the date when the second half of such taxes would have become delinquent if the same had not been paid.

(d) All refunds ordered to be paid by the board of county commissioners *must* be paid by the county treasurer out of the general fund of the county, and the county treasurer shall then make such transfers from other county funds and from state, school district, and other public corporation funds in his possession as may be necessary to reimburse the county general fund for payments made therefrom.

(2) Upon the entering of judgment under 15-2-306, the county commissioners of the affected county shall order a refund of such portion of the taxes as the state tax appeal board has judged should be refunded."

Section 46. Section 15-16-701, MCA, is amended to read:

**"15-16-701. Personal property taxes ten years delinquent — list.** (1) It shall be the duty of each county treasurer to prepare in triplicate and submit to the board of county commissioners of his county, on or before the first Monday of June in each year, a list of personal property taxes *that* are not a lien on real estate and *that* have been delinquent for 10 years or more. *The* list shall show the following:

- (a) name and address of the delinquent taxpayer;
- (b) amount of the delinquent *taxes*, plus *interest*, penalties, and costs, if any; and
- (c) the *date* the taxes became delinquent.

(2) Every county treasurer shall, within the same time, prepare in triplicate and submit to the board of county commissioners of his county a list of all contractual obligations owed to or held by his county for seed grain, feed, or other relief, the collection of which is barred by the statute of limitations *provided in* 27-2-202(1). *The* list *must* show the following:

- (a) *the* name and address of the person or persons who entered into the contractual obligation;

(b) the name of the contractual obligation, as "seed loan", "feed loan", "promissory note", as applicable; and

(c) the date of obligation, date when last payment became due, date of last payment thereon, and the date when the collection of the obligation became barred by the statute of limitations provided in 27-2-202(1)."

Section 47. Section 15-16-702, MCA, is amended to read:

**"15-16-702. Cancellation of taxes and obligations — filing of lists.** Upon receipt of such list or lists and within 30 days thereafter, the board of county commissioners shall examine the same and make any necessary corrections. Thereupon, the board of county commissioners shall make its order canceling all such personal property taxes and contractual obligations contained in the list or lists, as corrected, required by this part to be canceled and spread such order upon its minutes. The order and minutes need not set forth in full the contents of the list or lists, a proper reference therein for their identification being sufficient. When the order is made, the original or copy of the list or lists, as corrected, must be filed with and as a part of the records of the board. One legible copy thereof must be filed with the county clerk and recorder as a public record, and one legible copy thereof must be filed with the county treasurer as a permanent record of his office."

Section 48. Section 15-16-703, MCA, is amended to read:

**"15-16-703. Adjustment of accounts after cancellation.** Upon notification of the order for cancellation, the county clerk and recorder and county treasurer shall adjust their taxes-receivable accounts to conform to the order of cancellation."

Section 49. Section 15-16-704, MCA, is amended to read:

**"15-16-704. Certain unpaid taxes uncollectable — stricken from records.** All unpaid taxes constituting a lien on real property in the state, levied and assessed against real property which have remained delinquent more than 10 years prior to July 1, 1976, whether the levy be by general or special assessment or by the state or any county, city, or political subdivision of the state, are hereby declared to be uncollectable and stricken from the respective tax records."

Section 50. Section 15-23-704, MCA, is amended to read:

**"15-23-704. Lien of tax — enforcement of payment.** The tax on gross proceeds from coal shall be levied as taxes on other forms of property, and this tax and the severance tax on coal production are each a lien upon the coal mine and a prior lien upon all personal property and improvements used to produce the coal. These taxes may be collected by the seizure and sale of the personal property on which the tax is a lien as provided under 15-16-113 and [section 15]."

Section 51. Section 15-24-302, MCA, is amended to read:

**"15-24-302. Collection procedure.** All property mentioned in 15-24-301 is assessed at the same value as property of like kind and character, and the assessment, levy, and collection of the tax are governed by the

provisions of 15-8-408, 15-16-111 through 15-16-115, 15-16-404, [section 15], and 15-24-202, as amended, except:

(1) taxation of motor vehicles under 15-24-301(4) to the extent that subsection varies from the general provisions cited above; and

(2) livestock taxation governed by 81-7-104 and Title 81, chapter 7, part 2."

Section 52. Section 76-13-211, MCA, is amended to read:

**"76-13-211. Amount due for protection treated as lien.** (1) Whenever the department provides forest protection during a forest fire season for any forest land or timber not protected by the owner thereof as required by this part or part 1, the amount due for the forest protection is a lien upon the land or timber which shall continue until such time as the amount due is paid.

(2) The lien has the same force, effect, and priority as general tax liens under the laws of the state and is subject and inferior only to tax liens on the lands. The county attorney of the county in which the land is situated shall on request of the department foreclose the lien in the name of the state and in the manner provided by law, or the county attorney upon the request of the department shall institute an action against the forest landowner in the name of the state in any district or justice court having jurisdiction to recover the debt. The state in the action is not required to pay any fees or costs to the clerk of the court or justice of the peace.

(3) The remedies provided by this section are cumulative and do not affect the other provisions of this part or part 1 for the payment and collection of amounts due to the department."

Section 53. Section 85-7-2152, MCA, is amended to read:

**"85-7-2152. Proceeds of sale.** Whenever any lot, tract, piece, or parcel of land included within and forming a part of any irrigation district created under the provisions of this chapter or included within any extension of such district is sold by the treasurer of the county where such land is situated in the manner provided by law for the sale of lands for delinquent taxes for state and county purposes and taxes or assessments of the irrigation district form all or a part of the taxes for which such lands are sold, the county treasurer making such sale or sales shall place to the credit of the proper funds of such irrigation district, out of the proceeds of the sale or sales, the total tax or assessment of the irrigation district, inclusive of the interest and penalty thereon as provided for by the general laws relating to delinquent taxes for state and county purposes, and whenever any such lands are struck off at such sale to the county where they are situated pursuant to the provisions of [section 8], the county treasurer of the county must, upon the issuance of the certificate of tax sale to the county, issue to the irrigation district, in its corporate name, a debenture certificate for the amount of taxes and assessments due to the irrigation district from the lands and premises so sold, inclusive of the interest and penalty thereon, which certificate is evidence of and conclusive of the interest and claim of the irrigation district in, to, against, and upon the lands

and premises so struck off to the county at the tax sale, and after the issuance of the certificate, the sum named therein and the taxes and assessments of the district evidenced thereby shall bear interest at the rate of 1% a month from the date of the certificate until redeemed in the manner provided for by law for the redemption of the lands sold for delinquent state and county taxes or until paid from the proceeds of the sale of the lands and premises described therein in the manner provided for by law, and duplicates of such certificates so issued to the irrigation district shall be filed in the office of the county clerk and county treasurer of the county with the certificate of tax sale of the lands and premises."

Section 54. Section 85-7-2154, MCA, is amended to read:

**"85-7-2154. Redemption of lands sold.** Upon the redemption of any lands so sold for taxes in the manner provided for by [sections 16 through 26], the county treasurer of said county, out of the redemption money, shall pay to the holder or holders of such certificate or certificates the sums for which the same were issued, with interest as therein provided to the date of the redemption of said lands."

Section 55. Section 85-7-2155, MCA, is amended to read:

**"85-7-2155. Sale by county commissioners when land not redeemed.** When the lands and premises so sold for taxes and upon and against which the certificates have been issued for the taxes and assessments of the irrigation district are not redeemed within the time provided for by [section 16], the board of county commissioners of the county, within 3 months thereafter, shall cause these lands and premises to be sold as provided for by law, and out of the proceeds of the sale, the county treasurer of the county shall pay to the holder or holders of the certificates the sum for which the same were issued, with interest as provided for to the date of the sale of the lands by the board of county commissioners, and no lands and premises so held by any county and against which the certificates provided for by this chapter have been issued may, upon such sale, be struck off or sold for a less sum than the amount of taxes and assessments of the irrigation district represented by the certificate, inclusive of the interest thereon, in addition to the state and county taxes, if any, against the same."

Section 56. Section 85-7-2156, MCA, is amended to read:

**"85-7-2156. Proceedings where land struck off to county and not redeemed.** In case the property so assessed for irrigation district purposes is struck off to the county, as provided for by law, and certificates of the taxes and assessments of said irrigation district issued thereon, as hereinbefore provided for, and the said lands and premises be not redeemed before the next annual assessment for irrigation purposes shall become delinquent thereon, then and in that event, like certificates for each year's irrigation district taxes and assessments shall be issued against said land and shall be included in and satisfied by any redemption thereof, with interest as hereinbefore provided for, and shall in like manner be paid from the proceeds of sale of said lands by the board of county commissioners, if the same be not redeemed as provided for by law."

Section 57. Section 85-7-2163, MCA, is amended to read:



**"85-7-2163. Granting of tax deed.** The holder of *the* certificate of tax sale *must be granted a tax deed by* the county treasurer in the manner and form provided by [sections 16 through 26]."

Section 58. Section 20-15-403, MCA, is amended to read:

**"20-15-403. Applications of other school district provisions.** (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2215, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-55-106, 15-70-301, 15-70-322, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-102, 18-1-112, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

Section 59. **Repealer.** Sections 15-16-116, 15-16-501, 15-16-502, 15-16-505, 15-17-101, 15-17-102, 15-17-111 through 15-17-113, 15-17-201 through 15-17-208, 15-17-301 through 15-17-305, 15-17-311, 15-17-312, 15-17-901 through 15-17-903, 15-18-101 through 15-18-108, 15-18-201 through 15-18-205, 15-18-301 through 15-18-309, and 15-18-401 through 15-18-404, MCA, are repealed.

Section 60. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 61. **Transition.** (1) (a) Except as provided in subsection (1)(b), for the purpose of implementing the provisions of [sections 1 through 26], no tax deed may be applied for or issued during the period between [the effective date of this act] and July 1, 1988.

(b) A tax deed may be issued between [the effective date of this act] and July 1, 1988, if the tax deed is issued for property on which property taxes are delinquent for 1982 and prior years. In such a case the tax deed is to be issued based on the procedures provided for in [this act].

(2) During the period between [the effective date of this act] and July 1, 1988, the county clerk and county treasurer of each county shall cooperate in identifying all property in their respective counties on which the taxes are delinquent or on which a tax sale certificate or assignment certificate was issued.

(3) Not less than 60 days or more than 90 days prior to July 1, 1988, the county clerk in each county shall give notice, as provided in [section

21], for each property on which the taxes have been delinquent for the 3 preceding years or more or for which there had been issued a tax sale certificate to the county and for which the board of county commissioners has directed the county treasurer to issue a tax deed.

(4) After January 1, 1988, and before May 1, 1988, the county clerk shall send a notice to each purchaser other than the county and to each assignee who has taken an assignment from the county. The notice must be sent by certified mail and contain a statement apprising the purchaser or assignee of his obligation to give notice as required in [section 21]. The county clerk shall also publish in the official newspaper of the county or such other newspaper as the board of county commissioners may designate a general notice to all purchasers and assignees stating the obligations to the purchaser or assignee regarding the notice required in [section 21].

Section 62. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 63. **Effective date.** This act is effective on passage and approval.

Approved April 23, 1987.

## CHAPTER NO. 588

[SB 170]

AN ACT TO ALLOW AN OPTOMETRIST TO ADMINISTER OR PRESCRIBE CERTAIN PAIN MEDICINES AND DRUGS TO TREAT EYE DISEASES; TO REQUIRE AN OPTOMETRIST TO DEMONSTRATE COMPETENCY TO ADMINISTER OR PRESCRIBE DRUGS TO TREAT EYE DISEASES; AND AMENDING SECTIONS 37-2-101, 37-10-101, 37-10-103, 37-10-304, AND 37-10-311, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-2-101, MCA, is amended to read:

**"37-2-101. Definitions.** As used in this part, the following definitions apply:

(1) "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, chiropody (podiatry), or optometry and in such practice to administer or prescribe drugs.

(2) "Drug" means any article:

(a) recognized in the official United States Pharmacopoeia/National Formulary or in any supplement to such pharmacopoeia/formulary;

(b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

- (c) intended to affect the structure or any function of the body of man;
- (d) intended for use as a component of any article described in subsection (a), (b), or (c) of this subsection (2), but such term does not include any device or any components of a device.
- (3) "Device" means any instrument, apparatus, or contrivance intended:
  - (a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;
  - (b) to affect the structure or any function of the body of man.
- (4) "Pharmacy" means an establishment which engages in the sale of drugs requiring a prescription.
- (5) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which such medical practitioner maintains an office for professional practice.
- (6) "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs; but such term does not include a pharmacy.
- (7) "Person" means any individual and any partnership, firm, corporation, association, or other business entity.
- (8) "State" means the state of Montana or any political subdivision thereof."

Section 2. Section 37-10-101, MCA, is amended to read:

**"37-10-101. Definitions — practice of optometry.** (1) The practice of optometry is the profession constituting the art and science of visual care and is hereby defined to be any one of the following acts:

(a) the optometric examination or optometric diagnosis of all of those physiological or anatomical parts or functions which consummate the process of human vision to ascertain the presence therein of abnormal conditions or functions which may be optometrically diagnosed, corrected, remedied, or relieved;

(b) the employment of any optometric means, excluding the use of surgery, for the purpose of detecting any condition of the process of vision which may have any significance in a complete optometric eye and vision examination, including the employment and administration of drugs topically applied for examination purposes, limited to cycloplegics, mydriatics, topical anesthetics, dyes such as fluorescein, and for emergency use only, miotics;

(c) the application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, any physical, mechanical, or physiological therapy, and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies, excluding surgery;

(d) the administration, dispensation, and prescription of the oral analgesics codeine, propoxyphene, hydrocodone, and dihydrocodeine, alone or in combination with nonscheduled or nonregulated drugs; and

(e) *the administration, dispensation, and prescription of those topical drugs, not including corticosteroids, approved by the board for use in ocular treatment limited to the anterior segment of the eye and adnexa. Glaucoma may not be treated.*

(2) *Nothing in subsection (1) prohibits an optometrist from removing from the eye or adnexa a foreign body that is not intraocular.*

(3) *Unless the context requires otherwise, in this chapter:*

(a) *"board" means the board of optometrists provided for in 2-15-1846; and*

(b) *"department" means the department of commerce provided for in Title 2, chapter 15, part 18."*

Section 3. Section 37-10-103, MCA, is amended to read:

**"37-10-103. Use of drugs not prohibited by pharmacy law.** The use of drugs by a licensed optometrist as stated in 37-10-101 is not prohibited by Title 37, chapter 7."

Section 4. Section 37-10-304, MCA, is amended to read:

**"37-10-304. Course in use of diagnostic and therapeutic drugs required.** (1) (a) In addition to the requirements of 37-10-302 or 37-10-303, whichever is applicable, each person desiring to commence the practice of optometry shall satisfactorily complete a course prescribed by the board of medical examiners with consultation and approval by the board of optometrists with particular emphasis on the topical application of diagnostic agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions.

(b) A person presently licensed to practice optometry who wishes to employ diagnostic agents must satisfactorily complete a course referred to in subsection (1)(a) and must pass an examination as provided in subsection (1)(d).

(c) The course referred to in subsection (1)(a) must be conducted by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course must also be approved by the board.

(d) The board shall provide for an examination in competency in the use of diagnostic drugs and shall issue a certificate to those applicants who pass such examination.

(2) (a) *In addition to the requirements of 37-10-302 or 37-10-303, whichever is applicable, each person desiring to commence the practice of optometry shall:*

(i) *pass an examination, of the international association of boards of examiners in optometry, on the diagnosis, treatment, and management of ocular disease; or*

(ii) *take a course and pass an examination in the diagnosis, treatment, and management of ocular diseases. The course and examination must be*

*conducted by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course and examination must also be approved by the board.*

*(b) A person presently licensed to practice optometry who wishes to employ therapeutic pharmaceutical agents must meet the requirements of subsection (2)(a).*

*(c) The board shall:*

*(i) provide for an examination in competency in the diagnosis, treatment, and management of therapeutic pharmaceutical agents; and*

*(ii) issue a certificate to an applicant who passes such examination."*

Section 5. Section 37-10-311, MCA, is amended to read:

**"37-10-311. Revocation — unprofessional conduct.** (1) The board may revoke a certificate of registration for:

(a) physical or mental incompetence;

(b) gross malpractice or repeated malpractice;

(c) a violation of any of the provisions of this chapter or rules or orders of the board; or

(d) unprofessional conduct.

(2) Unprofessional conduct includes:

(a) obtaining a fee by fraud or misrepresentation;

(b) employing, directly or indirectly, a suspended or unlicensed optometrist to perform work covered by this chapter;

(c) directly or indirectly accepting employment to practice optometry from a person not having a valid certificate of registration as an optometrist or accepting employment to practice optometry for or from a company or corporation;

(d) permitting another to use his certificate of registration;

(e) soliciting or sending a solicitor from house to house;

(f) treatment or advice in which untruthful or improbable statements are made;

(g) professing to cure *nonocular* disease;

(h) advertising in which ambiguous or misleading statements are made; or

(i) the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist. This chapter does not prohibit legitimate or truthful advertising by a registered optometrist.

(3) Before a certificate is revoked, the holder shall be given a notice and an opportunity for a hearing.

(4) Any optometrist convicted a second time for violation of the provisions of this chapter or whose certificate of registration or examination has been revoked a second time shall not be permitted to practice optometry in this state."

**Section 6. Optometric oversight committee — members — duty to investigate complaints.** (1) (a) There is an optometric oversight committee composed of five members. The members are:

(i) two physicians, one of whom must be an ophthalmologist and the other a member of the board of medical examiners, who are appointed by the board of medical examiners;

(ii) two optometrists who are members of the board of optometrists and who are appointed by the board of optometrists; and

(iii) one pharmacist who is a member of the board of pharmacy and who is appointed by the board of pharmacy.

(b) The members of the committee shall elect a chairman from their members. Members of the committee are entitled to compensation and travel expenses as provided for in 37-1-133. Members' compensation and travel expenses and committee clerical and administrative expenses must be paid by the board of optometrists from funds appropriated to the board for its ordinary operations.

(2) A meeting of the committee must be called by any of the represented boards upon receipt of a signed written complaint regarding the diagnosis, treatment, or management of ocular disease as it relates to therapeutic drug usage by an optometrist.

(3) Each of the represented boards shall, upon receipt of a complaint concerning the diagnosis, treatment, or management of ocular disease by an optometrist, forward a copy of the complaint to the members of the committee. Each member of the committee shall, subject to applicable confidentiality requirements, have access to all records related to therapeutic drug usage of the board of optometrists concerning the optometrist against whom a complaint has been filed.

(4) The committee may investigate any complaint that it believes has a valid basis. The investigation may include:

(a) requiring the complainant, if injuries have been alleged, to submit to a physical examination;

(b) examination of hospital and other medical records;

(c) interviews of the complainant and the accused optometrist; and

(d) other avenues of inquiry tending to prove or disprove the complaint but that do not raise the formality of the investigation to the level of a contested case administrative hearing.

(5) Based on the findings of its investigation, the committee may:

(a) recommend to the board of optometrists that no further action be taken regarding the complaint;

(b) recommend to the board of optometrists that no action be taken against the subject optometrist, but that the board should review its rules and statutory provisions relating to the administration of prescription drugs by optometrists to amend the rules or propose legislation to prevent similar occurrences; or

(c) recommend that the board of optometrists initiate disciplinary proceedings.

(6) If the committee recommends that the board of optometrists initiate disciplinary proceedings, the board must take necessary action to begin disciplinary proceedings.

(7) (a) A copy of the committee's decision must be mailed to the complainant.

(b) If the committee makes a decision under subsection (5)(b) or (5)(c), the board of optometrists shall respond to the committee's decision in writing. The response must be addressed to the board of medical examiners and the board of pharmacy.

**Section 7. Extension of authority.** Any existing authority of the board of optometrists to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 23, 1987.

## CHAPTER NO. 589

[SB 177]

AN ACT TO REVISE AND CONTINUE THE NONGAME WILDLIFE CHECKOFF PROGRAM; TO REMOVE THE REQUIREMENT THAT CHECKOFF CONTRIBUTIONS REPLACE LICENSE FEE FUNDING FOR THE NONGAME WILDLIFE PROGRAM; TO PROVIDE FOR CONTINGENT COLLECTION OF ADMINISTRATIVE COSTS; AND AMENDING SECTIONS 87-5-121 AND 87-5-123, MCA, AND SECTION 7, CHAPTER 627, LAWS OF 1983.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-5-121, MCA, is amended to read:

**"87-5-121. Nongame wildlife account.** (1) There is a nongame wildlife account in the state special revenue fund provided for in 17-2-102.

(2) All money collected under 15-30-150 and all interest earned by the fund before being expended under this section must be deposited in the account, except as provided in subsection (5).

(3) Money in the account must be used by the department, upon the approval of the commission as determined under 87-5-122, to provide adequate funding for:

(a) research and education programs on nongame wildlife in Montana, as provided for in 87-5-104; and

(b) any management programs for nongame wildlife approved by the legislature under 87-5-105 as species or subspecies in need of management.

(4) The money is available to the department in the same manner as provided in 87-1-601, except that no money collected under 15-30-150 may be used:

(a) for the purchase of any real property; or

(b) in such a way as to interfere with the production on or management of private property.

(5) The department of revenue may deduct from collections an amount not to exceed \$1 for each tax checkoff contribution for administering the voluntary checkoff program."

Section 2. Section 87-5-123, MCA, is amended to read:

**"87-5-123. Report.** The department shall report to *each* legislature the results of any program using money from the nongame wildlife account and shall list in detail how the money collected was used."

Section 3. Section 7, Chapter 627, Laws of 1983, is amended to read:

"Section 7. **Applicability.** This act applies to tax returns which by law are required to be filed after January 1, 1984."

Section 4. **Extension of authority.** Any existing authority of the department of revenue and the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Contingency authorization.** The authorization for deduction of administrative costs for the department of revenue in 87-5-121(5) of this act is contingent on passage and approval by the 50th legislature of legislation to require a similar deduction for administrative costs for all voluntary income tax checkoff programs authorized by law.

Approved April 23, 1987.

## CHAPTER NO. 590

[SB 190]

AN ACT REQUIRING A BORROWER TO ACKNOWLEDGE THAT CERTAIN ENCUMBERED REAL PROPERTY IS NOT EXEMPT FROM EXECUTION AS A HOMESTEAD; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Homestead subject to execution for certain judgments — separate acknowledgment required.** (1) If a borrower borrowing money from a regulated lender as defined in 31-1-111, a mutual or stock



insurance company regulated by any state, or a farm credit system lender encumbers real property that otherwise would qualify as a homestead under Title 70, chapter 32, the financial institution shall require the borrower to sign a written statement acknowledging that the real property is not exempt from execution as a homestead because under 70-32-202 it is subject to execution or forced sale to satisfy a judgment obtained on a debt secured by a mortgage or other encumbrance on the premises. The written acknowledgment may be in a document separate from, or may be included in, the loan agreement or loan documents and must be printed in capital letters of not less than 10-point boldfaced type and signed separately by the borrower.

(2) The financial institution shall retain a copy of the acknowledgment provided for in subsection (1) until the mortgage or other encumbrance is paid or otherwise satisfied or discharged unless the acknowledgment is of record in the office of the clerk and recorder.

**Section 2. Applicability.** This act applies to mortgages and other encumbrances of real property created after the effective date of this act.

Approved April 23, 1987.

## CHAPTER NO. 591

[SB 272]

AN ACT TO EXEMPT FROM BENEFICIAL USE TAXATION CERTAIN LANDS AND EASEMENTS OF ABANDONED RAILROADS ACQUIRED BY THE STATE PURSUANT TO TITLE 60, CHAPTER 11, PART 1; DEFINING "ABANDONMENT"; AMENDING SECTION 15-24-1203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Abandonment defined.** For purposes of this part, "abandonment" means the relinquishment of property, both real and personal, and the discontinuance of railroad services. Abandonment may be accomplished by voluntary act or by formal procedure.

**Section 2.** Section 15-24-1203, MCA, is amended to read:

**"15-24-1203. Privilege tax on gainful use of tax-exempt property — exceptions.** After March 17, 1969, there is imposed and shall be collected a tax upon the possession or other beneficial use enjoyed by any private individual, association, or corporation of any property, real or personal, which for any reason is exempt from taxation. No tax may be imposed upon the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on such airport property are subject to tax. No tax shall be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber, or grazing leases or permits

issued by the United States or the state of Montana or upon any easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates. The tax shall be imposed upon the possession or other beneficial use of an electric transmission line and associated facilities, except that lines and facilities of a design capacity of less than 500 kilovolts shall not be subject to the tax. *The tax may not be imposed upon the possession or other beneficial use of railroad right-of-way or track acquired by the state pursuant to Title 60, chapter 11, part 1, as long as the state retains ownership and the right-of-way and track is used exclusively for rail transportation.*"

**Section 3. Applicability.** This act applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1986.

**Section 4. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 60, chapter 11, part 1, and the provisions of Title 60, chapter 11, part 1, apply to section 1.

**Section 5. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 6. Extension of authority.** Any existing authority of the department of revenue and the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 7. Effective date.** This act is effective on passage and approval.

Approved April 23, 1987.

## CHAPTER NO. 592

[SB 279]

AN ACT PROVIDING FOR SECURITY OF DATA AND INFORMATION TECHNOLOGY RESOURCES; ESTABLISHING THE RESPONSIBILITIES OF STATE AGENCIES, THE BOARD OF REGENTS, THE SUPREME COURT, AND THE DEPARTMENT OF ADMINISTRATION; AND AMENDING SECTION 2-15-102, MCA.

WHEREAS, data and information collected and maintained by state government are assets which require protection; and

WHEREAS, the increasing use of information technology in state government requires a systematic risk-management approach to minimize increased security threats to data and information technology resources; and

WHEREAS, it is desirable to create a greater awareness regarding the importance of security of state government data and information technology resources; and .

WHEREAS, a recent audit of mainframe computer security indicated a lack of security over data processing equipment and procedures.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-102, MCA, is amended to read:

**"2-15-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Executive branch" means the executive branch of state government referred to in the Montana constitution, Articles III and VI.

(2) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive branch of state government.

(3) "Unit" means an internal subdivision of an agency, created by law or by administrative action, including a division, bureau, section, or department, and an agency allocated to a department for administrative purposes only by this chapter.

(4) "*Data and information technology resources*" means *data processing mainframe, microcomputer hardware, peripherals, software, special forms, personnel, facility resources, maintenance, training, electronically stored data, or other related resources.*

(5) "Department" means a principal functional and administrative entity, created by this chapter within the executive branch of state government; is one of the 20 principal departments permitted under the constitution; and includes its units.

(6) "Department head" means a director, commission, board, commissioner, or constitutional officer in charge of a department created by this chapter.

(7) "Director" means a department head specifically referred to as a director in this chapter, and does not mean a commission, board, commissioner, or constitutional officer.

(8) "Advisory capacity" means furnishing advice, gathering information, making recommendations, and performing such other activities as may be necessary to comply with federal funding requirements and does not mean administering a program or function or setting policy.

(9) "Function" means a duty, power, or program, exercised by or assigned to an agency, whether or not specifically provided for by law.

(10) "Quasi-judicial function" means an adjudicatory function exercised by an agency, involving the exercise of judgment and discretion in making determinations in controversies. The term includes but is not limited to the functions of interpreting, applying, and enforcing existing rules and laws;

granting or denying privileges, rights, or benefits; issuing, suspending, or revoking licenses, permits, and certificates; determining rights and interests of adverse parties; evaluating and passing on facts; awarding compensation; fixing prices; ordering action or abatement of action; adopting procedural rules; holding hearings; and any other act necessary to the performance of a quasi-judicial function.

(11) "Quasi-legislative function" generally means making or having the power to make rules or set rates and all other acts connected with or essential to the proper exercise of a quasi-legislative function."

**Section 2. Responsibilities of departments.** Each department head is responsible for assuring an adequate level of security for all data and information technology resources within his department and shall:

(1) develop and maintain written internal policies and procedures to assure security of data and information technology resources. The internal policies and procedures are confidential information and exempt from public inspection, except that such information must be available to the legislative auditor in performing his postauditing duties.

(2) designate an information security manager to administer the department's security program for data and information technology resources;

(3) implement appropriate cost-effective safeguards to reduce, eliminate, or recover from identified threats to data and information technology resources;

(4) ensure internal evaluations of the security program for data and information technology resources are conducted. The results of such internal evaluations are confidential and exempt from public inspection, except that such information must be available to the legislative auditor in performing his postauditing duties.

(5) include appropriate security requirements, as determined by the department, in the written specifications for the department's solicitation of data and information technology resources; and

(6) maintain an information technology plan, including a general description of the existing security program and future plans for assuring security of data and information technology resources.

**Section 3. Responsibilities of department of administration.** The department of administration is responsible for providing centralized management and coordination of state policies for security of data and information technology resources and shall:

(1) establish and maintain the minimum security standards and policies to implement [section 2], including the physical security of central and backup computer facilities consistent with these standards;

(2) establish guidelines to assist agencies in identifying electronic data processing personnel occupying positions of special trust or responsibility or sensitive locations;

(3) establish standards and policies for the exchange of data between data centers or departments by hardwired or nondedicated telecommunications to ensure that exchanges do not jeopardize data security and confidentiality;

(4) coordinate and provide for a training program regarding security of data and information technology resources to serve governmental technical and managerial needs;

(5) include appropriate security requirements in the specifications for solicitation of state contracts for procuring data and information technology resources; and

(6) upon request, provide technical and managerial assistance relating to the security program.

**Section 4. Responsibilities of board of regents.** The board of regents is responsible for assuring an adequate level of security for data and information technology resources, as defined in 2-15-102, within the state university system. In carrying out this responsibility, the board of regents shall, at a minimum, address the responsibilities prescribed in [section 2].

**Section 5. Responsibilities of supreme court.** The supreme court is responsible for assuring an adequate level of security for data and information technology resources, as defined in 2-15-102, within the judicial branch. In carrying out this responsibility, the supreme court shall, at a minimum:

(1) address the responsibilities prescribed in [section 2]; and

(2) develop written minimum standards and guidelines for the judicial branch to follow in developing its security program.

**Section 6. Codification instructions.** (1) Section 2 is intended to be codified as an integral part of Title 2, chapter 15, part 1, and the provisions of Title 2, chapter 15, part 1, apply to section 2.

(2) Section 3 is intended to be codified as an integral part of Title 2, chapter 17, part 5, and the provisions of Title 2, chapter 17, part 5, apply to section 3.

(3) Section 4 is intended to be codified as an integral part of Title 2, chapter 15, part 15, and the provisions of Title 2, chapter 15, part 15, apply to section 4.

(4) Section 5 is intended to be codified as an integral part of Title 3, chapter 2, part 6, and the provisions of Title 3, chapter 2, part 6, apply to section 5.

Approved April 23, 1987.

## CHAPTER NO. 593

[SB 325]

AN ACT DIRECTING THE DEPARTMENT OF REVENUE TO CONSIDER REDUCTIONS FROM MARKET VALUE FOR PHYSICAL DEPRECIATION, FUNCTIONAL OBSOLESCENCE, AND ECONOMIC OBSOLESCENCE WHEN USING CONSTRUCTION COST TO APPROXIMATE MARKET VALUE FOR PROPERTY TAX PURPOSES; AMENDING SECTION 15-8-111, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-8-111, MCA, is amended to read:

**"15-8-111. Assessment — market value standard — exceptions.** (1) All taxable property must be assessed at 100% of its market

value except as provided in subsection (5) of this section and in 15-7-111 through 15-7-114.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) *If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.*

(c) Except as provided in subsection (3), the market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to aircraft and boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in 15-6-134 through 15-6-140 and 15-6-145 through 15-6-149, except:

(a) the wholesale value for agricultural implements and machinery is the loan value as shown in the Official Guide, Tractor and Farm Equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri; and

(b) for agricultural implements and machinery not listed in the official guide, the department shall prepare a supplemental manual where the values reflect the same depreciation as those found in the official guide.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property in classes four through eleven and fifteen through nineteen is the percentage of market value established for each class of property in 15-6-134 through 15-6-141 and 15-6-145 through 15-6-149.

(6) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-143, under class thirteen, are assessed at 100% of the combined appraised value of the standing timber and grazing productivity of the land when valued as timberland.

(7) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(8) The taxable value of all property in 15-6-131 and classes two, three, and thirteen is the percentage of assessed value established in 15-6-131(2), 15-6-132, 15-6-133, and 15-6-143 for each class of property. (Subsections (3)(a) and (3)(b) applicable to tax years beginning after December 31, 1985—sec. 4, Ch. 463, L. 1985. Subsection (6)(d) and references in (8) to class thirteen and 15-6-143 terminate January 1, 1991—sec. 10, Ch. 681, L. 1985.)"

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Applicability date.** This act applies to taxable years beginning after December 31, 1987.

Approved April 23, 1987.

## CHAPTER NO. 594

[SB 337]

### AN ACT TO CLARIFY THE EXTENT OF THE PROPERTY TAX EXEMPTION GRANTED TO SURVIVING SPOUSES OF DISABLED VETERANS; AND AMENDING SECTION 15-6-211, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-6-211, MCA, is amended to read:

**"15-6-211. Certain disabled or deceased veterans' residences exempt.** (1) A residence, including the lot on which it is built, owned and occupied by a veteran or a veteran's spouse is exempt from property taxation under the following conditions. The veteran must:

(a) have been killed while on active duty or have died as a result of a service-connected disability; or

(b) if living:

(i) have been honorably discharged from active service in any branch of the armed services;

(ii) be rated 100% disabled due to a service-connected disability by the United States veterans administration or its successor; and

(iii) have an annual adjusted gross income, as reported on the latest federal income tax return, of not more than \$15,000 for a single person and \$18,000 for a married couple.

(2) *Property shall continue to be exempt under this section so long as the property is the primary residence owned and occupied by the veteran or, if the veteran is deceased, the veteran's spouse and the spouse:*

(a) is the owner and occupant of the house;

(b) has an annual adjusted gross income, as reported on the latest federal income tax return, of not more than \$15,000;

(c) is unmarried; and

(d) *has obtained from the United States veterans administration a letter indicating that the veteran was 100% service-connected disabled at the time of death or that the veteran died while on active duty or as a result of a service-connected disability."*

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 23, 1987.

## CHAPTER NO. 595

[SB 389]

AN ACT TO INCREASE THE ANNUAL LICENSE TAX FEE ON MOTOR VEHICLES POWERED BY LIQUEFIED PETROLEUM GAS TO BE COMMENSURATE WITH THE TAX ON GASOLINE AND DIESEL FUEL; AMENDING SECTION 15-71-101, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-71-101, MCA, is amended to read:

**"15-71-101. Tax to be collected on motor vehicles self-propelled by a liquefied petroleum gas.** (1) The department of highways shall, under the rules issued by the department of revenue, collect or cause to be collected from owners or operators of motor vehicles powered by any liquefied petroleum gas an annual license tax fee on each such vehicle, which license tax fee is prorated on a quarterly basis and may be paid quarterly, semiannually, or annually according to the following schedule:

(a) passenger cars and pickups whose licensed gross vehicle weight is 10,000 pounds or less, \$108;



(b) motor trucks and truck tractors whose licensed gross vehicle weight is over 10,000 pounds and less than 18,000 pounds, \$144;

(c) motor trucks and truck tractors whose licensed gross vehicle weight is 18,000 pounds or more and less than 48,000 pounds, \$361;

(d) motor trucks and truck tractors whose licensed gross vehicle weight is 48,000 pounds or more, \$1,806;

(e) *school buses used to provide transportation services on contract with school districts in this state, \$144.*

(2) Upon payment of the tax required by this section, the department of highways shall provide a certificate to be carried in each vehicle, which is valid for a period no less than a calendar quarter or for such further calendar period for which the tax is paid."

**Section 2. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date — applicability.** (1) This act is effective January 1, 1988.

(2) This act applies to annual license tax fees paid after December 31, 1987.

Approved April 23, 1987.

## CHAPTER NO. 596

[HB 361]

AN ACT PROVIDING THAT NEW VALUES RESULTING FROM PROPERTY TAX REVALUATION ARE NOT PLACED ON THE TAX ROLLS UNTIL 1 YEAR AFTER THE END OF THE REVALUATION CYCLE; REQUIRING TAXPAYERS TO APPEAL NEW VALUES BEFORE THEY ARE PLACED ON THE TAX ROLLS; AND AMENDING SECTION 15-7-111, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-7-111, MCA, is amended to read:

**"15-7-111. Periodic revaluation of taxable property — appeal of revaluations.** (1) The department of revenue shall administer and supervise a program for the revaluation of all taxable property within the state at least every 5 years. A comprehensive written plan of rotation shall be promulgated by the department fixing the order of revaluation of property in each county on the basis of the last revaluation of taxable property in each county prior to July 1, 1974, in order to adjust the disparities therein between the counties. The plan of rotation so adopted shall provide that all property in each county shall be revalued at least every 5 years or that no less than 20% of the property in each county shall be revalued in

each year. The department shall furnish a copy of the plan and all amendments thereto to each county assessor and the board of county commissioners in each county.

(2) *The new values determined during a revaluation cycle must be provided to the taxpayers at the end of the revaluation cycle but may not be placed on the tax rolls until 1 year following the completion of the revaluation cycle.*

(3) *A taxpayer shall appeal the new value in advance of its placement on the tax rolls by filing an appeal pursuant to 15-15-102 before the first Monday in June or 15 days after receiving notice of the new valuation amount, whichever is later, or be barred from appealing for untimeliness."*

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 23, 1987.

## CHAPTER NO. 597

[HB 397]

AN ACT TO INCREASE UNDER CERTAIN CONDITIONS THE KILOVOLT THRESHOLD FOR THE PURPOSE OF DEFINING A TRANSMISSION LINE UNDER THE MONTANA MAJOR FACILITY SITING ACT; TO PROVIDE FOR NOTICE TO THE PUBLIC AND TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; TO PROVIDE FOR VERIFICATION OF LANDOWNER CONSENT; AMENDING SECTION 75-20-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-20-104, MCA, is amended to read:

**"75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less in inside diameter.

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(6) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection (10), including upgrading to a design capacity covered by subsection (10)(b), except that the term does not include normal maintenance or repair of an existing facility.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Facility" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of \$10 million;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having an estimated cost in excess of \$10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of \$10 million;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of \$10 million; or

(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of \$10 million;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length; and

(ii) *does not include an electric transmission line with a design capacity of more than 69 kilovolts and up to and including 115 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;*

(c) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of \$750,000;

(e) any underground in situ gasification of coal.

(11) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

**Section 2. Notice requirement for certain electric transmission lines.** Whenever a person plans to construct an electric transmission line or associated facilities of a design capacity of more than 69 kilovolts and up to and including 115 kilovolts that is more than 10 miles in length, it must provide public notice to persons residing in the area in which any portion of the electric transmission facility may be located and to the department. This notice must be made no less than 180 days prior to the commencement of acquisition of right-of-way by publication of a summary describing the transmission facility and the proposed location of the facility in those newspapers that will substantially inform those persons of the construction and by mailing such a summary to the department. The notice must inform the property owners of their rights under this chapter concerning the location of the facility and that more information concerning their rights can be obtained from the department.

**Section 3. Verification.** (1) Prior to constructing a transmission line under subsection (10)(b)(ii) of 75-20-104, the person planning to construct the line must provide to the department within 36 months of the date of the public notice provided under [section 2], unless extended by the board for good cause:

(a) copies of the right-of-way agreements or options for a right-of-way containing sufficient information to establish landowner consent to construct the line; and

(b) sufficient information for the department to verify to the board that the requirements of subsection (10)(b)(ii) of 75-20-104 are satisfied.

(2) The provisions of subsection (10)(b)(ii) of 75-20-104 do not apply to any facility for which public notice under [section 2] has been given but for which the requirements of subsection (1) have not been complied with.

**Section 4. Extension of authority.** Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 5. Codification instruction.** Sections 2 and 3 are intended to be codified as an integral part of Title 75, chapter 20, part 2, and the provisions of Title 75, chapter 20, part 2, apply to sections 2 and 3.

**Section 6. Applicability.** The provisions of this act do not apply to any transmission lines or associated facilities that have been certified under this chapter prior to the effective date of this act.

**Section 7. Effective date.** This act is effective on passage and approval.

Approved April 23, 1987.

## CHAPTER NO. 598

[HB 526]

AN ACT TO PROVIDE FOR THE LEASE OR PURCHASE OF LAND OR EASEMENTS FOR WILDLIFE HABITAT AND THE DEVELOPMENT AND MAINTENANCE THEREOF; TO PROVIDE FUNDING THROUGH HUNTING LICENSE FEE INCREASES; TO SPECIFY THE NUMBER OF NONRESIDENT DEER "A" LICENSES THAT MAY BE SOLD; AMENDING SECTIONS 87-2-403, 87-2-504, 87-2-505, 87-2-507, 87-2-701, AND 87-2-711, MCA; PROVIDING A DELAYED EFFECTIVE DATE; AND PROVIDING A TERMINATION DATE.

WHEREAS, the lease or purchase of land suitable for wildlife habitat and the acquisition of conservation easements to protect and enhance habitat are necessary; and

WHEREAS, allocating revenue from increases in hunting license fees is appropriate to fund the protection and enhancement of wildlife habitat.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Acquisition of wildlife habitat — rules.** (1) Before acquisition of any interest in land for the primary purpose of securing wildlife habitat the commission shall by rule establish a policy for making such

acquisitions. With regard to any specific acquisition the policy shall provide for a comprehensive analysis of:

(a) the wildlife populations and use currently associated with the property;

(b) the potential value of the land for protection, preservation, and propagation of wildlife;

(c) management goals proposed for the land and wildlife populations, and where feasible, any additional uses of the land such as livestock grazing or timber harvest;

(d) any potential impacts to adjacent private land resulting from proposed management goals, and plans to address such impacts;

(e) a land maintenance program to control weeds and maintain roads and fences; and

(f) any other matter considered necessary or appropriate by the commission.

(2) The analysis made of any proposed acquisition must be made available for review by each owner of land adjacent to the property that is the subject of analysis, and to any member of the public. A public hearing must be held in the affected area after the analysis has been made available to the public.

**Section 2. Funding for wildlife habitat.** (1) The amount of money specified in this subsection from the sale of each hunting license or permit listed must be used exclusively by the commission to secure, develop, and maintain wildlife habitat, subject to appropriation by the legislature.

(a) Class B-10, nonresident combination, \$100;

(b) Nonresident antelope, \$20;

(c) Nonresident moose, \$20;

(d) Nonresident mountain goat, \$20;

(e) Nonresident mountain sheep, \$20;

(f) Class D-1, nonresident mountain lion, \$20;

(g) Nonresident black bear, \$20;

(h) Wild turkey nonresident, \$10;

(i) Class AAA, sportsman's, \$9.

(2) Twenty percent of any increase after [the effective date of this act] in the fee for the Class B-7 license or any license or permit listed in subsection (1) must be allocated for use as provided in subsection (1).

(3) Eighty percent of the money allocated by this section, together with the interest and income therefrom, must be used to secure wildlife habitat pursuant to 87-1-209.

(4) Twenty percent of the money allocated by this section must be credited to the account created by 87-1-601(5) for use in the manner prescribed therein for the development and maintenance of real property used for wildlife habitat.

Section 3. Section 87-2-403, MCA, is amended to read:

**"87-2-403. Wild turkey tags and fee.** (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or Class B-1 license or as set out in subsection (3). Each tag shall entitle the holder to pursue, hunt, shoot, and kill one wild turkey and possess the carcass thereof, during such times and such places as the department shall authorize an open season on wild turkey.

(2) The fee for a wild turkey tag is \$3 for residents and \$13 for nonresidents. Turkey tags shall be issued either by a drawing system or in unlimited number as authorized by department rules.

(3) Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805 may purchase a wild turkey tag upon presentation of his wildlife conservation license."

Section 4. Section 87-2-504, MCA, is amended to read:

**"87-2-504. Class B-7 and B-8—nonresident deer licenses.** Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase one each of the following licenses: Class B-7, deer A tag, \$150; Class B-8, deer B tag, \$50; and will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the carcasses of those animals as authorized by department rules. Unless purchased as part of a B-10 license, a Class B-7 license must be assigned for use in a specific administrative region or portion thereof. *Not more than 5,000 Class B-7 licenses may be sold in any license year. Money received from the sale of Class B-7 licenses in excess of 1,700 must be used as provided in [section 2(1)].*"

Section 5. Section 87-2-505, MCA, is amended to read:

**"87-2-505. Class B-10—nonresident big game combination license.** Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the fee of \$450 and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license which shall entitle the holder to all the privileges of Class B, Class B-1, Class B-7, and black bear licenses, and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 17,000 Class B-10 licenses may be sold in any one license year."

Section 6. Section 87-2-507, MCA, is amended to read:

**"87-2-507. Class D-1—nonresident mountain lion license.** Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of a fee of \$320 may receive a Class D-1 license which shall entitle the holder thereof to pursue, hunt, shoot, and kill mountain lion and possess the carcass thereof as authorized by department rules. If a holder of a valid mountain lion license under this section kills a mountain lion, he must purchase a trophy license for a fee of \$50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport such trophy."

Section 7. Section 87-2-701, MCA, is amended to read:

**"87-2-701. Special licenses.** (1) Any applicant who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license which, in the judgment of the department, is to be issued and shall pay the following fees therefor:

- (a) moose—resident, \$50; nonresident, \$320;
- (b) mountain goat—resident, \$50; nonresident, \$320;
- (c) mountain sheep—resident, \$50; nonresident, \$320;
- (d) antelope—resident, \$6; nonresident, \$120;
- (e) grizzly bear—resident, \$50; nonresident, \$300;
- (f) black or brown bear—nonresident, \$120;
- (g) wild buffalo—resident, \$200; nonresident, \$1,000.

(2) In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of \$25 within 10 days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

(3) Special licenses shall be issued in a manner prescribed by the department."

Section 8. Section 87-2-711, MCA, is amended to read:

**"87-2-711. Class AAA—sportsman's license.** Any resident, as defined by 87-2-102, who will be 12 years of age or older prior to September 15 of the season for which the license is issued, upon payment of the sum of \$45, shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5, A-6, and resident conservation licenses as prescribed in 87-2-202. The department shall furnish each holder of a sportsman's license an appropriate decal."

Section 9. **Extension of authority.** Any existing authority of the department of fish, wildlife, and parks or the fish and game commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.



Section 10. **Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 87, chapter 1, and the provisions of Title 87 apply to sections 1 and 2.

Section 11. **Coordination instruction.** (1) If Senate Bill No. 331 is passed and approved:

(a) any reference in Senate Bill No. 331 to a fee increase in the Class B-10 nonresident combination license in 87-2-505 or in the Class AAA sportsman's license in 87-2-711 may not be considered as fee increases in addition to the fee increase for those licenses; and

(b) any dedication of a portion of the Class B-10 nonresident combination and Class AAA sportsman's license fees in section 1 of Senate Bill No. 331 must be deducted from the amount of such fees dedicated in section 2 of this act.

(2) If House Bill No. 535 and the provision therein creating a Class B-11 license is passed and approved:

(a) the fee established in House Bill No. 535 for the Class B-11 license is increased to \$200; and

(b) a new subsection is added to section 2 of this act that reads: "Class B-11 nonresident deer combination, \$200."

Section 12. **Effective date — termination date.** This act is effective March 1, 1988, and terminates March 1, 1994.

Approved April 23, 1987.

## CHAPTER NO. 599

[HB 532]

AN ACT ELIMINATING THE REQUIREMENT THAT COUNTY TREASURERS MUST ISSUE A RECEIPT IF A PAYMENT IS RECEIVED THROUGH THE MAIL OR BY ELECTRONIC MEANS; AMENDING SECTIONS 7-6-2116 AND 15-16-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-6-2116, MCA, is amended to read:

**"7-6-2116. Receipt for money paid to county treasurer.** (1) *Except as provided in subsection (2), when any money is paid to the county treasurer, he must issue a receipt, in triplicate, for such money, the original of which shall be delivered to the person paying the same, the duplicate of which shall be delivered to the county clerk, and the triplicate shall be retained in his office.*

(2) *When any money is paid to the county treasurer through the mail or by any electronic means, he must issue receipts for the money. The original receipt shall be retained in his office and a duplicate shall be delivered*

*to the county clerk. Upon request the county treasurer must issue a receipt to the person paying the money."*

Section 2. Section 15-16-104, MCA, is amended to read:

**"15-16-104. Entry of payment — receipt.** (1) The county treasurer must note the date and the amount of the payment of any tax in the assessment book opposite the name of the person paying.

(2) (a) *Except as provided in subsection (2)(b), he must give a receipt to the person paying any tax, specifying the amount of the assessment and the tax paid, with a description of the property assessed.*

(b) *If the payment is received through the mail or by any electronic means, the county treasurer must issue a receipt only on request of the person paying the tax. If the county treasurer issues a receipt, it must contain the information specified in subsection (2)(a)."*

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 23, 1987.

## CHAPTER NO. 600

[HB 656]

AN ACT INCLUDING FERTILIZER HAULERS AMONG THOSE ELIGIBLE TO PAY GROSS VEHICLE WEIGHT FEES OF 55 PERCENT OF SCHEDULES; AMENDING SECTION 61-10-205, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-10-205, MCA, is amended to read:

**"61-10-205. Special fees — haulers of ready-mix concrete — haulers of fertilizer.** There shall be paid and collected annually a fee equal to 55% of the fees provided in Schedule I and Schedule II, as provided in 61-10-201 and 61-10-202, on:

(1) concrete mixer trucks, concrete mixer trailers, and concrete mixer semitrailers used exclusively for hauling ready-mix or ready-to-pour concrete and truck tractors used exclusively in hauling concrete mixer semitrailers; and

(2) fertilizer spreader trucks and spreader trailers used exclusively to transport or to apply fertilizer to agricultural fields and plots. The applicant for a special fee under this subsection shall show, when the fee is paid as provided in 61-10-222, a valid fertilizer dealer license issued by the department of agriculture as provided in 80-10-202."

Section 2. **Extension of authority.** Any existing authority of the department of highways to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective January 1, 1988.

Approved April 23, 1987.

## CHAPTER NO. 601

[HB 848]

AN ACT PROVIDING FOR A REFUND EQUAL TO TAXES PAID IN ANOTHER STATE ON CERTAIN PROPERTY TAXED IN MONTANA; AND AMENDING SECTION 15-16-601, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Refund of certain taxes paid in other states.** Subject to the provisions of 15-16-601 and upon proof that tax was paid in another state, a taxpayer is entitled to a refund equal to the amount of tax paid in another state on a helicopter or property that was assessed in Montana under 15-6-138(1)(g) on January 1 of the year for which the refund is due. The refund under this section may not exceed the tax that was paid in Montana on the same property for the same period of time.

Section 2. Section 15-16-601, MCA, is amended to read:

**"15-16-601. Taxes or penalties illegally collected or duplicate taxes to be refunded.** (1) (a) Any taxes, per centum, and costs paid more than once or erroneously or illegally collected or any amount of tax paid for which a taxpayer is entitled to a refund under 15-16-612 or [section 1] or any part or portion of taxes paid which were mistakenly computed on government bonus or subsidy received by the taxpayer may, by order of the board of county commissioners, be refunded by the county treasurer. Whenever any payment shall have been made to the state treasurer as provided in 15-1-504 and it shall afterwards appear to the satisfaction of the board of county commissioners that a portion of the money so paid should be refunded as herein provided, said board of county commissioners may refund such portion of said taxes, penalties, and costs so paid to the state treasurer, and upon the rendering of the report required by 15-1-505 the county clerk and recorder shall certify to the state auditor, in such form as the state auditor may prescribe, all amounts so refunded, and in the next settlement of the county treasurer with the state, the state auditor shall give the county treasurer credit for the state's portion of the amounts so refunded.

(b) When any part of the taxes, penalties, or costs hereinbefore referred to were levied in behalf of any school district or municipal or other public corporation and collected by the county treasurer, the same may be refunded upon the order of the board of county commissioners.

(c) No order for the refund of any taxes, license fees, per centum, or costs under this section shall be made except upon a claim therefor, verified by the person who has paid such tax, license fee, penalty, or costs or his guardian or, in case of his death, by his executor or administrator, which claim must be filed within 10 years after the date when the second half of such taxes would have become delinquent if the same had not been paid.

(d) All refunds ordered to be paid by the board of county commissioners shall be paid by the county treasurer out of the general fund of the county, and the county treasurer shall then make such transfers from other county funds and from state, school district, and other public corporation funds in his possession as may be necessary to reimburse the county general fund for payments made therefrom on account of such other funds.

(2) Upon the entering of judgment under 15-2-306, the county commissioners of the affected county shall order a refund of such portion of the taxes or license fees as the state tax appeal board has judged should be refunded."

**Section 3. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 15, chapter 16, part 6, and the provisions of Title 15, chapter 16, part 6, apply to section 1.

Approved April 23, 1987.

## CHAPTER NO. 602

[HB 849]

AN ACT RELATING TO THE FUNDING OF THE MONTANA STATEHOOD CENTENNIAL OFFICE; PROVIDING FOR THE APPROPRIATION OF LOAN AUTHORITY FROM THE CRIME VICTIMS COMPENSATION ACCOUNT AND THE JUNK VEHICLE DISPOSAL ACCOUNT AND APPROPRIATION OF CENTENNIAL ACTIVITIES PROCEEDS; EXTENDING REPAYMENTS OF LOANS AUTHORIZED IN THE OFFICE'S 1985 APPROPRIATION; CLARIFYING CERTAIN FUNDING PROVISIONS; AMENDING SECTION 7, CHAPTER 664, LAWS OF 1985, AND SECTION 2-89-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriation.** There is appropriated to the Montana statehood centennial office for the biennium ending June 30, 1989:

(1) an amount not to exceed \$119,110 on loan from the crime victims compensation account and an amount not to exceed \$119,110 on loan from

the junk vehicle disposal account, to be repaid from revenues raised under subsections (2) and (3);

(2) all gifts, devises, loans, and money received by the office or by the state on behalf of the office, prior to July 1, 1989, from public or private sources;

(3) all funds derived, prior to July 1, 1989, from centennial activities conducted pursuant to Title 2, chapter 89.

Section 2. Section 7, Chapter 664, Laws of 1985, is amended to read:

**"Section 7. Appropriation.** There is appropriated to the Montana Statehood Centennial Office for the biennium ending June 30, 1987:

(1) an amount not to exceed \$119,110 on loan from the crime victims compensation account, to be repaid from the revenues raised under *section 1(2) and (3) or subsection (4) of this section by January 1, 1988;*

(2) an amount not to exceed \$119,110 on loan from the junk vehicle disposal account, to be repaid from the revenues raised under *section 1(2) and (3) or subsection (4) of this section by January 1, 1988;*

(3) all gifts, devises, loans, and money received by the office, or by the state on behalf of the office, before July 1, 1987, from public or private sources; and

(4) all funds derived, prior to July 1, 1987, from the following acts in which such acts specifically identify funds that are to be generated for the purpose of providing funds for centennial activities:

(a) Chapter 674, Laws of 1985, enacted as Senate Bill No. 419;

(b) Chapter 489, Laws of 1985, enacted as Senate Bill No. 380."

Section 3. Section 2-89-207, MCA, is amended to read:

**"2-89-207. Administration of sale.** (1) The office shall administer the sale of deeds for the square inches of land as authorized by this part.

(2) The office shall prepare an individual deed for each square inch of the land. After certification by the office, such deeds are conclusive evidence that the holder of the deed purchased the deed to 1 square inch of the centennial acre. No record of subsequent transfer of a deed is required to be kept by the office, the department of fish, wildlife, and parks, or the county clerk and recorder.

(3) (a) The price of a deed is \$10, to be deposited to the account of the Montana statehood centennial office.

(b) The cost of administering the sale of deeds under this part must be borne by the office. The costs of administering the program may be derived from the proceeds of the sales and from any other source except state general fund money.

(c) Proceeds exceeding the costs of administering the program shall first supplant general funds and thereafter constitute funds for centennial activities as provided in part 1 of this chapter.

(4) If, on December 30, 1990, the office believes that there are sufficient unexpended funds derived from the operation of this part, the office shall prepare a bill for the 1991 session of the legislature suggesting the establishment of a continuing fund for the further advancement of Montana's goals."

**Section 4. Effective date.** This act is effective on passage and approval.

Approved April 23, 1987.

## CHAPTER NO. 603

[HB 863]

AN ACT REVISING THE VIDEO POKER MACHINE CONTROL LAW BY REDUCING THE STATE AND LOCAL LICENSE FEES; DEFINING KENO MACHINE; PROVIDING SPECIFICATIONS FOR KENO MACHINES; IMPOSING A VIDEO DRAW POKER AND KENO MACHINE NET INCOME TAX; PROVIDING FOR NET INCOME TAX DISTRIBUTION TO THE GENERAL FUND; AMENDING SECTIONS 17-7-502, 23-5-602, 23-5-603, 23-5-605, 23-5-607, 23-5-608, 23-5-612, AND 23-5-615, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 23-5-602, MCA, is amended to read:

**"23-5-602. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Keno machine" means an electronic video game machine that, upon insertion of cash, is available to play or simulate the play of the game of keno or bingo as provided in part 4 of this chapter, utilizing a video display and microprocessors, in which by the skill of the player or by chance, or both, the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins, cash, tokens, or anything else of value.

(3) "Licensed establishment" means:

(a) with respect to the licensure of keno machines, an establishment that is licensed to sell alcoholic beverages for consumption on the premises or an establishment licensed under 23-5-421; and

(b) with respect to the licensure of video draw poker machines, an establishment that is licensed to sell alcoholic beverages for consumption on the premises.

(4) "Licensee" means an individual, partnership, or corporation that has been issued a license by the department for the placement and operation

of video draw poker machines or *keno machines* in the licensed establishment of the individual, partnership, or corporation.

(5) "*Net machine income*" means money put into a video draw poker or keno machine minus credits paid out in cash.

(6) "*Used keno machine*" means a keno machine, as that term is defined in this section, that is owned or possessed by an applicant on the day he applies for a license for the used machine and that was owned or operated in the state prior to June 30, 1987.

(7) "*Used video draw poker machine*" means a video draw poker machine, as that term is defined in this section, which is owned or possessed by an applicant on the day he applies for a license for the used machine and which was owned or operated in the state prior to February 3, 1984.

(8) "*Video draw poker machine*" means an electronic video game machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker, as provided in this part, utilizing a video display and microprocessors in which, by the skill of the player or by chance, or both, the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins, cash, tokens, or anything else of value."

Section 2. Section 23-5-603, MCA, is amended to read:

**"23-5-603. Video draw poker or keno machines — possession — play — restriction.** No person may place an electronic video game machine that simulates or offers a game of poker, *bingo*, or *keno* in his licensed establishment unless he is licensed under 23-5-612. Machines licensed under 23-5-612 are legal, and it is legal to play such machines, except that a person under the age of 18 years may not play a video draw poker or keno machine. The provisions of part 3 of this chapter do not apply to or prohibit video draw poker or keno machines or the playing of such machines."

Section 3. Section 23-5-605, MCA, is amended to read:

**"23-5-605. Powers and duties of the department — licensing.**

(1) The department shall administer the provisions of this part, except 23-5-615.

(2) The department shall adopt rules implementing this part, except 23-5-615, and:

(a) with respect to state licenses:

(i) provide licensing procedures;

(ii) prescribe necessary application forms; and

(iii) grant or deny license applications;

(b) *with respect to the video draw poker and keno machine net income tax:*

(i) *prescribe recordkeeping requirements for licensees;*

- (ii) *provide a procedure for inspection of records; and*
- (iii) *provide a method for collection of the tax; and*
- (iv) *establish penalties for the delinquent reporting and payment of the required tax.*

(3) The department may not deny or place a condition on a license except for reasonable cause.

(4) The department is a criminal justice agency, and designated employees are granted peace officer status with powers of search, seizure, and arrest to regulate and control those persons licensed under this part, except 23-5-615."

Section 4. Section 23-5-607, MCA, is amended to read:

**"23-5-607. Expected payback — verification.** The department shall prescribe the expected payback value of one credit played to be at least 80% of the value of a credit. Each *video draw poker* or *keno* machine must have an electronic accounting device that the department may use to verify the winning percentage."

Section 5. Section 23-5-608, MCA, is amended to read:

**"23-5-608. Limitation on amount of money played and value of prizes.** A *video draw poker* or *keno* machine may not allow more than \$2 to be played on a game or award free games or credits in excess of the value of \$100 per hand."

Section 6. Section 23-5-612, MCA, is amended to read:

**"23-5-612. State license — fee — used video draw poker and keno machines.** (1) (a) The department of revenue, upon payment of the fee provided in subsection (1)(b) and in conformance with rules adopted under 23-5-605, shall issue to the licensee a license for each *video draw poker* or *keno* machine.

(b) The department shall charge an annual license fee of \$100 for each *video draw poker* machine and \$100 for each *keno* machine. The department shall retain \$100 of the total license fee collected for purposes of administering this part, except 23-5-615. The license expires on June 30 of each year.

(2) A used *video draw poker* machine may be licensed under subsection (1) without meeting the requirements of 23-5-606(4)(j), (4)(k), and (4)(o) if the applicant for licensure can establish to the satisfaction of the department that, on the date of application, he owns or possesses a machine which was owned or operated in the state prior to February 3, 1984. A license issued under this subsection expires 1 year from the date of issuance or on July 1, 1987, whichever occurs first.

(3) A used *keno* machine may be licensed under subsection (1) without meeting the requirements of [section 8] if the applicant for licensure can establish to the satisfaction of the department that, on the date of application, he owns or possesses a machine that was owned or operated in the state prior to June 30, 1987. A license issued under this subsection expires



*for all purposes no later than June 30, 1989. (Subsection (2) terminates July 1, 1987—sec. 15, Ch. 720, L. 1985.)"*

Section 7. Section 23-5-615, MCA, is amended to read:

**"23-5-615. Licensing by local governing bodies.** (1) Any city, town, or county governing body may issue to a person who meets the qualifications of 23-5-611 a license for each video draw poker machine to be used on the premises of a licensed establishment. A machine may be licensed by a city or town if located in the city or town or by the county if the machine is not located in a city or town.

(2) In addition to the license fee paid under 23-5-612, a governing body may charge an annual license fee for each license issued under this section. The license expires on June 30 of each year, and the fee must be prorated.

(3) Such license fee may not exceed \$100."

Section 8. **Keno machine specifications.** Each keno machine must:

(1) be inspected in the state of Montana for certification and licensure by the department;

(2) be connected with a system consisting of player-operated terminals. The terminals must be intelligent devices operated by the players in the manner specified in this part.

(3) not have any switches, jumpers, wire posts, or any other means of manipulation that could affect the operation or outcome of a game; and

(4) offer only the game of keno and have the following method of operation:

(a) the numbers must be mixed after each game is played;

(b) the game must have one memory location for each number. The numbers must be mixed by use of a random number generator.

(c) each game must have a field of numbers from 1 to 75 or 1 to 80 for each game of keno or bingo that is played. There must be at least 20 numbers drawn in each game.

(d) the game must display the number of spaces picked for which free games or credits will be awarded and the number of free games or credits for each game;

(e) the machine must have doors to two or more locking areas, one area containing the logic board and software for the game of keno and the others housing the cash compartment and mechanical meters. These areas must be locking and separated. Access to one from the other must not be allowed at any time.

(f) the machine must have two mechanisms, hereinafter referred to as "mechanism 1" and "mechanism 2", that accept quarters. The machine may have a mechanism that accepts cash in the form of bills not to exceed \$5.

(g) each quarter must represent one credit;

(h) the game must display the combinations for which free games or credits will be awarded and the number of free games or credits for each combination;

(i) the machine must be capable of printing a ticket voucher for the player at the completion of each game. If credits are owed the player, the ticket must contain:

(i) the name of the licensed establishment;

(ii) the name of the city, town, or county in which the licensed establishment is located;

(iii) the value of the prize in numbers;

(iv) the value of the prize in words;

(v) the time of day, in hours and minutes in a 24-hour format;

(vi) the date;

(vii) the machine license number or serial number up to eight digits;

(viii) the sequential number of the ticket voucher; and

(ix) an encrypted validation number from which the validity of the prize can be determined;

(j) an exact copy of each printed ticket voucher must be printed and retained within the machine;

(k) the machine must have nonresettable mechanical meters housed in the cash compartment that keep a permanent record of:

(i) total coins accepted by both coin acceptors;

(ii) the machine may have a mechanism that accepts cash in the form of bills;

(iii) credits played by player;

(iv) credits won by player; and

(v) credits printed out by the ticket voucher printer;

(l) the machine must contain electronic metering, using meters that record the following and display them on the video screen:

(i) total coins in mechanism 1, total coins in mechanism 2, and total coins in mechanisms 1 and 2 combined;

(ii) if the machine has a bill acceptor, it must contain electronic metering using meters that record total coins in mechanisms 1 and 2 combined and total credits in the bill acceptor;

(iii) total credits, total credits played, and total credits won;

(iv) total games of keno played and total games of keno won;

(v) total errors from the logic board random access memory; and

- (vi) total examination of electronic meters;
- (m) the machine may not have any functions or parameters adjustable by or through any separate video display or input codes, except for the adjustment of features that are wholly cosmetic;
- (n) the machine must issue, by activation of an external switch, an accounting ticket containing a performance synopsis of the machine. The ticket must contain:
  - (i) the name of the licensed establishment;
  - (ii) the name of the city, town, or county in which the licensed establishment is located;
  - (iii) the license number of the machine;
  - (iv) the time of day, in hours and minutes in a 24-hour format;
  - (v) the date; and
  - (vi) the electronic meter readings required by subsection (4)(l).

**Section 9. Video draw poker and keno machine net income tax — records — quarterly statement and payment.** (1) Each licensee shall pay to the department a video draw poker and keno machine tax of 15% of net machine income from each video draw poker and keno machine licensed under this part.

(2) Each licensee shall keep a record of net machine income in such form as the department may require. The records must at all times during the business hours of the licensee be subject to inspection by the department, its agents, or employees.

(3) Each licensee shall, within 15 days after the end of each quarter, complete and deliver to the department a statement showing the total net machine income from each video draw poker and keno machine licensed to him, together with the total amount due the state as video draw poker and keno machine net income tax for the preceding quarter. The statement must contain such other information as the department may require.

(4) (a) The department must deposit one-third of the tax collected under subsection (3) in the general fund.

(b) The department must forward the remaining two-thirds of the tax collected under subsection (3) to the treasurer of the county, or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video draw poker and keno machines located in cities and towns. The two-thirds local government portion of tax collected under subsection (3) is statutorily appropriated to the department as provided in 17-7-502 for deposit to the county or municipal treasury.

**Section 10.** Section 17-7-502, MCA, is amended to read:

**“17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by

permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations:

- (a) 2-9-202;
- (b) 2-17-105;
- (c) 2-18-812;
- (d) 10-3-203;
- (e) 10-3-312;
- (f) 10-3-314;
- (g) 10-4-301;
- (h) 13-37-304;
- (i) 15-31-702;
- (j) 15-36-112;
- (k) 15-70-101;
- (l) 16-1-404;
- (m) 16-1-410;
- (n) 16-1-411;
- (o) 17-3-212;
- (p) 17-5-404;
- (q) 17-5-424;
- (r) 17-5-804;
- (s) 19-8-504;
- (t) 19-9-702;
- (u) 19-9-1007;
- (v) 19-10-205;
- (w) 19-10-305;
- (x) 19-10-506;
- (y) 19-11-512;
- (z) 19-11-513;
- (aa) 19-11-606;

(bb) 19-12-301;  
(cc) 19-13-604;  
(dd) 20-6-406;  
(ee) 20-8-111;  
(ff) 37-51-501;  
(gg) 53-24-206;  
(hh) 75-1-1101;  
(ii) 75-7-305;  
(jj) 80-2-103;  
(kk) 80-2-228;  
(ll) 90-3-301;  
(mm) 90-3-302;  
(nn) 90-15-103;  
(oo) Sec. 13, HB 861, L. 1985; and  
(pp) [section 9].

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments."

**Section 11. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 12. Codification instruction.** Sections 8 and 9 are intended to be codified as an integral part of Title 23, chapter 5, part 6, and the provisions of Title 23, chapter 5, part 6, apply to sections 8 and 9.

**Section 13. Effective date.** This act is effective June 30, 1987.

Approved April 23, 1987.

## CHAPTER NO. 604

[HB 871]

**AN ACT REQUIRING THE BOARD OF PUBLIC EDUCATION TO ADJUST THE SALARIES FOR THE CERTIFIED OR LICENSED FACULTY OF THE MONTANA SCHOOL FOR THE DEAF AND BLIND; PROVIDING AN APPROPRIATION FOR ADJUSTING THE SALARIES; AND PROVIDING AN EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Salary schedule for faculty.** When prescribing compensation for the certified or licensed faculty of the Montana school for the deaf and blind as provided in 20-8-103, the board of public education shall

adjust the salaries for certified or licensed faculty so that the cost of the adjustment is equal to the appropriation in [section 2].

**Section 2. Appropriation.** There is appropriated \$23,029 for each year of the biennium ending June 30, 1989, from the general fund to the board of public education for adjusting the salaries for the certified or licensed faculty of the Montana school for the deaf and blind.

**Section 3. Extension of authority.** Any existing authority of the board of public education to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Codification instruction.** Section 1 is intended to be codified as an integral part of Title 20, chapter 8, part 1, and the provisions of Title 20, chapter 8, part 1, apply to section 1.

**Section 5. Effective date.** This act is effective July 1, 1987.

Approved April 23, 1987.

## CHAPTER NO. 605

[HB 887]

AN ACT ESTABLISHING A REVISED PROGRAM TO PROVIDE ASSISTANCE AND COUNSELING FOR FINANCIALLY DISTRESSED FARMERS; PROVIDING FOR FARM FINANCIAL CONSULTING, SUPPORT COUNSELING, AND REFERRAL SERVICES; AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO CHARGE REASONABLE FEES TO DEFRAY THE COSTS OF PROVIDING FINANCIAL CONSULTING SERVICES; APPROPRIATING MONEY FOR COUNSELING AND FOR MEDIATION IN COORDINATION WITH SENATE BILL NO. 321; AMENDING SECTIONS 80-13-101 THROUGH 80-13-104 AND 80-13-111, MCA, AND SECTION 15, CHAPTER 9, SPECIAL LAWS OF MARCH 1986; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 80-13-101, MCA, is amended to read:

**"80-13-101. (Temporary) Purpose.** It is the declared purpose of this chapter to establish an emergency program to directly assist individual farmers who are financially distressed by providing them assistance and counseling to manage farm credit problems, to avoid or mitigate forced liquidation or farm foreclosure, and to cope with the financial stress resulting from the adverse conditions of agriculture in this state. (Terminates July 1, 1987—sec. 15, Ch. 9, Sp. L. March 1986.)"

**Section 2.** Section 80-13-102, MCA, is amended to read:

**"80-13-102. (Temporary) Definitions.** As used in this chapter, unless the context indicates otherwise, the following definitions apply:

(1) "Agricultural production" means the production of livestock, poultry, field crops, fruit, or other animal and vegetable matter for food or fiber.

(2) "Department" means the department of agriculture provided for in 2-15-3001.

(3) "Farmer" means a person who owns or operates a farm or ranch primarily for the purpose of agricultural production.

(4) "Peer counselor" means a person who is or has been involved in production agriculture and who has been trained through the department and others in financial counseling and who works to aid financially distressed farmers through this program.

(5) "Program" means the program provided for in 80-13-103. (Terminates July 1, 1987—sec. 15, Ch. 9, Sp. L. March 1986.)"

Section 3. Section 80-13-103, MCA, is amended to read:

**"80-13-103. (Temporary) Establishment of program.** (1) The department shall establish a program to aid financially distressed farmers in this state.

(2) Under the program, the department shall make available to farmers the following types of assistance:

- (a) *farm* financial consulting;
- (b) support counseling; and
- (c) *information and* referral services. (Terminates July 1, 1987—sec. 15, Ch. 9, Sp. L. March 1986.)"

Section 4. Section 80-13-104, MCA, is amended to read:

**"80-13-104. (Temporary) Powers and duties of department.** (1) For the purpose of administering the program, the department shall:

- (a) utilize the services of:
  - (i) a network of trained peer counselors who can directly assist financially distressed farmers;
  - (ii) the cooperative extension service and the college of agriculture at Montana state university;
  - (iii) state or federal agencies;
  - (iv) community service organizations;
  - (v) private business;
  - (vi) professional organizations;
  - (vii) regional mental health corporations;
  - (viii) volunteer organizations; and
  - (ix) any other person or entity capable of providing assistance to farmers;

(b) contract for services with qualified personnel, including peer counselors and farm financial consultants, to provide the assistance required under 80-13-103;

(c) hire a coordinator and necessary staff to implement and manage the program;

(d) provide training for interested and qualified persons, including peer counselors, to assist farmers needing help with farm financial management problems; and

(e) establish a toll-free telephone line to receive requests for assistance, counseling, and referral of services.

(2) The department may establish an advisory board to assist the department in determining policy and in developing plans for administration of the program. *Members of the advisory board shall serve without compensation.*

(3) *The department may adopt rules necessary for the administration of the program. (Terminates July 1, 1987—sec. 15, Ch. 9, Sp. L. March 1986.)*

Section 5. Section 80-13-111, MCA, is amended to read:

**"80-13-111. (Temporary) Gifts and grants to support program.**

(1) The department may accept monetary or in-kind contributions, gifts, and grants provided to support the program.

(2) *The department may receive grants on a matching formula basis to be used in accordance with the terms and conditions for receipt of such grants. (Terminates July 1, 1987—sec. 15, Ch. 9, Sp. L. March 1986.)*

Section 6. **Authorization for collection of fees.** The department may charge reasonable fees to defray the costs of providing financial consulting services under [this act].

Section 7. Section 15, Chapter 9, Special Laws of March 1986, is amended to read:

**"Section 15. Effective date — termination.** (1) This act is effective on passage and approval.

(2) *Sections 6 through 14 terminate July 1, 1987.*

(3) *Sections 1 through 5 terminate July 1, 1989."*

Section 8. **Extension of authority.** Any existing authority of the department of agriculture to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 9. **Appropriation for counseling — expenditure of fees and grants authorized.** (1) There is appropriated to the department of agriculture from the general fund for the biennium ending June 30, 1989, the following sums of money to be used to fund the program provided for under this act:



FY 1988  
\$124,175

FY 1989  
\$123,814

(2) In addition to the appropriation provided in subsection (1), the department of agriculture may expend \$50,000 in grants and fees during the biennium. Such expenditure must be made for purposes of administering the program established under [this act].

**Section 10. Appropriation for mediation — expenditure authority — coordination with Senate Bill No. 321.** (1) There is appropriated from the general fund to the department of agriculture the sum of \$50,000 for the biennium ending June 30, 1989, for the purpose of providing mediation services.

(2) In addition to the appropriation contained in subsection (1), there is appropriated to the department of agriculture \$50,000 for the biennium ending June 30, 1989, available from fees collected to defray the costs of providing mediation services as authorized in Senate Bill No. 321. Such fees must be applied toward the costs of providing mediation.

(3) If Senate Bill No. 321 is not passed and approved by the 50th legislature, this section is void.

**Section 11. Effective date — termination.** This act is effective on passage and approval and terminates July 1, 1989.

Approved April 23, 1987.

## CHAPTER NO. 606

[SB 210]

AN ACT DEFINING PROFESSIONAL COUNSELORS AS HEALTH CARE PROVIDERS FOR PURPOSES OF DISABILITY INSURANCE AND HEALTH SERVICE CORPORATION PLANS; AMENDING SECTIONS 33-1-104, 33-1-313, 33-1-317, 33-22-111, 33-22-702, 33-30-101, AND 33-30-111 THROUGH 33-30-113, MCA; AND REPEALING SECTION 33-30-1012, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-22-111, MCA, is amended to read:

**“33-22-111. Policies to provide for freedom of choice of practitioners — professional practice not enlarged.** (1) All policies of disability insurance, including individual, group, and blanket policies, and all policies insuring the payment of compensation under the Workers’ Compensation Act shall provide the insured shall have full freedom of choice in the selection of any duly licensed physician, dentist, osteopath, chiropractor, optometrist, chiropodist, psychologist, licensed social worker, *licensed professional counselor*, or nurse specialist as specifically listed in 37-8-202 for treatment of any illness or injury within the scope and limitations of his practice. Whenever such policies insure against the expense of drugs,

the insured shall have full freedom of choice in the selection of any duly licensed and registered pharmacist.

(2) Nothing in this section shall be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1); nor shall this section be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals."

Section 2. Section 33-22-702, MCA, is amended to read:

**"33-22-702. Definitions.** For purposes of this part, the following definitions apply:

(1) "Inpatient hospital benefits" means benefits payable for charges made by a hospital or freestanding inpatient facility, as defined in the policy or contract, for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient and, with respect to major medical policies or contracts, also includes those benefits payable for charges made by a physician, as defined in the policy or contract, for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as a hospital inpatient.

(2) "Outpatient benefits" means benefits payable for:

(a) reasonable charges made by a hospital for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as a hospital inpatient;

(b) reasonable charges for services rendered or prescribed by a physician for the necessary care and treatment for mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as a hospital inpatient;

(c) reasonable charges made by a mental health, alcoholism, or drug addiction treatment center for the necessary care and treatment of a covered person provided in the treatment center; and

(d) reasonable charges for services rendered by a licensed psychiatrist, psychologist, *licensed professional counselor*, or *licensed social worker*.

(3) "Alcoholism treatment center" and "drug addiction treatment center" mean a treatment facility which provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan approved and monitored by a physician or chemical dependency counselor certified by the state, and which facility is also:

(a) affiliated with a hospital under a contractual agreement with an established system for patient referral; or

(b) licensed or approved as an alcoholism or drug addiction treatment center by the alcohol authority of the state.

(4) "Mental health treatment center" means a treatment facility organized to provide care and treatment for mental illness through multiple modalities or techniques pursuant to a written treatment plan approved

and monitored by an interdisciplinary team, including a licensed physician, psychiatric social worker, and psychologist, and which facility is also:

- (a) licensed as a mental health treatment center by the state;
  - (b) funded or eligible for funding under federal or state law; or
  - (c) affiliated with a hospital under a contractual agreement with an established system for patient referral.
- (5) "Mental illness" means neurosis, psychoneurosis, psychopathy, psychosis, or personality disorder."

Section 3. Section 33-30-101, MCA, is amended to read:

**"33-30-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Health service corporation" means a nonprofit corporation organized or operating for the purposes of establishing and operating a nonprofit plan or plans under which prepaid hospital care, medical-surgical care, and other health care and services, or reimbursement therefor, may be furnished to a member or beneficiary.

(2) "Health services" means the health care and services provided by hospitals or other health care institutions, organizations, associations, or groups and by doctors of medicine, osteopathy, dentistry, chiropractic, optometry, and podiatry; nursing services; licensed social worker, *licensed professional counselor*, or psychologist; medical appliances, equipment, and supplies; drugs, medicines, ambulance services, and other therapeutic services and supplies.

(3) "Membership contract" means any agreement, contract, or certificate by which a health service corporation describes the health services or benefits provided to its members or beneficiaries."

Section 4. **Repealer.** Section 33-30-1012, MCA, is repealed.

Section 5. Section 33-1-104, MCA, is amended to read:

**"33-1-104. General penalty.** Each violation of any provision of this code with respect to which violation a greater penalty is not provided by other applicable laws of this state shall, in addition to any administrative penalty otherwise applicable thereto, upon conviction in a court of competent jurisdiction of this state be punishable by a fine of not less than \$50 or more than \$1,000 or by imprisonment in the county jail for not less than 30 days or more than 90 days or by both such fine and imprisonment."

Section 6. Section 33-1-313, MCA, is amended to read:

**"33-1-313. Rules — notice, hearing, and penalty.** (1) The commissioner may make reasonable rules necessary for or as an aid to effectuation of any provision of this code. No such rule shall extend, modify, or conflict with any law of this state or the reasonable implications thereof. Any such rule affecting persons or matters other than the personnel or the internal affairs of the commissioner's office shall be made or amended only after a hearing thereon of which notice was given as required by 33-1-703.

If reasonably possible the commissioner shall set forth the proposed rule or amendment in or with the notice of hearing. No such rule or amendment as to which a hearing is required shall be effective until it has been on file as a public record in the commissioner's office for at least 10 days.

(2) In addition to any other penalty provided, willful violation of any such rule shall subject the violator to such administrative penalties as may be applicable under this code as for violation of the provision as to which such rule relates."

Section 7. Section 33-1-317, MCA, is amended to read:

**"33-1-317. Penalty imposed by commissioner.** The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine not to exceed the sum of \$5,000 upon a person found to have violated any provision of this code or regulation duly promulgated by the commissioner, except that the fine imposed upon agents or adjusters shall not exceed \$500. Said fine shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the commissioner in the name of the state of Montana. Imposition of any fine hereunder shall be an order from which an appeal may be taken, pursuant to the provisions of 33-1-711."

Section 8. Section 33-30-111, MCA, is amended to read:

**"33-30-111. Notice of violation — conference.** If the commissioner shall for any reason have cause to believe that violation of this chapter has occurred or is threatened, the commissioner may give written notice to the health service corporation and to the representatives or other persons who appear to be involved in the suspected violation to arrange a conference with the alleged violators or their authorized representative for the purpose of attempting to ascertain the facts relating to the suspected violation, and in the event it appears that a violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing the violation."

Section 9. Section 33-30-112, MCA, is amended to read:

**"33-30-112. Cease and desist order.** (1) The commissioner acting in the name of the state may issue an order directing a health service corporation or a representative of a health service corporation to cease and desist from engaging in any act or practice in violation of the provisions of this chapter.

(2) Within 15 days after service of the order of cease and desist, the respondent may request a hearing on the question of whether acts or practices in violation of this chapter have occurred. These hearings shall be conducted under the Montana Administrative Procedure Act."

Section 10. Section 33-30-113, MCA, is amended to read:

**"33-30-113. Injunctive relief.** In the case of any violation of the provisions of this chapter, if the commissioner elects not to issue a cease and desist order or in the event of noncompliance with a cease and desist order issued under this chapter, the commissioner may institute a proceeding to obtain injunctive relief, receivership, or other appropriate relief in

the district court of the county in which the violation occurs or in which the principal place of business of the health service corporation is located. Any proceeding under this section shall conform to the requirements of Title 27, chapter 19 or 20, except that the commissioner shall not be required to allege facts tending to show the lack of an adequate remedy at law or tending to show irreparable damage or loss."

**Section 11. Extension of authority.** Any existing authority of the commissioner of insurance and the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 12. Coordination instruction.** If Senate Bill No. 120 and this act are both passed and approved, the code commissioner shall add in Senate Bill No. 120 the words and punctuation "licensed professional counselor, licensed" on page 2, line 18, following "psychologist,".

Approved April 24, 1987.

## CHAPTER NO. 607

[HB 84]

AN ACT IMPOSING A STATEWIDE 4 PERCENT TAX ON THE USERS OF HOTEL, MOTEL, OR CAMPGROUND ACCOMMODATIONS AND SIMILAR FACILITIES; PROVIDING FOR DISTRIBUTION OF THE TAX PROCEEDS TO THE DEPARTMENT OF COMMERCE, REGIONAL NONPROFIT TOURISM CORPORATIONS, AND NONPROFIT CONVENTION AND VISITORS BUREAUS FOR PROMOTION OF MONTANA TOURISM AND MOTION PICTURE AND TELEVISION COMMERCIAL LOCATION, TO THE MONTANA HISTORICAL SOCIETY FOR ROADSIDE HISTORICAL SIGNS AND HISTORIC SITES, AND TO THE UNIVERSITY SYSTEM FOR A MONTANA TRAVEL RESEARCH PROGRAM; ESTABLISHING A TOURISM ADVISORY COUNCIL; PROVIDING FOR APPROPRIATIONS; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** For purposes of [this act], the following definitions apply:

(1) "Accommodation charge" means the fee charged by the owner or operator of a facility for use of the facility for lodging, including bath house facilities, but excluding charges for meals, transportation, entertainment, or any other similar charges.

(2) "Council" means the tourism advisory council established in [section 9].

(3) "Facility" means a building containing individual sleeping rooms or suites, providing overnight lodging facilities for periods of less than 30 days to the general public for compensation. The term includes a facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, or bed and breakfast facility. The term does not include any health care facility, as defined in 50-5-101, any facility owned by a corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under the age of 18 years for camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

(4) "Nonprofit convention and visitors bureau" means a nonprofit corporation organized under Montana law and recognized by a majority of the governing body in the city or consolidated city-county in which the bureau is located.

(5) "Regional nonprofit tourism corporation" means a nonprofit corporation organized under Montana law and recognized by the council as the entity for promoting tourism within one of several regions established by executive order of the governor.

(6) "Campground" means a place, publicly or privately owned, used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes. The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.

**Section 2. Tax rate — combined charge for services.** (1) There is imposed on the user of a facility a tax at a rate equal to 4% of the accommodation charge collected by the facility.

(2) Accommodation charges do not include charges for rooms used for purposes other than lodging.

**Section 3. Collection and reporting.** (1) The owner or operator of a facility shall collect the tax imposed by [section 2].

(2) The owner or operator shall report to the department of revenue, at the end of each calendar quarter, the gross receipts collected during that quarter attributable to accommodation charges for the use of the facility. The report is due within 30 days following the end of the calendar quarter and must be accompanied by a payment in an amount equal to the tax required to be collected under subsection (1).

**Section 4. Audits — records.** (1) The department of revenue may audit the books and records of any owner or operator to ensure that the proper amount of tax imposed by [section 2] has been collected. An audit may be done on the premises of the owner or operator of a facility or at any other convenient location.

(2) The department may request the owner or operator of a facility to provide the department with books, ledgers, registers, or other documents necessary to verify the correct amount of tax.

(3) The owner or operator of a facility shall maintain and have available for inspection by the department books, ledgers, registers, or other documents showing the collection of accommodation charges for the preceding 5 years.

(4) Except in the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating the provisions of [this act], the amount of tax due under any return must be determined by the department within 5 years after the return is made, and the department thereafter is barred from revising any such return or recomputing the tax due thereon, and no proceeding in court for the collection of the tax may be instituted unless notice of any additional tax is provided within such period.

(5) An application for revision may be filed with the department by an owner or operator of a facility within 5 years from the original due date of the return.

**Section 5. Registration number — application to department.** (1) The owner or operator of a facility shall apply to the department of revenue for a registration number.

(2) The application must be made on a form provided by the department.

(3) Upon completion of the application and delivery of the application to the department, the department must assign a registration number to the owner, operator, or facility, as appropriate.

**Section 6. Failure to pay or file — penalty — interest.** (1) An owner or operator of a facility who fails to file the report as required by [section 3] must be assessed a penalty of 2% of the tax that should have been collected during the calendar quarter. Upon a showing of good cause, the department of revenue may waive the penalty.

(2) An owner or operator of a facility who fails to make payment or fails to report and make payment as required by [section 3] must be assessed a penalty of 2% of the amount that was not paid. Upon a showing of good cause, the department may waive the penalty.

(3) If an owner or operator of a facility fails to file the report required by [section 3] or if the department of revenue determines that the report understates the amount of tax due, the department may determine the amount of the tax due and assess that amount against the owner or operator.

(4) The amount required to be paid under [section 3] accrues interest at the rate of 1% a month or part thereof from delinquency until paid.

**Section 7. Distribution of tax proceeds — general fund loan authority.** (1) The proceeds of the tax imposed by [section 2] must be deposited in an account in the state special revenue fund to the credit of

the department of revenue. The department is statutorily appropriated, as provided in 17-7-502, 2% of that account each reporting period for the costs of collecting and disbursing the proceeds of the tax. The balance of the tax proceeds received each reporting period and not deducted pursuant to the statutory appropriation for collection and disbursement is statutorily appropriated as provided in 17-7-502 and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, and to the university system, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program; and

(c) the balance of the proceeds as follows:

(i) 75% to be used directly by the department of commerce;

(ii) except as provided in subsection (1)(c)(iii), 25% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide;

(iii) if 25% of the proceeds collected annually within the limits of a city or consolidated city-county exceeds \$35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city or consolidated city-county is located is to be distributed to the nonprofit convention and visitors bureau in that city or consolidated city-county.

(2) If a city or consolidated city-county qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in [section 8], then those funds must be allocated to the tourism region in which the city or consolidated city-county is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in [section 8], then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.

(4) The department of commerce may use general fund loans for efficient implementation of this section.

**Section 8. Qualification of nonprofit entities for receipt of funds — limitation on administrative costs.** (1) The department of revenue shall provide the council with quarterly reports of regional tax proceeds and tax proceeds of cities and consolidated city-counties that qualify for disbursement of funds under [section 7].



(2) No funds may be disbursed to a regional nonprofit tourism corporation or nonprofit convention and visitors bureau until that entity has submitted an annual marketing plan to the council and that plan has been approved by the council.

(3) A maximum of 20% of the funds received by a regional nonprofit tourism corporation or nonprofit convention and visitors bureau may be used for administrative purposes as defined by the council.

**Section 9. Tourism advisory council.** (1) There is created a tourism advisory council.

(2) The council is composed of not less than 12 members appointed by the governor from Montana's private sector travel industry with representation from each tourism region initially established by executive order of the governor and as may be modified by the council under subsection (5).

(3) Members of the council shall serve staggered 3-year terms, subject to replacement at the discretion of the governor. The governor shall designate four of the initial members to serve 1-year terms and four of the initial members to serve 2-year terms.

(4) The council shall:

(a) oversee distribution of funds to regional nonprofit tourism corporations for tourism promotion and to nonprofit convention and visitors bureaus in accordance with [this act];

(b) advise the department of commerce relative to tourism promotion;

(c) advise the governor on significant matters relative to Montana's travel industry;

(d) prescribe allowable administrative expenses for which accommodation tax proceeds may be used by regional nonprofit tourism corporations and nonprofit convention and visitors bureaus;

(e) direct the university system regarding Montana travel research; and

(f) approve all travel research programs prior to their being undertaken.

(5) The council may modify the tourism regions established by executive order of the governor.

**Section 10.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations:

- (a) 2-9-202;
- (b) 2-17-105;
- (c) 2-18-812;
- (d) 10-3-203;
- (e) 10-3-312;
- (f) 10-3-314;
- (g) 10-4-301;
- (h) 13-37-304;
- (i) 15-31-702;
- (j) 15-36-112;
- (k) 15-70-101;
- (l) 16-1-404;
- (m) 16-1-410;
- (n) 16-1-411;
- (o) 17-3-212;
- (p) 17-5-404;
- (q) 17-5-424;
- (r) 17-5-804;
- (s) 19-8-504;
- (t) 19-9-702;
- (u) 19-9-1007;
- (v) 19-10-205;
- (w) 19-10-305;
- (x) 19-10-506;
- (y) 19-11-512;
- (z) 19-11-513;
- (aa) 19-11-606;
- (bb) 19-12-301;
- (cc) 19-13-604;

- (dd) 20-6-406;
- (ee) 20-8-111;
- (ff) 23-5-612;
- (gg) 37-51-501;
- (hh) 53-24-206;
- (ii) 75-1-1101;
- (jj) 75-7-305;
- (kk) 80-2-103;
- (ll) 80-2-228;
- (mm) 90-3-301;
- (nn) 90-3-302;
- (oo) 90-15-103;
- (pp) Sec. 13, HB 861, L. 1985; *and*
- (qq) [section 7].

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments."

**Section 11. Rulemaking authority.** The department of revenue shall adopt such rules as may be necessary to implement and administer [this act].

**Section 12. Rulemaking authority.** The department of commerce shall adopt such rules as may be necessary to implement and administer [this act].

**Section 13. Codification instructions.** (1) Sections 1 through 8 and 11 are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to sections 1 through 8 and 11.

(2) Sections 9 and 12 are intended to be codified as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, apply to sections 9 and 12.

**Section 14. Appropriation.** (1) The department of revenue is authorized, as provided in 17-2-107(2) to obtain a general fund loan in fiscal year 1987 and repay such loan in fiscal year 1988 for startup costs associated with the administration of this act. The loan may not exceed \$120,000.

(2) There is hereby appropriated from the state special revenue fund to the credit of the department of revenue up to \$120,000 in fiscal year 1988 to repay the amount of any general fund loan obtained by the department of revenue in fiscal year 1987.

**Section 15. Effective date — applicability — termination of statutory appropriation.** This act is effective on passage and approval to allow timely rulemaking and is applicable to taxable transactions on or after July 1, 1987. The statutory appropriation to the department of revenue in section 7 for the costs of collecting and disbursing the proceeds of the tax terminates on June 30, 1989. Effective July 1, 1989, the second and third sentences of section 7 are amended to read: "The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, and to the university system, as follows:".

Approved April 24, 1987.

## CHAPTER NO. 608

[HB 252]

AN ACT LOWERING COAL SEVERANCE TAX RATES; PROVIDING A CONTINGENT PERMANENT REDUCTION; EXTENDING THE NEW PRODUCTION CREDIT; REVISING LEGISLATIVE FINDINGS AND DECLARATIONS OF PURPOSE; AMENDING SECTIONS 15-35-101 THROUGH 15-35-104, 15-35-202, AND 15-35-203, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-35-101, MCA, is amended to read:

**"15-35-101. Legislative findings and declarations of purpose.**

(1) The legislature finds that while coal is extracted from the earth like metal minerals, there are differences between coal and metal minerals such that they should be classified in different categories for taxation purposes. The legislature finds that while coal can be utilized like petroleum products, there are differences between coal and petroleum such that they should be classified in different categories for taxation purposes. The legislature further finds that:

(a) coal is the only mineral which can supply energy while being easily found in abundance in Montana;

(b) coal is the only mineral which is so often marketed through sales contracts of many years' duration;

(c) coal, unlike most minerals, varies widely in composition and consequent value when marketed;

(d) coal in Montana is subject to regional and national demands for development which could affect the economy and environment of a larger portion of the state than any other mineral development has done;

(e) *subbituminous coal and lignite coal in Montana have sufficiently different markets and value and therefore require different production taxes;*

(f) coal produced in underground mines has higher production costs and underground producers are able to pay lesser amounts of royalty and production tax than strip-mine producers can pay; *and*

(g) coal production in Montana has been subject to an uncoordinated array of taxes which overlap one another and yield revenue in an inconsistent and unpredictable manner.

(2) The legislature declares that the purposes of this chapter are to:

(a) allow the severance taxes on coal production to remain a constant percentage of the price of coal;

(b) stabilize the flow of tax revenue from coal mines to local governments through the property taxation system;

(c) simplify the structure of coal taxation in Montana, reducing tax overlap and improving the predictability of tax projections; and

(d) accomplish the foregoing purposes by establishing categories of taxation which recognize the unique character of coal as well as the variations found within the coal industry."

Section 2. Section 15-35-102, MCA, is amended to read:

**"15-35-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) (a) "Base consumption level" for a purchaser, *except as provided in subsection (2)(b)*, means the *lesser of*:

(i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or

(ii) *the greater of*:

(A) *the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or*

(B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed

on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

*(b) If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii).*

(3) (a) *Except as provided in subsection (3)(b), "base production level" for a coal mine operator means the lesser of:*

*(i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or*

*(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.*

*(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i).*

(4) "Broker" means any person who resells Montana coal.

(5) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how such royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only:

(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid; and

(d) for quarterly periods ending on and after September 30, 1987, 15 cents per ton.

(6) "Department" means the department of revenue.

(7) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electric energy, or any other form of energy.

(8) "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that

exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.

(9) "Produced" means severed from the earth.

(10) "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

(11) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed his base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.

(12) "Strip mining" or "surface mining" is defined in 82-4-203.

(13) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

(14) "Ton" means 2,000 pounds.

(15) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203."

Section 3. Section 15-35-103, MCA, is amended to read:

**"15-35-103. Severance tax — rates imposed — exemptions.** (1) *Except as provided in subsection (2), a severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:*

(a) *Fiscal Years 1988 and 1989:*

| Heating quality<br>(Btu per pound<br>of coal): | Surface<br>Mining           | Underground<br>Mining      |
|------------------------------------------------|-----------------------------|----------------------------|
| Under 7,000                                    | 12 cents or<br>20% of value | 5 cents or<br>3% of value  |
| 7,000-8,000                                    | 22 cents or<br>30% of value | 8 cents or<br>4% of value  |
| 8,000-9,000                                    | 34 cents or<br>30% of value | 10 cents or<br>4% of value |
| Over 9,000                                     | 40 cents or<br>30% of value | 12 cents or<br>4% of value |

(b) *Fiscal Year 1990:*

| Heating quality<br>(Btu per pound) | Surface<br>Mining | Underground<br>Mining |
|------------------------------------|-------------------|-----------------------|
|------------------------------------|-------------------|-----------------------|

of coal):

|             |                             |                            |
|-------------|-----------------------------|----------------------------|
| Under 7,000 | 12 cents or<br>13% of value | 5 cents or<br>3% of value  |
| 7,000-8,000 | 22 cents or<br>25% of value | 8 cents or<br>4% of value  |
| 8,000-9,000 | 34 cents or<br>25% of value | 10 cents or<br>4% of value |
| Over 9,000  | 40 cents or<br>25% of value | 12 cents or<br>4% of value |

(c) Fiscal Year 1991 and Thereafter:

| Heating quality<br>(Btu per pound<br>of coal): | Surface<br>Mining           | Underground<br>Mining      |
|------------------------------------------------|-----------------------------|----------------------------|
| Under 7,000                                    | 12 cents or<br>13% of value | 5 cents or<br>3% of value  |
| 7,000-8,000                                    | 22 cents or<br>20% of value | 8 cents or<br>4% of value  |
| 8,000-9,000                                    | 34 cents or<br>20% of value | 10 cents or<br>4% of value |
| Over 9,000                                     | 40 cents or<br>20% of value | 12 cents or<br>4% of value |

(2) (a) (i) On or before October 1, 1988, the department shall determine the total number of tons of coal produced in Montana and sold from July 1, 1987, through June 30, 1988. If the department finds that these sales exceed 32.2 million tons (which is the average total yearly coal sales for calendar years 1983, 1984, 1985, and 1986), the rate of the coal severance tax is as set forth in subsections (2)(b) through (2)(d).

(ii) If any facility that burned Montana coal at any time from July 1, 1987, to June 30, 1988, does not operate during a portion of that period due to mechanical failure or catastrophic act of God, the department shall determine the average monthly sales of Montana coal to the facility during its operation and multiply this figure by 12. The department shall include the product of this calculation in making its determination of coal produced in Montana and sold from July 1, 1987, through June 30, 1988.

(b) The severance tax imposed pursuant to subsection (2)(a) on each ton of coal produced in the state from July 1, 1988, through June 30, 1990, is:

| Heating quality<br>(Btu per pound<br>of coal): | Surface<br>Mining           | Underground<br>Mining      |
|------------------------------------------------|-----------------------------|----------------------------|
| Under 7,000                                    | 12 cents or<br>17% of value | 5 cents or<br>3% of value  |
| 7,000-8,000                                    | 22 cents or<br>25% of value | 8 cents or<br>4% of value  |
| 8,000-9,000                                    | 34 cents or<br>25% of value | 10 cents or<br>4% of value |



Over 9,000

40 cents or  
25% of value12 cents or  
4% of value

(c) *The severance tax imposed pursuant to subsection (2)(a) on each ton of coal produced in the state from July 1, 1990, through June 30, 1991, is:*

*Heating quality  
(Btu per pound  
of coal):*

*Surface  
Mining*

*Underground  
Mining*

Under 7,000

12 cents or  
13% of value5 cents or  
3% of value

7,000-8,000

22 cents or  
20% of value8 cents or  
4% of value

8,000-9,000

34 cents or  
20% of value10 cents or  
4% of value

Over 9,000

40 cents or  
20% of value12 cents or  
4% of value

(d) *The severance tax imposed pursuant to subsection (2)(a) on each ton of coal produced in the state after June 30, 1991, is:*

*Heating quality  
(Btu per pound  
of coal):*

*Surface  
Mining*

*Underground  
Mining*

Under 7,000

12 cents or  
13% of value5 cents or  
3% of value

7,000-8,000

22 cents or  
15% of value8 cents or  
4% of value

8,000-9,000

34 cents or  
15% of value10 cents or  
4% of value

Over 9,000

40 cents or  
15% of value12 cents or  
4% of value

(3) "Value" means the contract sales price.

(4) The formula which yields the greater amount of tax in a particular case shall be used at each point on *these schedules*.

(5) A person is not liable for any severance tax upon 50,000 tons of the coal he produces in a calendar year, except that if he produces more than 50,000 tons of coal in a calendar year, he will be liable for severance tax upon all coal produced in excess of the first 20,000 tons.

(6) A new coal production incentive tax credit may be claimed on certain coal as provided in 15-35-202."

Section 4. Section 15-35-104, MCA, is amended to read:

**"15-35-104. Quarterly statement and payment of tax.** Each coal mine operator shall compute the severance tax due on each quarter-year's worth of production on forms prescribed by the department. The statement shall indicate the tonnage produced, the average Btu value of the production, the contract sales price received for the production, and such other

information as the department may require. *Each coal mine operator shall provide a statement of the tons of coal sold to each purchaser for the quarter.* The completed form in duplicate, with the tax payment, shall be delivered to the department not later than 30 days following the close of the quarter. The form shall be signed by the operator if the operator is an individual or by an officer of the coal mine operator if the operator is a business entity. A person operating more than one coal mine in this state may include all of his mines in one statement. The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor."

Section 5. Section 15-35-202, MCA, is amended to read:

**"15-35-202. New coal production incentive tax credit allowed — application limited.** (1) A coal mine operator is entitled to a new coal production incentive tax credit *against* the tax imposed under 15-35-103 of:

(a) 33 ⅓% for incremental production sold during calendar years 1985 and 1986;

(b) 50% for incremental production sold from January 1, 1987, until June 30, 1988; and

(c) 40% for incremental production sold from July 1, 1988, until June 30, 1990; provided, however, that if the production quota established in 15-35-103(2)(a)(i) is not met, the tax credit for this period is 50% for fiscal year 1989 and 40% for fiscal year 1990.

(2) (a) A coal mine operator is entitled to a new coal production incentive tax credit *against* the tax imposed under 15-35-103 on incremental production for the entire term of an agreement, except as provided in subsection (3), if the incremental production resulted from coal purchases under:

(i) an existing agreement which was extended between January 1, 1985, and December 31, 1988, for at least a 5-year period; or

(ii) a new agreement that was executed between January 1, 1985, and December 31, 1988.

(b) The rate of credit allowed under subsection (2)(a) is:

(i) 33 ⅓% for incremental production sold from January 1, 1985, until December 31, 1986;

(ii) 50% for any incremental production sold from January 1, 1987, until June 30, 1988;

(iii) 40% for any incremental production sold from July 1, 1988, until June 30, 1990. However, if the production quota established in 15-35-103(2)(a)(i) is not met, the tax credit for this period is 50% for fiscal year 1989 and 40% for fiscal year 1990.

(iv) 25% for any incremental production sold from July 1, 1990, until June 30, 1991; and

(v) 25% after June 30, 1991, if the production quota in 15-35-103(2)(a)(i) has not been met.

(3) No credit may be claimed for coal produced prior to January 1, 1985."

Section 6. Section 15-35-203, MCA, is amended to read:

**"15-35-203. Calculation and application of credit.** (1) The amount of new coal production incentive tax credit that a coal mine operator may claim against the tax imposed in 15-35-103 is calculated by:

(a) determining the incremental production for each of his qualified purchasers that was produced during a calendar year;

(b) *distributing the incremental production among the quarters in the calendar year in the same proportion as the total volume of coal sold each quarter to each respective purchaser and summing the amounts for all purchasers to determine the coal mine operator's incremental production for each quarter;*

(c) determining the arithmetic average severance tax per ton calculated prior to application of the credit on coal sold to each qualified purchaser *each quarter* during the calendar year;

(d) multiplying the incremental production for a *quarter* for a purchaser by the average severance tax per ton for that purchaser and multiplying the total by *the appropriate percentage as provided in 15-35-202 for each quarter;* and

(e) totaling the amount so calculated for all qualified purchasers *for all four quarters of the calendar year.*

(2) When filing the quarterly statement required in 15-35-104, a coal mine operator may claim against the coal severance tax calculated for that quarter an amount equal to 25% of the new coal production incentive tax credit allowed on incremental production that occurred during the previous calendar year.

(3) If in any calendar year a purchaser exceeds his base consumption level and he has purchased from more than one Montana coal mine operator during the year, the credit on the incremental production must be divided among the operators on a pro rata basis. To determine each coal mine operator's pro rata share of the tax credit, each operator shall divide his incremental production by the sum of all coal mine operators' incremental production for that purchaser and multiply the quotient by the purchases in excess of the base consumption level for that purchaser.

(4) Neither a coal mine operator nor a purchaser is entitled to a direct payment for the credit allowed in 15-35-202. A credit terminates if not taken during the year following the year in which the incremental production occurred.

(5) Each coal mine operator must reduce the delivered price of coal sold to each qualified purchaser by an amount equal to the credit received on incremental production sold to that purchaser."

Section 7. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 8. **Applicability.** Sections 2 and 5 apply retroactively, within the meaning of 1-2-109, to tax periods beginning after December 31, 1986.

Section 9. **Effective date.** This act is effective July 1, 1987.

Approved April 24, 1987.

## CHAPTER NO. 609

[HB 325]

AN ACT REORGANIZING THE EXECUTIVE BRANCH OF STATE GOVERNMENT; CREATING A NEW DEPARTMENT OF FAMILY SERVICES; TRANSFERRING CERTAIN FUNCTIONS OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, COUNTY WELFARE DEPARTMENTS, THE DEPARTMENT OF INSTITUTIONS, AND THE YOUTH COURT OF THE DISTRICT COURT TO THE DEPARTMENT OF FAMILY SERVICES; GENERALLY REVISING THE LAWS RELATING TO CHILD WELFARE SERVICES, CHILD AND ADULT PROTECTIVE SERVICES, AND THE YOUTH COURT TO CONFORM TO THE REORGANIZATION; REPEALING SECTIONS 41-3-1106, 41-3-1113, 41-3-1121, 53-4-121, 53-4-122, 53-20-404, 53-20-407, 53-20-411, AND 53-20-412, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-104, MCA, is amended to read:

**"2-15-104. Structure of executive branch.** (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:

- (a) department of administration;
- (b) department of military affairs;
- (c) department of revenue;
- (d) state board of education;
- (e) department of labor and industry;
- (f) department of commerce;
- (g) department of justice;
- (h) department of health and environmental sciences;
- (i) department of social and rehabilitation services;
- (j) department of institutions;
- (k) department of highways;

- (l) department of public service regulation;
- (m) department of agriculture;
- (n) department of livestock;
- (o) department of state lands;
- (p) department of natural resources and conservation;
- (q) department of fish, wildlife, and parks;
- (r) *department of family services.*

(2) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a division. Each division shall be headed by an administrator.

(b) The principal unit of a division is a bureau. Each bureau shall be headed by a chief.

(c) The principal unit of a bureau is a section. Each section shall be headed by a supervisor."

**Section 2. Department of family services — head.** There is a department of family services. The department head is a director of family services appointed by the governor in accordance with 2-15-111.

**Section 3. Purpose.** It is the public policy of the legislature to reduce duplication and fragmentation of services to youth, families, and senior citizens by creating a department that shall develop and maintain consolidated programs and services, within available resources, and a planned continuum of services to:

(1) provide protective services to ensure the health, welfare, and safety of children and adults who are in danger of abuse, neglect, or exploitation within communities;

(2) provide for the care, protection, and mental and physical development of youth alleged to be youth in need of supervision or delinquent youth who are referred or committed to the department; and

(3) provide supportive services to enable senior citizens to maintain their independence.

**Section 4. Definitions.** Unless the context requires otherwise, in this title the following definitions apply:

(1) "Department" means the department of family services provided for in [section 2].

(2) "Director" means the director of family services provided for in [section 2].

**Section 5. Powers and duties of department.** The department shall:

(1) administer and supervise all forms of child and adult protective services;

(2) provide funding for and place youth alleged or adjudicated to be delinquent or in need of supervision who are referred or committed to the department;

(3) provide the following functions, as necessary, for youth in need of care:

(a) intake, investigation, case management, and client supervision;

(b) placement in youth care facilities;

(c) contracting for necessary services;

(d) protective services day care; and

(e) adoption;

(4) administer youth correctional facilities;

(5) provide supervision, care, and control of youth released from a state youth correctional facility;

(6) license youth care facilities, child placing agencies, day-care facilities, community homes for developmentally disabled persons, community homes for physically disabled persons, and adult foster care facilities;

(7) administer interstate compacts for children and delinquent youth;

(8) (a) administer child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 41, chapter 3, part 7; and

(b) administer elder abuse prevention services;

(9) (a) make a written evaluation of each plan developed by the local youth services advisory councils, as provided in [section 8], indicating those portions of each plan that will be implemented by the department, those portions that will not be implemented, and the reasons for not implementing those portions;

(b) develop a statewide youth services and resources plan that takes into consideration local needs as reflected in plans developed by the local youth services advisory councils;

(10) administer services to the aged;

(11) provide consultant services to:

(a) facilities providing care for needy, indigent, handicapped, or dependent adults; and

(b) youth care facilities;

(12) utilize at maximum efficiency the resources of state government in a coordinated effort to:

(a) provide for children in need of temporary protection or correctional services; and

(b) coordinate and apply the principles of modern institutional administration to the institutions in the department;

(13) subject to the functions of the department of administration, lease or purchase lands for use by institutions in the department and classify those lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration:

(a) the needs of all institutions in the department for the food products that can be grown or produced on the lands; and

(b) the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions in the department;

(14) utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(15) propose programs with specific goals and objectives to the legislature to meet the projected long-range needs of institutions in the department, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions in the department;

(16) contract, as necessary, with the county board of welfare for administration of child and adult protection services for that county; and

(17) adopt rules necessary to carry out the purposes of [sections 3 through 10 and 17 through 19].

**Section 6. Local service areas.** The department shall organize its field offices into local service areas. The director shall take into consideration geographic boundaries used by local governments, judicial districts, and service agencies when creating local service areas.

**Section 7. State youth services council — membership.** (1) The governor may appoint a state planning and advisory council or designate an existing council to advise the director on policies relating to services to children and youth.

(2) A member of the council must have knowledge of and experience in at least one of the following areas:

(a) services to:

(i) youth in need of care;

(ii) youth in need of supervision;

(iii) delinquent youth;

(iv) emotionally disturbed youth; or

(v) chemically dependent youth; or

(b) domestic violence issues.

(3) Membership of the council must include as many of these areas of expertise as possible.

(4) Members must be compensated and reimbursed as provided for in 2-15-122.

**Section 8. Local youth services advisory councils.** (1) The department shall establish a local youth services advisory council within each local service area to ensure a broad-based community plan for children and youth services within the area. A local youth services advisory council may act in an advisory capacity only. Each local advisory council consists of seven members. The director shall appoint members to each local advisory council. At least two members must be nominated by the county commissioners within the area, and at least two members must be nominated by district court judges within the area. Members of the local advisory councils must be broadly representative of the local service area and may not be employed by or under contract to the department or the youth court.

(2) The department shall provide technical assistance to the local advisory councils as necessary.

(3) Each local advisory council shall:

(a) make an annual written review and evaluation of needs and services within the local service area and provide a copy of the review and evaluation to the state planning and advisory council;

(b) advise the department, other state agencies, councils, local governments, and private organizations on programs for services to the children and youth within the local service area; and

(c) develop a plan with specific goals and objectives for a system of community-based services for the children and youth within the local service area and provide a copy of the plan to the state planning and advisory council.

(4) Members must be compensated and reimbursed as provided for in 2-15-122.

**Section 9. Institutions in department.** (1) The following institutions are in the department:

(a) Mountain View school;

(b) Pine Hills school; and

(c) any other institution that provides care and services for delinquent youth.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature.

**Section 10. Debt to state by natural or adoptive parents — limitations.** If a child has been placed in substitute care, as defined in 41-5-103 and 41-3-1102, and a written agreement for payment of support has been entered into by the responsible parent or parents and the department, the debt for support is limited to the amount provided for in the agreement. However, if a court order for support is or has been entered, the order prevails over the agreement.

**Section 11. Certain functions of department of social and rehabilitation services transferred to department of family services.** (1) The functions of the department of social and rehabilitation services in



Title 41 and Title 53 relating to child welfare services and child and adult protective services for youth in need of care, youth in need of supervision, delinquent youth, children and adults in need of protective services, and senior citizens are transferred to the department of family services. The transferred functions include:

- (a) intake, investigation, case management, and client supervision;
- (b) out-of-home placements;
- (c) contracting for services such as evaluations, in-home services, and counseling;
- (d) protective services day care;
- (e) adoption;
- (f) licensure of youth care facilities, child-placing agencies, day-care facilities, community homes for developmentally disabled persons, community homes for physically disabled persons, and adult foster care facilities;
- (g) child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 41, chapter 3, part 7;
- (h) elder abuse prevention services;
- (i) adult protective services and services for the aged; and
- (j) any other functions necessary to provide child welfare services and child and adult protective services.

(2) Unless inconsistent with this act, any reference in the following sections to "department of social and rehabilitation services" or to "department" (of social and rehabilitation services) referring to the functions listed in subsection (1) or any related reference to "department" (of social and rehabilitation services) referring to the functions listed in subsection (1) in related sections is changed to "department of family services": 2-15-2211, 15-6-209, 20-5-301, 27-1-718, 40-2-401 through 40-2-404, 40-8-111, 40-8-121, 40-8-124, 41-3-201, 41-3-202, 41-3-208, 41-3-403, 41-3-406, 41-3-702, 41-3-704, 41-3-1101, 41-4-103, 41-4-104, 41-5-301, 53-4-303, 53-5-101 through 53-5-103, 53-5-111, 53-5-202, 53-5-302, 53-5-504, 53-5-511, 53-5-601, and 53-20-302. The code commissioner shall conform internal references and grammar to these changes.

**Section 12. Certain functions of county welfare offices or departments transferred to department of family services.** (1) The functions of county welfare offices or departments in Title 40, Title 41, and Title 53 relating to child welfare services and child and adult protective services for youth in need of care, youth in need of supervision, delinquent youth, and children and adults in need of protective services are transferred to the department of family services.

(2) Unless inconsistent with this act, any reference in the following sections to "county welfare office" or "county welfare department" or to (county welfare) "office" or (county welfare) "department" referring to the functions listed in subsection (1) or related reference to (county welfare)

"office" or (county welfare) "department" referring to the functions listed in subsection (1) in related sections is changed to "department of family services": 40-4-218, 41-3-107, and 53-5-505. The code commissioner shall conform internal references and grammar to these changes.

**Section 13. Certain functions of department of institutions transferred to department of family services.** (1) The following functions of the department of institutions in Title 53 relating to the evaluation, detention, and aftercare of youth who are alleged to be or have been adjudicated to be youth in need of care, youth in need of supervision, or delinquent youth and of emotionally disturbed youth are transferred to the department of family services:

- (a) intake, investigation, case management, and client supervision;
- (b) contracting for services such as evaluations, in-home services, and counseling;
- (c) institutional services at department institutions;
- (d) supervision, custody, and control of youth released from a state juvenile correctional facility; and
- (e) community-based programs for evaluation or residential care.

(2) Unless inconsistent with this act, any reference in the following sections to "department of institutions" or to "department" (of institutions) referring to the functions listed in subsection (1) or any related reference to "department" (of institutions) referring to the functions listed in subsection (1) in related sections is changed to "department of family services": 53-21-502, 53-30-209, 53-30-210, 53-30-213, 53-30-227, and 53-30-228. The code commissioner shall conform internal references and grammar to these changes.

**Section 14. County contribution for salaries and travel of protective services employees.** (1) Upon transfer of certain functions of the county welfare department to the department of family services as provided in [section 12], the salaries and travel expenses, as provided in 2-18-501 through 2-18-503, of protective services employees must be paid by the department of family services. The board of county commissioners shall reimburse the department of family services from county poor funds in an amount equal to that county's expenditures for salaries, travel expenses, and indirect costs of protective services employees in fiscal year 1987, adjusted for annual inflation.

(2) On or before the 20th day of the month following the month for which payments were made for protective services employees' salaries, travel, and indirect costs, the department of family services shall present to the board of county commissioners a claim for the required reimbursement. The board of county commissioners shall make such reimbursement within 20 days after the presentation of the claim.

**Section 15. Youth placement committees — composition.** (1) In each judicial district, the department shall establish a youth placement committee for the purposes of recommending an appropriate placement of

a youth referred to the department under 41-5-403 or committed to the department under 41-5-523.

(2) The committee consists of not less than five members appointed by the department and must include a representative of the department, a representative of a county department of public welfare, a youth probation officer, a mental health professional, and a representative of a school district located within the boundaries of the judicial district. Committee members serve without compensation.

**Section 16. Duties of the youth placement committee.** A youth placement committee shall:

(1) review all information relevant to the placement of a youth referred or committed to the department;

(2) consider available resources appropriate to meet the needs of the youth;

(3) consider the treatment recommendations of any professional person who has evaluated the youth;

(4) recommend in writing to the department an appropriate placement for the youth in a licensed facility, considering the age and treatment needs of the youth and the relative costs of care in the facilities considered appropriate for placement;

(5) review temporary and emergency placements as required under [section 18]; and

(6) conduct placement reviews as requested by the department.

**Section 17. Youth placement committee to submit recommendation to department — acceptance or rejection of recommendation by department.** (1) When a youth has been referred or committed to the department for placement, the department shall notify the appropriate youth placement committee. The committee shall submit in writing to the department its recommendation for placement of the youth. The committee shall send a copy of the recommendation to the appropriate youth court judge.

(2) If the department accepts the committee's recommendation, the youth must be placed according to the recommendation.

(3) If the department rejects the committee's recommendation, it promptly shall notify the committee in writing of the reasons for rejecting the recommendation. The department shall send a copy of the notice to the appropriate youth court judge.

(4) After receiving a notice under subsection (3), the committee shall submit in writing to the department a recommendation for an alternative placement of the youth.

(5) If the department accepts the committee's recommendation for alternative placement, the youth must be placed according to the recommendation.

(6) If the department rejects the committee's recommendation for alternative placement, the department promptly shall notify the committee in writing of the reasons for rejecting the recommendation, and the youth must be placed in an appropriate facility as determined by the department.

**Section 18. Temporary and emergency placements — limit.** (1) A temporary placement of a youth in a shelter care facility or an emergency placement of a youth in a youth care facility is exempt from the requirements of [section 17].

(2) If a temporary or emergency placement of a youth continues for 45 or more days, the department shall refer the placement of the youth to the appropriate youth placement committee for review. The committee shall make a recommendation for placement to the department in accordance with [section 17].

**Section 19. Confidentiality of youth placement committee meetings and records.** (1) Meetings of a youth placement committee are closed to the public to protect a youth's right to individual privacy.

(2) Information presented to the committee about a youth and committee records are confidential and subject to confidentiality requirements established by rule by the department.

**Section 20. Status of employees upon transfer to the department of family services.** A current state employee who occupies a position that is transferred to the department of family services becomes an employee of the department of family services upon signing of the executive order provided in [section 117] and may not receive a reduction in wages upon such transfer. Any subsequent changes that may affect such employee must be made according to existing laws and rules.

**Section 21.** Section 2-18-303, MCA, is amended to read:

**"2-18-303. Procedures for utilizing pay schedules.** (1) The pay schedules provided in 2-18-311 and 2-18-312 shall be implemented as follows:

(a) The pay schedule provided in 2-18-311 indicates the annual compensation for the fiscal year ending June 30, 1986, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(b) The pay schedule provided in 2-18-312 indicates the annual compensation for the fiscal year ending June 30, 1987, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(c) Each new employee shall advance from step 1 to step 2 of a grade after successfully completing 6 months of probationary service. The anniversary date of an employee shall be established at the end of the probationary period in accordance with rules promulgated by the department.

(d) (i) The compensation of each employee on the first day of the first pay period in fiscal year 1986 shall be that amount which corresponds to the grade and step occupied on the last day of the preceding fiscal year of 1985.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1987 shall be that amount which corresponds to the grade and step occupied on the last day of the fiscal year 1985.

(iii) In compliance with rules adopted to implement this part, each employee is eligible on his anniversary date to advance one step in the pay matrix for fiscal year 1987. However, if the employee's anniversary date falls between (inclusive) July 1 and the first day of the first pay period of fiscal year 1987, he will advance one step on the first day of that pay period.

(2) The pay schedules provided in 2-18-311 and 2-18-312 and the provisions of subsection (1) of this section do not apply to those institutional teachers, liquor store occupations, or blue-collar occupations compensated under the pay schedules provided in 2-18-313, 2-18-314, or 2-18-315.

(3) The pay schedules provided in 2-18-313, 2-18-314, or 2-18-315 shall be implemented as follows:

(a) (i) The pay schedules provided in 2-18-313 indicate the annual compensation for the contracted school term for teachers employed by institutions under the authority of the department of institutions *or the department of family services* for fiscal years 1986 and 1987.

(ii) The compensation of each teacher on the first day of the first pay period in July, 1985, shall be that amount which corresponds to his level of academic achievement and the step occupied on June 30, 1985.

(iii) The compensation of each teacher on the first day of the first pay period in July, 1986, shall be that amount which corresponds to his level of achievement and the step occupied on June 30, 1985.

(b) (i) The pay schedules provided in 2-18-314 indicate the maximum hourly compensation for fiscal years ending June 30, 1986, and June 30, 1987, for those employees in liquor store occupations who have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1986 or 1987, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(c) (i) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, 1986, and June 30, 1987, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1986 or 1987, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) No member of a bargaining unit may receive the amounts indicated in the respective pay schedules provided in 2-18-311 through

2-18-315 until the bargaining unit of which he is a member ratifies a completely integrated collective bargaining agreement covering the biennium ending June 30, 1987.

(ii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, 1985, retroactivity to that date may be negotiated.

(iii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, 1985, members of the bargaining unit involved will continue to receive the compensation they were receiving as of June 30, 1985.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules provided in 2-18-313 through 2-18-315 may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee shall not be reduced by the implementation of the pay schedules provided for in 2-18-311 through 2-18-315.

(6) The department may authorize a separate pay schedule for medical doctors if the rates provided in 2-18-311 and 2-18-312 are not sufficient to attract and retain fully licensed and qualified physicians at the state institutions.

(7) The department may develop programs which will enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. Insofar as the program may apply to employees within a collective bargaining unit, it shall be a negotiable subject under 39-31-305."

Section 22. Section 20-5-301, MCA, is amended to read:

**"20-5-301. Elementary tuition with mandatory approval.** (1) Any child may be enrolled in and attend an elementary school outside of the elementary district in which he resides when such elementary school is located in:

- (a) any other district of the county of his residence;
- (b) a county adjoining his county of residence; or
- (c) a district of another state that is adjacent to the county of his residence.

(2) When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before July 1 of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. The application shall be made on a tuition agreement form supplied by the county superintendent and shall be approved, before

permission to enroll in and attend school outside of the district under the provisions of this section may be granted, by:

- (a) the trustees of the elementary district in which the child resides;
- (b) the trustees of the district where the child wishes to attend school; and
- (c) the county superintendent of the child's residence.

(3) In considering the approval of a tuition application, the tuition approval agents prescribed in this section shall approve such application for a resident child when:

(a) the child resides less than 3 miles from the school which he wishes to attend and more than 3 miles from any school of his resident elementary district;

(b) the child resides more than 3 miles from any school of his resident elementary district and such district does not provide transportation under the provisions of this title;

(c) the child resides more than 3 miles from any school of his resident elementary district, the resident district does not provide transportation under the provisions of this title, and school bus transportation is furnished by the district operating the school which he wishes to attend;

(d) the child is a member of a family who must send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided the child resides more than 3 miles from an elementary school of the resident district or the parent must move to the elementary district where the high school is located in order to enroll the other child in high school;

(e) the child has been declared by a court of competent jurisdiction to be an abused, neglected, or dependent child, as defined in 41-3-102, or a delinquent youth, as defined in 41-5-103, and has been ordered to be placed in a licensed *youth care facility* which is approved by the department of family services and as a result of the order the child is required to attend elementary school outside of the district of his residence. For purposes of this subsection the prescribed geographic relationship of the receiving district to the district of residence does not apply.

(f) the child is required to attend elementary school outside the district of residence as the result of an order of a court of competent jurisdiction. For the purposes of this subsection (f), the following do not apply:

(i) the prescribed geographic relationship of the receiving district to the district of residence in this subsection (3); or

(ii) an order issued under Title 40, chapter 4, part 2.

(4) The trustees of the district where the school to be attended is located may disapprove a tuition agreement that satisfies any of the mandatory approval conditions specified in subsection (3) above when they find that, due to insufficient room and overcrowding, the accreditation of

the school would be adversely affected by the acceptance of the child. In the event of disapproval, the trustees shall so notify the parent in writing within 15 days of the first receipt of the application."

Section 23. Section 20-7-404, MCA, is amended to read:

**"20-7-404. Cooperation of state agencies.** The state department of health, the department of *family services*, and the state school for the deaf and blind shall cooperate with the superintendent of public instruction in assisting school districts in discovering children in need of special education. Nothing herein shall be construed to interfere with the purpose and function of these state agencies."

Section 24. Section 20-7-422, MCA, is amended to read:

**"20-7-422. Out-of-state tuition for special education children.** (1) If the trustees of any district recommend to the superintendent of public instruction the attendance of a child in need of special education in a special education program offered outside of the state of Montana, such arrangements shall not be subject to the out-of-state attendance provisions of the laws governing the attendance of pupils in schools outside the state of Montana.

(2) Whenever the attendance of a child at an out-of-state special education program is approved by the superintendent of public instruction, it shall be the responsibility of the superintendent of public instruction, in cooperation with the department of *family services*, to negotiate the program for the child and the amount and manner of payment of tuition. The amount of tuition shall be included as a contracted service in 20-7-431(1)(a)(iii)(A) in the maximum-budget-without-a-vote for special education."

Section 25. Section 20-9-304, MCA, is amended to read:

**"20-9-304. Eligibility for and payment of state impact aid.** Any district which shall have children of employees of a public institution may be eligible for state impact aid under the following provisions:

(1) An "employee" means an employee of a public institution under the administration of the department of institutions, as defined in 53-1-202, or the department of *family services*, as defined in [section 2], who resides on the property of such a public institution.

(2) A school district shall receive annually from moneys available for state equalization aid \$150 for each elementary pupil and \$250 for each high school pupil whose parents are employees of an institution located in the school district where the pupil attends school or in a school district which has a tuition agreement with the district where the pupil attends school.

(3) A district which is eligible for state impact aid shall apply for such aid to the superintendent of public instruction in the manner prescribed by the rules prescribed by the superintendent of public instruction.

(4) The distribution of state impact aid shall be deposited in the general fund of the district and shall not be considered as a part of the state equalization aid but shall be used to reduce the property tax in support of the general fund of the district."



Section 26. Section 40-4-209, MCA, is amended to read:

**"40-4-209. Security or guaranty to secure support.** (1) Upon verified application by a person authorized to enforce or collect a child support obligation, the department of revenue, *the department of family services*, or the department of social and rehabilitation services showing that a person obligated to pay child support or maintenance pursuant to court or administrative order is delinquent in an amount equal to the total of 6 months' support payments, the court may direct the obligated person to appear and show cause why an order should not be entered ordering that he post bond, give a mortgage, or provide other security or guaranty for the payment of the delinquency.

(2) If the court finds that a delinquency greater than the total of 6 months of support is owed and that the obligated person has the ability to post bond, give a mortgage, or provide security or other guaranty, the court may enter an order requiring him to post bond, give a mortgage, or provide security or guaranty for so long as there is a support delinquency.

(3) The bond or other security may be in an amount up to the total support due for a 2-year period and must be approved by the court. The bond must include the name and address of the issuer. Any person issuing a bond under this section must, if the bond is cancelled, notify the court and the person or public agency entitled to receive payments under the support order.

(4) If the person obligated to pay child support or maintenance fails to make payments as required by the court or administrative order, the person or public agency entitled to receive payment may recover on the bond or other security. The amount recovered on the bond or other security must first be applied toward satisfaction of any support arrearages.

(5) The department of revenue shall adopt guidelines which take into account the payment record of the obligated person, the availability of other remedies, and other considerations which it determines relevant for determining whether the procedure provided in this section would carry out the purpose of enforcing payments of child support or would be appropriate in the circumstances. If after application of the guidelines the department of revenue determines an application for an order requiring security is not appropriate, it may not request the order."

Section 27. Section 40-5-112, MCA, is amended to read:

**"40-5-112. Contents and filing of petition for support — venue.** (1) The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor, including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his social security number.

(2) At the time of filing the petition, the obligee shall also file with the court an affidavit as required by 53-4-248 stating whether he has received

public assistance from any source and, if he has received public assistance, that he has notified the department of social and rehabilitation services and the department of family services in writing of the pending action.

(3) The petition may be filed in the appropriate court of any state in which the obligee resides. The court may not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other state where there is pending another action for separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement."

Section 28. Section 40-5-113, MCA, is amended to read:

**"40-5-113. Officials to represent obligee.** If this state is acting as an initiating state, the prosecuting attorney, upon the request of the court, the department of social and rehabilitation services, the department of revenue, *the department of family services*, a county commissioner, or other local welfare officer, shall represent the obligee in any proceeding under this part. If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation."

Section 29. Section 40-5-139, MCA, is amended to read:

**"40-5-139. Official to represent obligee.** (1) If this state is acting either as a rendering or a registering state, the prosecuting attorney, upon the request of the court, a state department of social and rehabilitation services, *a state department of family services*, a county commissioner, or other local welfare official, shall represent the obligee in proceeding under this part.

(2) If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation."

Section 30. Section 40-5-202, MCA, is amended to read:

**"40-5-202. Department of revenue — powers and duties regarding collection of support debt.** (1) Whenever the department of social and rehabilitation services *or the department of family services* receives an application for public assistance on behalf of a child and it appears to the satisfaction of that department that the child has been abandoned by his parents; the child and one parent have been abandoned by the other parent; or the parent or other person who has a responsibility for the care, support, or maintenance of such child has failed or neglected to give proper care or support to the child, the department of social and rehabilitation services *or the department of family services* shall promptly refer the matter to the department of revenue for action under the provisions of this part, the abandonment or nonsupport statutes, or other appropriate statutes of this state to insure that the parent or other person responsible pays for the care, support, or maintenance of the dependent child.

(2) In the event that public assistance is furnished by a state or county agency or in instances where the department has contracted to collect support, the department shall become trustee of any cause of action of the dependent child or the person having legal custody of the dependent child to recover support due to that obligee from any person and may bring and maintain the action either in the department's own name or in the name of the obligee.

(3) The department has the power of attorney to act in the name of any recipient of public assistance in endorsing and cashing any and all drafts, checks, money orders, or other negotiable instruments received by the department and representing support payments for children in whose behalf public assistance has been previously paid.

(4) For purposes of prosecuting any civil action pursuant to this part, the department is a real party in interest upon the payment of public assistance. No obligee shall act to prejudice the rights of the department after the receipt of public assistance.

(5) No agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may act to reduce or terminate any rights of the department to recover from that obligor for support debt provided unless the department has consented to the agreement in writing.

(6) The department may petition a court for modification of any court order on the same basis as a party to that action would have been entitled to do.

(7) The department shall be subrogated to the right of the child or children or person having the care, custody, and control of the child or children to maintain any civil action or execute any administrative remedy existing under the laws of the state to obtain reimbursement of money thus spent.

(8) If a district court orders an amount of support to be paid by a responsible parent, the department shall be subrogated to the debt created by the order and the money judgment shall be determined to be in favor of the department. This subrogation applies both to:

(a) the lesser of the amount paid by the department of *social and rehabilitation services* or the department of *family services* in public assistance to or for the benefit of a dependent child or children of the responsible parent or the amount of support contained in the court order; and

(b) to any amount allocated to the benefit of the children on the basis of providing necessities for the caretaker of the children.

(9) The department may adopt and enforce such rules as may be necessary to carry out the provisions of this part.

(10) The department, for the purposes mentioned in this part, through its director or the director's authorized representatives, may administer oaths to certify official acts, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence."

Section 31. Section 40-5-303, MCA, is amended to read:

**"40-5-303. Petition for income deduction — who may initiate.** A petition for an income deduction for the payment of delinquent child support payments may be made by:

(1) the person named as the recipient of the child support payments in the child support order;

(2) the child or the guardian of the child named in the child support order; or

(3) the department of revenue, *the department of family services*, or the department of social and rehabilitation services of the state of Montana."

Section 32. Section 40-6-107, MCA, is amended to read:

**"40-6-107. Determination of father and child relationship — who may bring action.** (1) Any interested party may bring an action for the purpose of determining the existence or nonexistence of the father and child relationship presumed pursuant to 40-6-105.

(2) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under 40-6-105 may be brought by the child, the mother or personal representative of the child, the department of social and rehabilitation services or its appropriate local affiliate, *the department of family services or its appropriate local affiliate*, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(3) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with 40-6-114(2), between an alleged or presumed father and the mother or child does not bar an action under this section.

(4) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony."

Section 33. Section 40-6-110, MCA, is amended to read:

**"40-6-110. Parties.** The child shall be made a party to the action. If he is a minor, he shall be represented by his general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may appoint the department of *family services* as guardian ad litem for the child. The natural mother, each man presumed to be the father under 40-6-105, and each man alleged to be the natural father shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties."

Section 34. Section 40-8-103, MCA, is amended to read:

**"40-8-103. Definitions.** As used in this chapter, unless the context otherwise requires the following definitions apply:

(1) "Adoption" means the act of creating the legal relationship between parent and child when it does not exist genetically.

(2) "Adoptive parent" means an adult who has become the mother or father of a child through the legal process of adoption.

(3) "Agency" means a public or voluntary agency licensed by any jurisdiction within the United States and expressly empowered to place children as a preliminary to a possible adoption.

(4) "Birth parent" means the mother or father of genetic origin of a child but does not include a putative father of a child.

(5) "Child" means any person under 18 years of age.

(6) "Court" means a Montana district court or a tribal court of any Montana Indian reservation.

(7) "Department" means the department of *family services*, as established and provided for in [section 2].

(8) "Extended family member" means an adult who is the child's grandparent, aunt or uncle, brother or sister, niece or nephew, or first cousin.

(9) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

(10) "Placement for adoption" means the transfer of physical custody of a child with respect to whom all parental rights have been terminated and who is otherwise legally free for adoption to a person who intends to adopt the child.

(11) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an agency or individual pursuant to 40-6-135 or 40-8-109, whichever is applicable."

Section 35. Section 40-8-126, MCA, is amended to read:

**"40-8-126. Confidentiality of record and proceedings.** (1) Unless the court shall otherwise order, all hearings held in proceedings under this part shall be confidential and shall be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption shall be kept as a permanent record of the court and withheld from inspection. No person shall have access to such records except:

(a) for good cause shown, on order of the judge of the court in which the decree of adoption was entered; or

(b) as provided in 50-15-206.

(3) All files and records pertaining to said adoption proceedings in the county departments of public welfare, the department of social and rehabilitation services, *the department of family services*, or any authorized agencies shall be confidential and withheld from inspection except upon order of court for good cause shown or as provided in 50-15-206."

Section 36. Section 41-3-102, MCA, is amended to read:

**"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

- (1) "Child" or "youth" means any person under 18 years of age.
- (2) An "abused or neglected child" means a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare.
- (3) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:
  - (a) inflicts or allows to be inflicted upon the child physical or mental injury, including injuries sustained as a result of excessive corporal punishment;
  - (b) commits or allows to be committed a sexual assault against the child or exploits the child or allows the child to be exploited for sexual purposes or commits or allows to be committed the act of sexual abuse of children as defined in subsection (1) of 45-5-625;
  - (c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or health care, though financially able to do so or offered financial or other reasonable means to do so;
  - (d) abandons the child by leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or
  - (e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.
- (4) "Adequate health care" means any medical or nonmedical remedial health care, including the prevention of the withholding of medically indicated treatment, permitted or authorized under state law.
- (5) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions. However, the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment:
  - (a) the infant is chronically and irreversibly comatose;
  - (b) the provision of such treatment would:
    - (i) merely prolong dying;

(ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(iii) otherwise be futile in terms of the survival of the infant; or

(c) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane. For purposes of this subsection, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

(6) "Threatened harm" means imminent risk of harm.

(7) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(8) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(9) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(10) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for his necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody of the child and whose legal custody has been transferred to a licensed agency.

(11) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section.

(12) "Department" means the department of *family services* provided for in [section 2].

(13) "Limited emancipation" means a status conferred on a dependent youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(14) "Social worker" means an employee of the department of family services whose duties generally involve the provision of either child or adult protective services, or both."

Section 37. Section 41-3-108, MCA, is amended to read:

**"41-3-108. Child protective teams.** The county attorney or the department of family services may convene one or more temporary or permanent interdisciplinary child protective teams. These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to the child and his family. The supervisor of child protective services in a local service area or his designee shall serve as the team's coordinator. Members shall include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney."

Section 38. Section 41-3-204, MCA, is amended to read:

**"41-3-204. Admissibility and preservation of evidence.** (1) In any proceeding resulting from a report made pursuant to the provisions of this chapter or in any proceeding where the report or its contents are sought to be introduced into evidence, the report or its contents or any other fact related to the report or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a privilege related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

(2) Any person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section shall be paid by the department.

(3) When any person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, he must include in his report either a written description or photographs of the evidence.

(4) A physician, either in the course of his providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer may require x-rays to be taken when in his professional opinion there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section shall be paid by the county child protective service agency.

(5) All written, photographic, or radiological evidence gathered under this section shall be sent to the local affiliate of the department at the time the written confirmation report is sent or as soon thereafter as is possible."

Section 39. Section 41-3-205, MCA, is amended to read:

**"41-3-205. Confidentiality.** (1) The case records of the department of social and rehabilitation services, the department of family services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect shall be kept confidential except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.



(2) Records may be used by interagency interdisciplinary child protective teams as authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan. Members of the team are required to keep information about the subject individuals confidential.

(3) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds such disclosure to be necessary for the fair resolution of an issue before it.

(4) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies."

Section 40. Section 41-3-208, MCA, is amended to read:

**"41-3-208. Rulemaking authority.** The department of *family* services shall adopt rules to govern the procedures used by department personnel in preparing and processing reports and in making investigations authorized by this chapter or 41-3-1123."

Section 41. Section 41-3-301, MCA, is amended to read:

**"41-3-301. Emergency protective service.** (1) Any child protective social worker of the department of *family* services, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place him in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal custody of the youth at the time the placement is made or as soon thereafter as possible.

(2) No child who has been removed from his home or any other place for his protection or care may be placed in a jail.

(3) A petition shall be filed within 48 hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents.

(4) The department of *family* services shall make such necessary arrangements for the youth's well-being as are required prior to the court hearing."

Section 42. Section 41-3-302, MCA, is amended to read:

**"41-3-302. Responsibility of providing protective services.** (1) The department of *family* services shall have the primary responsibility to provide the protective services authorized by this chapter and shall have the authority pursuant to this chapter to take temporary or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

(2) The department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week."

Section 43. Section 41-3-401, MCA, is amended to read:

**"41-3-401. Abuse, neglect, and dependency petitions.** (1) The county attorney, attorney general, or an attorney hired by the county welfare department or office of human services shall be responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney or attorney general, or an attorney hired by the county welfare department or office of human services with the written consent of the county attorney or attorney general, may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting hearing dates and must be heard within 20 days of the filing of the petition.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency resides out of state or is not found within the state, the rules of civil procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced *at the request of* the department of family services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

- (a) temporary investigative authority and protective services;
  - (b) temporary legal custody;
  - (c) termination of the parent-child legal relationship;
  - (d) any combination of the above or such other relief as may be required for the best interest of the youth.
- (11) The petition may be modified for different relief at any time within the discretion of the court.
- (12) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party."

Section 44. Section 41-3-402, MCA, is amended to read:

**"41-3-402. Petition for temporary investigative authority and protective services.** (1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney, attorney general, or *an attorney hired by the county welfare department or office of human services or a department of family services report stating in detail the facts upon which the request is based.*"

Section 45. Section 41-3-607, MCA, is amended to read:

**"41-3-607. Petition for termination — separate hearing — right to counsel — no jury trial.** (1) The termination of a parent-child legal relationship shall be considered only after the filing of a petition pursuant to 41-3-401 alleging the factual grounds for termination. Termination of a parent-child legal relationship shall be considered at a dispositional hearing held pursuant to 41-3-406, following or together with an adjudicatory hearing held pursuant to 41-3-404, within 180 days after the filing of the petition.

(2) After the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services files a petition for termination of a parent-child relationship pursuant to this part, parents shall be advised of the right to counsel, and counsel shall be appointed in accordance with 41-3-401(12).

(3) A guardian ad litem shall be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian

ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

(4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship."

Section 46. Section 41-3-1102, MCA, is amended to read:

**"41-3-1102. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of *family services provided for in [section 2]*.

(3) "Operator of a youth care facility" means any person owning or operating a youth care facility into which he takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance he receives money or other consideration of value, and which child is neither his son, daughter, nor ward, except that this part shall not apply when any person accepts such care and custody of such child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian, or relative of such child.

(4) "Person" means any individual, partnership, voluntary association, or corporation.

(5) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.

(6) "Youth care facility" means a facility licensed by *the department or by the appropriate licensing authority in another state and in which facility* substitute care is provided to youth. *The term* includes youth foster homes, youth group homes, and child-care agencies.

(7) "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

(8) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth."

Section 47. Section 41-3-1103, MCA, is amended to read:

**"41-3-1103. Powers and duties of department.** (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, and child-care agencies for youth in need of care, youth in need of supervision, and delinquent youth;

(b) exercise licensing authority over all youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care, youth in need of supervision, and delinquent youth;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the breakdown of youth in need of care, youth in need of supervision, and delinquent youth by category in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; and

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, *indigent* youths in need of supervision, and *indigent* delinquent youths who require such treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide facilities and services for youth in need of care, youth in need of supervision, and delinquent youth;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in such facilities."

Section 48. Section 41-3-1104, MCA, is amended to read:

**"41-3-1104. Aftercare facilities.** The department of *family services* may establish, maintain, and administer youth *correctional* facilities, evaluation facilities, mental health facilities and services, aftercare programs, and aftercare facilities for the care, custody, and treatment of youth who have been committed to the department."

Section 49. Section 41-3-1112, MCA, is amended to read:

**"41-3-1112. Petition for placement in facility or home.** Any person between the ages of 18 and 21 years who is still within the jurisdiction of the youth court or any person under the age of 18 years may petition the youth court of a district in which a *licensed* youth care facility has

been established to be placed in such a facility for any period of time up to the person's 21st birthday."

Section 50. Section 41-3-1114, MCA, is amended to read:

**"41-3-1114. Continuing jurisdiction of youth court.** The youth court *committing* a delinquent youth or a *youth* in need of supervision to the department of family services retains continuing jurisdiction over the youth until the youth becomes 21 years of age or is otherwise discharged by the department after notice to the youth court of original jurisdiction."

Section 51. Section 41-3-1115, MCA, is amended to read:

**"41-3-1115. Foster care review committee.** (1) In every judicial district the youth court judge, in consultation with the department, shall appoint a foster care review committee. The members of the committee must be willing to act without compensation. The committee shall be composed of not less than five or more than seven members. The members shall include:

- (a) a representative of the department;
- (b) a representative of the youth court;
- (c) someone knowledgeable in the needs of children in foster care placements who is not employed by the department or the youth court;
- (d) a representative of a local school district; and
- (e) if there is one, the foster parent of the child whose care is under review. The foster parent's appointment is effective only for and during that review.

(2) When a child is in foster care under the supervision of the department or if payment for care is made pursuant to 41-3-1122, the committee shall conduct a review of the foster care status of the child. The review must be conducted within a time limit established by the department. The time limit must comply with federal law and may not be later than the 12-month anniversary date of the child's placement into foster care.

(3) The department shall provide the committee with guidelines for operation of the committee. Within 30 days of the foster care review, the committee shall provide the youth court and the department a written report of its findings and recommendations for further action by the youth court or the department.

(4) The department shall adopt rules necessary to carry out the purposes of this section.

(5) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members is confidential and subject to the confidentiality requirements of the department.

(6) The committee is subject to the call of the youth court judge to meet and confer with him on all matters pertaining to the foster care of a child before the youth court."

Section 52. Section 41-3-1122, MCA, is amended to read:

**"41-3-1122. Payment for support of youth in need of care, youth in need of supervision, or delinquent youth — reimbursement by county.** (1) Whenever a youth who is a youth in need of care, a youth in need of supervision, or a delinquent youth is placed by the department of family services in a youth care facility, the department shall pay, within the limits of the appropriation for that purpose, a foster care payment to the youth care facility at a rate established by the department for board, clothing, personal needs, treatment, and room of the youth.

(2) On or before the 20th of each month the department shall present a claim to the county of residence of the youth for no more than one-half of the nonfederal share of the payments so made during the month. The county must make reimbursement to the department within 20 days after the claim is presented.

(3) *Except as provided in subsection (4), when a county's level of expenditure for any year reaches the level of reimbursement for foster care in fiscal year 1987, the county has no further obligation for foster care expenditures.*

(4) *If a county's level of expenditure for foster care in fiscal year 1987 is \$10,000 or less, the county's level of expenditure for purposes of determining the county's reimbursement specified in subsection (3) is the level of expenditures for fiscal year 1987 or the average of expenditures for fiscal years 1984 through 1987, whichever is less.*

(5) The department shall conduct or arrange for the review required under 41-3-1115 of a youth placed in a youth care facility if the youth is placed by the department."

Section 53. Section 41-3-1123, MCA, is amended to read:

**"41-3-1123. Investigation of parents' or guardians' financial ability — financial status report.** (1) (a) Whenever a disposition under 41-3-404 involves placement in a youth care facility and the department is responsible for all or part of the cost of such placement, the court shall order the department to conduct an investigation of the financial status of the youth's parents or guardianship assets.

(b) *Whenever a disposition under 41-5-403, 41-5-523, or 41-5-524 involves placement in a youth care facility or youth correctional facility and the department is responsible for all or part of the cost of such placement, the court shall order the probation officer to conduct an investigation of the financial status of the youth's parents or guardianship assets.*

(2) (a) Upon receipt of the order, the department shall make an investigation for the purpose of ascertaining the residence of the parents or guardian of the youth and the financial ability of the parents or the adequacy of the guardianship assets to pay the cost of supporting the youth:

(i) in the youth care facility or youth correctional facility; or

(ii) as a child of limited emancipation, as may be ordered under 41-3-406.

(b) A written report of the investigation shall be filed with the court having jurisdiction *and* the department, and a copy shall be sent to the parents or guardian of the youth or to any other party to the proceeding.

(3) A copy of the written report shall be provided to all parties to the proceeding before the time set for the dispositional hearing."

Section 54. Section 41-5-103, MCA, is amended to read:

**"41-5-103. Definitions.** For the purposes of the Montana Youth Court Act, unless otherwise stated the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Commit" means to transfer to legal custody.

(4) "Court", when used without further qualification, means the youth court of the district court.

(5) "*Department*" means the department of family services provided for in [section 2].

(6) "Foster home" means a private residence *licensed* by the department for placement of a youth.

(7) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(8) "Judge", when used without further qualification, means the judge of the youth court.

(9) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(10) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

(11) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.



(12) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the *youth court* judge and probation officers.

(13) "Delinquent youth" means a youth:

(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(14) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) habitually disobeys the reasonable and lawful demands of his parents or guardian or is ungovernable and beyond their control;

(c) being subject to compulsory school attendance, is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

(15) "Youth in need of care" means a youth as defined in 41-3-102.

(16) "Custodian" means a person other than a parent or guardian to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(17) "Necessary parties" include the youth, his parents, guardian, custodian, or spouse.

(18) "State youth correctional facility" means a residential facility for the rehabilitation of delinquent youth such as Pine Hills school in Miles City, and Mountain View school in Helena.

(19) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(20) "Detention" means the temporary substitute care of youth in physically restricting facilities.

(21) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made *pursuant to an informal adjustment, consent decree, or other youth court order.*

(22) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.

(23) *"Serious juvenile offender" means a youth who has committed an offense against the person, an offense against property, or an offense involving dangerous drugs which would be considered a felony offense if committed by an adult."*

Section 55. Section 41-5-106, MCA, is amended to read:

**"41-5-106. Order of adjudication — noncriminal.** No placement of any youth in any state youth correctional facility under this chapter shall be deemed commitment to a penal institution. No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this chapter. Neither the disposition of a youth under this chapter nor evidence given in youth court proceedings under this chapter shall be admissible in evidence except as otherwise provided in this chapter."

Section 56. Section 41-5-205, MCA, is amended to read:

**"41-5-205. Retention of jurisdiction.** Once a court obtains jurisdiction over a youth, the court retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:

- (1) at the time the proceedings are transferred to adult criminal court;
- (2) at the time *the youth is discharged by the department; and*
- (3) in any event, at the time the youth reaches the age of 21 years."

Section 57. Section 41-5-206, MCA, is amended to read:

**"41-5-206. Transfer to criminal court.** (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, or mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

- (A) negligent homicide as defined in 45-5-104;
- (B) arson as defined in 45-6-103;
- (C) aggravated assault as defined in 45-5-202;
- (D) robbery as defined in 45-5-401;

- (E) burglary or aggravated burglary as defined in 45-6-204;
- (F) aggravated kidnapping as defined in 45-5-303;
- (G) possession of explosives as defined in 45-8-335;
- (H) criminal sale of dangerous drugs for profit as included in 45-9-101;
- (I) attempt as defined in 45-4-103 of any of the acts enumerated in subsections (1)(a)(ii)(A) through (1)(a)(ii)(H);
- (b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be to the youth court without a jury;
- (c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and
- (d) the court finds upon the hearing of all relevant evidence that there are reasonable grounds to believe that:
  - (i) the youth committed the delinquent act alleged;
  - (ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and
  - (iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.
- (2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:
  - (a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;
  - (b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts will not of itself be grounds for denying the transfer.
  - (c) the severity of the offense;
  - (d) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the youth by the use of procedures, services, and facilities currently available to the youth court.
- (3) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the court was waived and the case transferred to district court.
- (4) The transfer terminates the jurisdiction of the court over the youth with respect to the acts alleged in the petition. No youth may be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(5) Upon order of the court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(6) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

- (a) tried in youth court;
- (b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county attorney and acceptance by the district court judge.

(7) If a youth is found guilty in district court of any of the offenses enumerated in subsection (1) of this section and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it considers proper, *including a state youth correctional facility under the procedures of 53-30-212*; however, no youth under 16 years of age may be confined in the state prison."

Section 58. Section 41-5-301, MCA, is amended to read:

**"41-5-301. Preliminary investigation and disposition.** (1) Whenever the court receives information from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the terms thereof, a probation officer shall make a preliminary inquiry into the matter.

- (2) The probation officer may:
- (a) require the presence of any person relevant to the inquiry;
  - (b) request subpoenas from the judge to accomplish this purpose;
  - (c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall be immediately referred to the department.

(4) (a) The probation officer in the conduct of the preliminary inquiry shall:

(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(ii) determine whether the matter is within the jurisdiction of the court;

(iii) determine, if the youth is in detention or shelter care, whether such detention or shelter care should be continued based upon criteria set forth in 41-5-305.

(b) Once relevant information is secured, the probation officer shall:

(i) determine whether the interest of the public or the youth requires that further action be taken;

(ii) terminate the inquiry upon the determination that no further action be taken; *and*

(iii) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling, refer the youth and his parents to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403, provided such treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, and provided further that said matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney; *or*

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) A petition charging a youth held in detention must be filed within 5 working days from the date the youth was first detained or the petition shall be dismissed and the youth released unless good cause is shown to further detain such youth.

(7) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall be filed."

Section 59. Section 41-5-403, MCA, is amended to read:

**"41-5-403. Disposition permitted under informal adjustment.**

(1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth for substitute care into a youth care facility as defined in 41-3-1102 *and as determined by the department*;

(c) placement of the youth in a private agency responsible for the care and rehabilitation of such a youth *as determined by the department*;

(d) restitution upon approval of the youth court judge.

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim; however, the ability of the victim or his insurer to stand any loss may not be considered in any case.

(3) If the youth violates his aftercare agreement as provided for in 53-30-226, he must be returned to the court for further disposition. No youth may be placed in a state youth correctional facility under informal adjustment."

Section 60. Section 41-5-511, MCA, is amended to read:

**"41-5-511. Right to counsel.** In all proceedings following the filing of a petition alleging a delinquent youth or youth in need of supervision, the youth and the parents or guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained, counsel shall be appointed for the youth if the parents and the youth are unable to provide counsel unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication."

Section 61. Section 41-5-522, MCA, is amended to read:

**"41-5-522. Dispositional hearing.** (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of financial liability as provided in 41-3-1123 and 41-3-1124.

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian who gives his consent and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

(3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests

of the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

(6) In determining whether restitution, as authorized by 41-5-523, is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

- (a) age of the youth;
- (b) ability of the youth to pay;
- (c) ability of the parents or legal guardian to pay;
- (d) amount of damage to the victim; and
- (e) legal remedies of the victim; however the ability of the victim or his insurer to stand any loss may not be considered in any case."

Section 62. Section 41-5-523, MCA, is amended to read:

**"41-5-523. Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making any of the following dispositions:

- (a) place the youth on probation;
- (b) *commit the youth to the department. The department shall thereafter determine the appropriate placement, supervision, and rehabilitation program for the youth after considering the recommendation of the youth placement committee as provided in [section 17]; provided, however, that:*
  - (i) *in the case of a youth in need of supervision, such commitment does not authorize the department to place the youth in a state youth correctional facility. The court shall determine whether continuation in the home would be contrary to the welfare of the child and whether reasonable efforts have been made to prevent or eliminate the need for removal of the child from his home. The court shall include such determination in the order committing the youth to the department.*
  - (ii) *in the case of a delinquent youth who is a serious juvenile offender, the judge may specify that the youth be placed in physical confinement in an appropriate facility only if the judge finds that such confinement is necessary for the protection of the public;*
  - (iii) *a youth may not be held in physical confinement for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 53-30-226.*

(iv) *a youth is under the supervision of a youth probation officer, except that a youth placed in a youth correctional facility is supervised by the department;*

(c) *order such further care and treatment or evaluation that does not obligate funding from the department without the department's approval; or*

(d) *order restitution by the youth.*

(2) *At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department for a period not to exceed 45 days. The department shall determine the place and manner of evaluation.*

(3) *No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.*

(4) *No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes.*

(5) *Any order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.*

(6) *Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.*

(7) *The order of commitment to the department shall read as follows:*

ORDER OF COMMITMENT

State of Montana )  
                          ) ss.  
County of ..... )

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ....., a minor of this county, .... years of age, was brought before me charged with ....., Upon due proof I find that .... is a suitable person to be committed to the department of *family services*.

It is ordered that .... be committed to the department of *family services* until .....

The names, addresses, and occupations of the parents are:

| Name  | Address | Occupation |
|-------|---------|------------|
| ..... | .....   | .....      |
| ..... | .....   | .....      |



The names and addresses of their nearest relatives are:

.....  
.....

Witness my hand this .... day of ...., A.D. 19...

.....  
Judge"

Section 63. Section 41-5-602, MCA, is amended to read:

**"41-5-602. Law enforcement records.** (1) No law enforcement records concerning a youth, except traffic records, may be open to public inspection or their contents disclosed to the public unless the records are directly related to an offense to which publicity must be allowed under subsection (2) of 41-5-601 or unless inspection is ordered by the court.

(2) Inspection of law enforcement records concerning a youth, which records are not open to public inspection under subsection (1), is permitted prior to the sealing of the records by:

(a) a youth court having the youth currently before it in any proceeding;

(b) *the department if it is investigating, supervising, or providing services to the youth;*

(c) the officers of agencies having legal custody of the youth and those responsible for his supervision after release;

(d) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(e) law enforcement officers of Montana, when necessary for the discharge of their immediate duties;

(f) a district court in which the youth is convicted of a criminal offense, for the purpose of a presentence investigation;

(g) the county attorney; or

(h) the youth, his parent, guardian, or counsel."

Section 64. Section 41-5-603, MCA, is amended to read:

**"41-5-603. Youth court and department records.** (1) Youth court and youth court-related department records, including social, medical, and psychological records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers, are open to inspection prior to the sealing of the records only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon such party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after he has been emancipated or reaches the age of majority.

(2) All or any part of records information secured from records listed in subsection (1) of this section, when presented to and used by the court in a proceeding under this chapter, shall also be made available to the counsel for the parties to the proceedings.

(3) All other court records, including docket, petitions, motions, and other papers filed in a case, transcripts of testimony, findings, verdicts, orders, and decrees, shall be open to inspection by those persons and agencies listed in subsection (1) of this section and the parties to the proceedings and their counsel.

(4) All information obtained in discharge of an official duty by any officer or other employee of the youth court *or the department* shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this chapter to receive such information, unless otherwise ordered by the judge.

(5) After youth court *and department* records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:

(a) those persons and agencies listed in subsection (1); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority."

Section 65. Section 45-5-624, MCA, is amended to read:

**"45-5-624. Unlawful possession of an intoxicating substance — interference with sentence or court order.** (1) A person under the age of 18 years commits the offense of possession of an intoxicating substance if he knowingly has in his possession an intoxicating substance other than an alcoholic beverage. A person under the age of 19 commits the offense of possession of an intoxicating substance if he knowingly has in his possession an alcoholic beverage, except that he does not commit the offense when in the course of his employment it is necessary to possess alcoholic beverages.

(2) A person convicted of the offense of possession of an intoxicating substance shall:

(a) be fined not to exceed \$50;

(b) be ordered to complete and, if financially able, pay all costs of his participation in a community-based substance abuse information course;

(c) have his driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if he was driving

or otherwise in actual physical control of a motor vehicle when the offense occurred; or

(d) be sentenced to any combination of these penalties.

(3) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when he failed to comply must be transferred to the youth court. If proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do not apply. If proceedings for violation of subsection (1) or for failure to comply with a sentence are held in the youth court, the offender shall be treated as an alleged youth in need of supervision as defined in 41-5-103. In such case, the youth court may enter its judgment under 41-5-523.

(4) A person commits the offense of interference with a sentence or court order if he purposely or knowingly causes his child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined \$100 or imprisoned in the county jail for 10 days, or both."

Section 66. Section 50-8-101, MCA, is amended to read:

**"50-8-101. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of institutions, the department of health and environmental sciences, and the department of *family services*.

(2) "Facility" means:

(a) for the department of institutions, nonmedical facilities including:

(i) mental health transitional living facilities; and

(ii) inpatient freestanding or intermediate transitional living facilities for alcohol/drug treatment or emergency detoxification;

(b) for the department of *family services*:

(i) *community homes for the developmentally disabled, community homes for physically disabled persons, and adult foster care homes; and*

(ii) *youth care facilities; and*

(c) for the department of health and environmental sciences:

(i) public accommodations, including roominghouses and retirement homes, hotels, and motels;

(ii) health care facilities or services, including hospitals, skilled and intermediate nursing home services, and intermediate care nursing home services for the mentally retarded;

(iii) freestanding medical facilities or care, including infirmaries, kidney treatment centers, and home health agencies; and

(iv) personal care facilities.

(3) "Inspecting authority" means the department or agency authorized by statute to perform a given inspection necessary for certification for licensure.

(4) "Licensing agency" means the agency that is authorized by statute to issue the license."

Section 67. Section 50-15-206, MCA, is amended to read:

**"50-15-206. Permissible disclosure of illegitimate birth.** (1) Disclosure of illegitimacy of birth or information from which illegitimacy can be ascertained may be made only:

(a) upon an order of a court to determine personal or property rights. An adopted person of legal age may apply to the court for such an order.

(b) upon request of the department of social and rehabilitation services, *the department of family services*, or a licensed adoption agency for purposes of custody action, social security eligibility determinations, or Indian tribal enrollment determinations;

(c) upon request of the natural parent during the child's minority unless the child has been placed for adoption.

(2) Except when an order of the court is sought, prior to disclosure, the requesting party must submit in writing to the department:

(a) proof of identity when appropriate;

(b) the need for the information; and

(c) the specific purpose for which the information is to be used. The information may be used only for that purpose."

Section 68. Section 53-1-104, MCA, is amended to read:

**"53-1-104. Release of arsonist — notification of department of justice.** (1) Each of the following institutions or facilities having the charge or custody of a person convicted of arson or of a person acquitted of arson on the ground of mental disease or defect shall give written notification to the department of justice whenever such a person is admitted or released by it:

(a) Montana state hospital;

(b) State prison;

(c) Mountain View school;

(d) Pine Hills school;

(e) Swan River forest camp; or

(f) Any county or city detention facility.

(2) The notification shall disclose:

(a) the name of the person;

(b) where the person is or will be located; and

(c) the type of fire the person was involved in.”

Section 69. Section 53-1-201, MCA, is amended to read:

**“53-1-201. Purpose of department.** The department shall utilize at maximum efficiency the resources of state government in a coordinated effort to:

- (1) restore the physically or mentally disabled;
- (2) rehabilitate the violators of law;
- (3) sustain the vigor and dignity of the aged;
- (4) train children of limited mental capacity to their best potential;
- (5) rededicate the resources of the state to the productive independence of its now dependent citizens; and
- (6) coordinate and apply the principles of modern institutional administration to the institutions of the state.”

Section 70. Section 53-1-202, MCA, is amended to read:

**“53-1-202. Institutions in department.** (1) The following institutions are in the department:

- (a) Montana state hospital;
  - (b) Montana veterans’ home;
  - (c) State prison;
  - (d) Montana developmental center;
  - (e) Montana center for the aged;
  - (f) Swan River forest camp; and
  - (g) Eastmont human services center.
- (2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature.”

Section 71. Section 53-2-101, MCA, is amended to read:

**“53-2-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) “Department” means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(2) “*Protective services*” means services to children and adults to be provided by the department of family services as permitted by Titles 41 and 53.

(3) “Public assistance” or “assistance” means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

(4) “Needy person” is one who is eligible for public assistance under the laws of this state.

(5) "Net monthly income" means one-twelfth of the difference between the net income for the taxable year as the term net income is defined in 15-30-101 and the state income tax paid as determined by the state income tax return filed during the current year.

(6) "Ward Indian" is hereby defined as an Indian who is living on an Indian reservation set aside for tribal use or is a member of a tribe or nation accorded certain rights and privileges by treaty or by federal statutes. If and when the federal Social Security Act is amended to define a "ward Indian", such definition shall supersede the foregoing definition."

Section 72. Section 53-2-201, MCA, is amended to read:

**"53-2-201. Powers and duties of department.** (1) The department shall:

(a) administer or supervise public assistance, including the provision of medical care payments in behalf of recipients of public assistance;

(b) give consultant service to private institutions providing care for the needy, indigent, handicapped, or dependent adults;

(c) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(d) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administration of public assistance functions and for efficiency and economy;

(e) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when so requested, by performing services in conformity with public assistance purposes;

(f) administer all state and federal funds allocated to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes; and

(g) make rules governing payment for services and supplies provided to recipients of public assistance.

(2) The department may:

(a) purchase, exchange, condemn, or receive by gift either real or personal property which is necessary to carry out its public assistance functions. Title to property obtained under this subsection shall be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance."

Section 73. Section 53-2-301, MCA, is amended to read:

**"53-2-301. County departments to be established.** There shall be established in each county of the state, except in a county that has transferred its public assistance and protective services responsibilities to the *state* under the provisions of part 8 of this chapter, a county department of public welfare, which shall consist of a county board of public welfare and such staff personnel as may be necessary for the efficient performance of the public assistance activities of the county. If conditions warrant and if two or more county boards enter into an agreement, two or more counties may combine into one administrative unit and use the same staff personnel throughout the administrative unit."

Section 74. Section 53-2-302, MCA, is amended to read:

**"53-2-302. County commissioners ex officio county welfare board.** Except in a county that has transferred its public assistance and protective services responsibilities to the *state* under part 8 of this chapter, the board of county commissioners shall be the ex officio county welfare board and is hereby authorized to devote such additional time for public assistance matters as may be found necessary. The members of the county welfare board shall receive the same compensation for their services and the same mileage when acting as the county board of public welfare as they receive when acting as the board of county commissioners and shall be limited as to meetings as now provided by law, and the compensation and mileage of the members of the board shall be paid from county funds. They may transact business as a board of county commissioners and as a county welfare board on the same day, and in such cases they shall be paid as a board of county commissioners but may not receive compensation for more than 1 day's work for all services performed on the same calendar day."

Section 75. Section 53-2-304, MCA, is amended to read:

**"53-2-304. Staff personnel of county department.** (1) Each county board shall select and appoint from a list of qualified persons furnished by the department of social and rehabilitation services such staff personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the department of social and rehabilitation services, may appoint some fully qualified person listed by the department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the department of social and rehabilitation services may supervise such county employees in respect to the efficient and proper performance of their duties. The county board of public welfare may not dismiss any member of the staff personnel without the approval of the department of social and rehabilitation services, but the department may request the county board to dismiss any member of the staff personnel for inefficiency, incompetence, or similar cause.

(2) Public assistance staff personnel attached to the county board shall be paid from state public assistance funds both their salaries and their travel expenses as provided for in 2-18-501 through 2-18-503 when away

from the county seat in the performance of their duties, but the county board of public welfare shall reimburse the department of social and rehabilitation services from county poor funds the full amount of the salaries and travel expenses not reimbursed to the department by the federal government and the full amount of the department's administrative costs which are allocated by the department to the county for the administration of county welfare programs and not reimbursed to the department by the federal government. Under circumstances prescribed by the department of social and rehabilitation services, the reimbursement by the county board of public welfare may be less than the county share as prescribed above. All other administrative costs of the county department shall also be paid from county poor funds.

(3) On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the department of social and rehabilitation services shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make such reimbursements within 20 days after the presentation of the claim, and the department of social and rehabilitation services shall credit (add) all such reimbursements to its account for administrative costs.

(4) If a county has transferred its public assistance and protective services responsibilities to the *state* under part 8 of this chapter, the *appropriate* department shall select, appoint, and supervise all necessary public assistance and protective services personnel, including if necessary a supervisor of staff personnel. All such personnel are directly responsible to the department."

Section 76. Section 53-2-306, MCA, is amended to read:

**"53-2-306. County department charged with local administration of public assistance.** Except in a county that has transferred its public assistance and protective services responsibilities to the *state* under part 8 of this chapter, the county department of public welfare shall be charged with the local administration of all forms of public assistance operations in the county. All such local administration must conform to federal and state law and the rules as established by the department of social and rehabilitation services."

Section 77. Section 53-2-322, MCA, is amended to read:

**"53-2-322. County to levy taxes, budget, and make expenditures for public assistance activities.** (1) The board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so much thereof as may be necessary. Counties transferring public assistance and protective services responsibilities to the *state* under part 8 of this chapter may not levy more than the difference between 13.5 mills and the state levy pursuant to 53-2-813.

(2) The board shall budget and expend so much of the funds in the county poor fund for public assistance and *protective services* purposes as will enable the county welfare department to pay the general relief activities of the county and to reimburse the department of social and rehabilitation services and the department of family services for the county's



proportionate share of the administrative costs of the county welfare department and of all public assistance *and protective services* and its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

(3) The amounts set up in the budget for the reimbursements to the department of social and rehabilitation services *and the department of family services* shall be sufficient to make all of these reimbursements in full. The budget shall make separate provision for each one of these public assistance *and protective services* activities, and proper accounts shall be established for the funds for all such activities.

(4) As soon as the county proposed budget provided for in 7-6-2315 has been agreed upon, a copy thereof shall without delay be mailed to the department of social and rehabilitation services, and at any time before the final adoption of the budget, the department shall make such recommendations with regard to changes in any part of the budget relating to the county poor fund as considered necessary in order to enable the county to discharge its obligations under the public assistance laws.

(5) The department of social and rehabilitation services shall promptly examine the county proposed budget in order to ascertain if the amounts provided for reimbursements to the department are likely to be sufficient and shall notify the county clerk of its findings. The board shall make such changes in the amounts provided for reimbursements, if any are required, in order that the county will be able to make the reimbursements in full.

(6) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing the department of social and rehabilitation services without having first obtained a statement in writing from the department to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

(7) No part of the county poor fund, irrespective of the source of any part thereof, may be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance *and protective services* or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor, except a county hospital or county nursing home, may be made out of any moneys in the county poor fund, whether such moneys are produced by the 13.5-mill levy provided for in subsection (1) of this section or from any additional levy authorized or to be authorized by law. Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the department of health and environmental sciences and when such expenditure has been approved by the department of social and rehabilitation services *and the department of family services.*"

Section 78. Section 53-2-323, MCA, is amended to read:

**"53-2-323. Emergency grants from state funds to counties.** Except when a county has transferred its public assistance and protective services responsibilities to the *state* under part 8 of this chapter, a county may apply to the department for an emergency grant-in-aid, and the grant shall be made to the county upon the following conditions:

(1) The board of county commissioners or a duly elected or appointed executive officer of the county shall make written application to the department for emergency assistance and shall show by written report and sworn affidavit of the county clerk and recorder and chairman of the board of county commissioners or other duly elected or appointed executive officer of the county the following:

(a) that the county will not be able to meet its obligations under law to provide assistance to the needy of the county or meet its proportionate share of any public assistance activity carried on jointly with the department;

(b) that all lawful sources of revenue and other income to the county poor fund will be exhausted;

(c) that all expenditures from the county poor fund have been lawfully made; and

(d) that all expenditures from the county poor fund have been reasonable and necessary, according to criteria set by the department in rules adopted for that purpose, for the county to meet its obligations under law to provide assistance to the needy.

(2) Within 10 days of receipt of the application and affidavit, the department shall determine whether the county poor fund will be depleted and shall give notice to the county of the department's intention to deny or allow the grant-in-aid. Before a grant-in-aid for any fiscal year may be made to a county under this section, any money credited during that fiscal year to the depletion allowance reserve fund from the sources provided by 7-34-2402(2) shall be transferred to the county poor fund to be used for lawful poor fund expenditures. The amount of the grant-in-aid shall be determined after all sources of income available to the poor fund, including the depletion allowance reserve fund transfers, have been exhausted.

(3) Within 10 days of receiving notice from the department that a grant-in-aid will be made to the county, the board of county commissioners or other duly elected or appointed executive officer of the county shall adopt an emergency budget. There is no requirement of notice and hearing for that emergency budget. The emergency budget shall state the amount required to meet the obligation of the county and shall allocate that whole amount among the various classes of expenditures for which the grant was made.

(4) Upon receipt and approval of the county emergency budget, the department shall issue a warrant to the county treasurer of the county for the total amount stated in the approved emergency budget.

(5) The grant-in-aid received by the county shall be placed in an emergency fund account to be kept separate and distinct from the poor fund

account. All expenditures from the emergency fund account shall be made by a separate series of warrants or checks marked as emergency warrants or checks.

(6) The grants-in-aid from the department may be used only for public assistance activities lawfully conducted by the county, including but not limited to medical aid, hospitalization, and institutional care. No part of a grant-in-aid may be used, directly or indirectly, to pay for the erection or improvement of any county building or for furniture, fixtures, appliances, or equipment for a county building.

(7) In the event the county poor fund is replenished by other lawful sources of revenue, the county shall issue warrants to meet its obligations from the county poor fund until such time as that fund is again so depleted that warrants can no longer lawfully be drawn on that account. Upon depletion of the county poor fund, the county may again make disbursements from the emergency fund account as provided in subsection (5). At the close of the county fiscal year, the county shall return to the department any amounts remaining in the county poor fund and the emergency fund account, but the remaining amount to be returned may not exceed the total amount of the emergency grant-in-aid for that fiscal year.

(8) Any amount which is unlawfully disbursed or transferred from the emergency fund account or used for a purpose other than that specified in the grant-in-aid shall be returned by the county to the department."

Section 79. Section 53-2-801, MCA, is amended to read:

**"53-2-801. Purpose.** The purpose of this part is to provide for the department of social and rehabilitation services to assume all responsibilities for public assistance programs and *for the department of family services to assume all responsibilities for* protective services for children and adults that, as of July 1, 1983, are provided by the counties pursuant to Titles 41 and 53. The assumption may become effective only at the option and with the express consent of each individual county requesting state assumption."

Section 80. Section 53-2-802, MCA, is amended to read:

**"53-2-802. Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "County department" means the county department of public welfare provided for in part 3 of this chapter.

(2) "Mill levy equivalent" means the prior year's expenditure divided by the value of 1 mill.

(3) "Needy person" is one who is eligible for public assistance under the laws of this state.

(4) "Protective services" means services to children and adults to be provided by the department of *family services* as permitted by Titles 41 and 53.

(5) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county department, regardless of the original source of assistance.

(6) "State assumption" means the transfer to the department of *social and rehabilitation services* and the department of *family services* for the county by the board of county commissioners of all powers and duties, including staff personnel as provided in 53-2-301 through 53-2-306 and public assistance and protective services, *respectively*, provided by the county department pursuant to Titles 41 and 53, except as otherwise specifically provided in this part."

Section 81. Section 53-2-803, MCA, is amended to read:

**"53-2-803. Authority to adopt rules.** (1) The department of *social and rehabilitation services* and the department of *family services* may adopt rules necessary to carry out the purposes of this part, including implementing transfer of the county programs to each department, *respectively*.

(2) The department of *social and rehabilitation services* may adopt rules:

(a) to determine the amount, scope, and duration of general relief, which may not exceed those services and amounts payable under the department of *social and rehabilitation services*' programs of medicaid and aid to families with dependent children as necessary to carry out the purposes of this part; and

(b) establishing a system of penalties and sanctions applicable to providers of health-related services to state-assumed counties in accordance with 53-6-111(2) through (5)."

Section 82. Section 53-2-811, MCA, is amended to read:

**"53-2-811. Transfer of county public assistance and protective services to state departments.** (1) All authority granted to the board of county commissioners to establish and operate a public assistance program and provide protective services for children and adults pursuant to Titles 41 and 53 may be transferred to the department of *social and rehabilitation services* and the department of *family services*, *respectively*, except that the county attorney shall continue to provide legal assistance and representation for the purposes of adult and child protective services without charge and all debts and obligations incurred prior to the effective date of state assumption continue as the responsibility of the county.

(2) The board of county commissioners, after public hearing, may by resolution or ordinance transfer to the department of *social and rehabilitation services* and the department of *family services* all powers and duties for public assistance and protective services for children and adults, *respectively*, including the selection, supervision, and termination of staff personnel associated with the performance of these activities. Upon the effective date of such transfer, the department of *social and rehabilitation services* and the department of *family services* shall assume all powers and duties related to public assistance and protective services, *respectively*, and accorded by law to the county welfare department. If the notice required in subsection (3) is given, the transfer is effective at the start of the next state fiscal year.

(3) Counties opting for state assumption shall notify the department of *social and rehabilitation services* and the department of *family services* at

least 90 days prior to the start of the state fiscal year unless the time period is waived in whole or in part by the director of *each* department.

(4) Counties opting for state assumption shall permit the department of *social and rehabilitation services and the department of family services* to use the same facilities currently occupied by the county department or substantially equal facilities, with fair rental value for such facilities to be paid by *each* department. Counties opting for state assumption shall transfer to the *appropriate* department all materials, equipment, and supplies used in the operation of the county department and which were paid for in whole or in part with federal or state funds."

Section 83. Section 53-2-812, MCA, is amended to read:

**"53-2-812. State assumption — permanent transfer to state — exceptions.** (1) A county opting for state assumption does so on a complete and permanent basis, unless the county requests to retain or reassume responsibility for medical assistance or monetary payments to needy persons as provided in Title 53, chapter 3, pursuant to the adoption of a resolution or ordinance as provided in 53-2-811(2) and notice to the department of *social and rehabilitation services* as provided in 53-2-811(3). Under such a retention or reassumption, staff personnel continue under the supervision and control of the department of *social and rehabilitation services* but the department may contract with the counties for the operation of programs provided in Title 53, chapter 3. A county may not retain or reassume assistance programs partially funded by the federal government.

(2) A county transferring all duties and responsibilities to the *state* may reassume limited responsibility for medical assistance or monetary payments to needy persons as provided in subsection (1) but may not thereafter request full state assumption. A county initially requesting limited state assumption may not thereafter request full state assumption. A county opting for limited or full state assumption does so on a permanent basis, except as provided in this section."

Section 84. Section 53-2-813, MCA, is amended to read:

**"53-2-813. Mill levy for counties transferring public assistance and protective services.** (1) (a) Except as provided in subsection (1)(b), for the purpose of this part, 12 mills must be levied annually in those counties opting for state assumption.

(b) A county that levied an amount less than 12 mills for purposes of its county poor fund during fiscal year 1982 must levy an equivalent amount to the poor fund mill levy assessed by that county during fiscal year 1982 plus 1.5 mills, not to exceed a total of 12 mills, less a mill levy equivalent to an amount the county can demonstrate was spent during fiscal year 1982 for the building or operation of a medical facility. The reduced mill levy exception provided in this subsection (1)(b) continues in effect until June 30, 1984. After that date 12 mills must be levied in all counties where state assumption is in effect.

(2) *For a county electing state assumption before July 1, 1986, the proceeds of the mill levy established in subsection (1) must be deposited in the state special revenue fund in the state treasury for the purpose of paying*

the expenses of the department of *social and rehabilitation services*. The mill levy may not exceed 12 mills, notwithstanding actual expenditures made by the department.

(3) *For a county electing state assumption on or after July 1, 1986, the proceeds of the mill levy established in subsection (1) must be deposited in the state special revenue fund in the state treasury to the credit of the department of social and rehabilitation services. The general fund authority of the department of social and rehabilitation services shall be reduced and the general fund authority of the department of family services shall be increased by an amount equal to the county's expenditures for child and adult protective services in the fiscal year immediately preceding state assumption. The mill levy may not exceed 12 mills, notwithstanding actual expenditures made by the department of social and rehabilitation services and the department of family services.*

(4) For a county retaining or reassuming operational responsibility for medical assistance or monetary payments to needy persons as provided in 53-2-812, the levy provided in subsection (1) must be reduced by the mill levy equivalent expended by that county or the department for such purposes in the fiscal year immediately preceding the option to retain or reassume such responsibility."

Section 85. Section 53-2-821, MCA, is amended to read:

**"53-2-821. Creation of advisory councils.** (1) The department of *social and rehabilitation services* may establish one or more advisory councils to advise the department on policies relating to public assistance. The director of the department shall appoint members of the advisory council for a term set by him, and they may be dismissed at his discretion.

(2) Upon request of the governing body of a county having opted for state assumption, the department of *social and rehabilitation services* shall establish a county advisory council for the county. The advisory council shall consist of the board of county commissioners of the county or, if the county governing body consists of greater than three members, three members of the governing body chosen by the governing body. The department may appoint two other members to the advisory council as provided in subsection (1).

(3) No compensation or expenses may be paid advisory council members for their service on the advisory council. The requirements of 2-15-122 do not apply to an advisory council appointed pursuant to this section."

Section 86. Section 53-2-822, MCA, is amended to read:

**"53-2-822. Work program required.** The department of *social and rehabilitation services* shall establish a work program as provided in 53-3-304. The department of *social and rehabilitation services* may contract with the county, a municipality, or state agency that has work available for recipients of general relief."

Section 87. Section 53-4-101, MCA, is amended to read:

**"53-4-101. Definitions.** As used in this part, the following definitions apply:

(1) "Child welfare services" means the establishing, extending, and strengthening of child welfare services (especially in predominantly rural areas) for the protection and care of *abused, dependent, or neglected children*.

(2) "Department" means the department of *family services* provided for in [section 2].

(3) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance."

Section 88. Section 53-4-111, MCA, is amended to read:

**"53-4-111. Administrative duties of department.** Subject to the authority and regulations of the department and in cooperation with the federal government, the department shall:

(1) adopt rules necessary to carry out the purposes of this part;

(2) administer or supervise all child welfare *services* of the state except the child welfare *services* which are administered by the department of health and environmental sciences and the department of social and rehabilitation services."

Section 89. Section 53-4-113, MCA, is amended to read:

**"53-4-113. Child protection and rehabilitation — duties of department.** The department shall:

(1) enforce all laws pertaining to children and take the initiative in all matters involving the interest of illegitimate, dependent, neglected, and delinquent children where adequate provision therefor has not been made by law;

(2) use funds available for cases where special medical or material assistance is necessary to rehabilitate *developmentally disabled* or physically handicapped children and where it is not otherwise provided for by law;

(3) cooperate for the purposes hereof with all reputable child-helping and child-placing agencies; and

(4) inspect, license, and supervise *youth care facilities* and child-placing agencies."

Section 90. Section 53-4-115, MCA, is amended to read:

**"53-4-115. Department to accept custody of children committed by courts.** The department shall accept the guardianship or custody of children committed by the courts to the department and arrange for their care."

Section 91. Section 53-4-401, MCA, is amended to read:

**"53-4-401. Definitions.** As used in this part, the following definitions apply:

(1) "Person" includes any individual, partnership, voluntary association, or corporation.

(2) "Agency" includes a person not related by blood or marriage to a minor child to be adopted.

(3) "Department" means the department of *family* services provided for in [section 2]."

Section 92. Section 53-4-501, MCA, is amended to read:

**"53-4-501. Purpose — definitions.** (1) The purpose of this part is to assure that children requiring supplemental parental care be provided such food, shelter, security and safety, guidance and direction, nurture and comfort, and learning experiences commensurate to their ages and capabilities so as to safeguard the growth and development of such children, thereby facilitating their proper physical and emotional maturation.

(2) In this part, the following definitions apply:

(a) "Child" means a person under 12 years of age.

(b) "Day-care facility" means a person, association, or place, incorporated or unincorporated, that provides supplemental parental care on a regular basis. It includes a family day-care home, a day-care center, or a group day-care home. It does not include a person who limits care to children who are related to him by blood or marriage or under his legal guardianship or any group facility established chiefly for educational purposes.

(c) "Day-care center" means a place in which supplemental parental care is provided to 13 or more children on a regular basis.

(d) "Department" means the department of *family* services provided for in [section 2].

(e) "Day care" means supplemental parental child care.

(f) "Supplemental parental child care" means the provision of food, shelter, and learning experiences commensurate with a child's age and capabilities so as to safeguard the child's growth and development on a supplemental basis outside of the child's home by an adult other than a parent, guardian, person in loco parentis, or relative on a regular basis for daily periods of less than 24 hours.

(g) "Regular basis" means providing supplemental parental care to children of separate families for any daily periods of less than 24 hours and within 3 or more consecutive weeks.

(h) "Family day-care home" means a private residence in which supplemental parental care is provided to three to six children from separate families on a regular basis.

(i) "Group day-care home" means a private residence in which supplemental parental care is provided to 7 to 12 children on a regular basis.

(j) "Registration" means the process whereby the department maintains a record of all family day-care homes and group day-care homes, prescribes standards, promulgates rules, and requires the operator of a family day-care home or a group day-care home to certify that he has complied with the prescribed standards and promulgated rules.



(k) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this part.

(l) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department his compliance with this part and the applicable standards for family day-care homes and group day-care homes.

(m) "License" means a written document issued by the department that the license holder has complied with this part and the applicable standards and rules for day-care centers.

(n) "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part."

Section 93. Section 53-20-203, MCA, is amended to read:

**"53-20-203. Responsibilities of department.** The department shall:

(1) take cognizance of matters affecting the developmentally disabled citizens of the state;

(2) initiate a preventive developmental disabilities program which shall include but not be limited to the implementation of developmental disabilities care, treatment, prevention, and research as can best be accomplished by community-centered services. Every means shall be utilized to initiate and operate the service program in cooperation with local agencies under the provisions of 53-20-205 and 53-20-207.

(3) collect and disseminate information relating to developmental disabilities;

(4) prepare, with the assistance of the planning and advisory council, an annual comprehensive plan for the initiation and maintenance of developmental disabilities services in the state. The services shall include but not be limited to community comprehensive developmental disabilities services as referred to in 53-20-202.

(5) provide to the planning and advisory council a written quarterly report of planning, program, and fiscal activities of the department in regard to community-based services for the developmentally disabled;

(6) provide by rule for the evaluation of persons who apply for services or persons admitted into a program at a developmental disability facility;

(7) provide state personnel to assist regional councils provided for in 53-20-207;

(8) receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions to initiate and maintain developmental disabilities services within the state;

(9) require that habilitation plans be developed, implemented, and continuously maintained for all developmentally disabled persons who are served through a community-based program funded by the state; and

(10) *use funds available for cases in which special medical or material assistance is necessary to rehabilitate developmentally disabled or physically handicapped children if such assistance is not otherwise provided for by law.*"

Section 94. Section 53-20-213, MCA, is amended to read:

**"53-20-213. Departments to cooperate.** The department of institutions, the department of social and rehabilitation services, the department of health and environmental sciences, *the department of family services*, and the office of superintendent of public instruction shall cooperate on all aspects of each agency's respective programs for the developmentally disabled."

Section 95. Section 53-20-305, MCA, is amended to read:

**"53-20-305. Local control of community homes — departmental licensing, administration, operation, health and safety standards.** (1) Community homes for the developmentally disabled may be under local control, and the nonprofit corporations or associations operating community homes are authorized to establish homes and programs they believe in the best interest of their homes.

(2) (a) A community home for the developmentally disabled shall be licensed annually by the department of *family services*.

(b) One temporary license may be issued for no longer than 60 days if there are unavoidable delays in the certification process.

(3) (a) The department of *family services* for the purpose of licensing shall adopt standards and rules concerning the administration, operation, health, and safety of community homes for the developmentally disabled.

(b) The department of health and environmental sciences shall provide advice and recommendations to the department of social and rehabilitation services *and the department of family services* concerning the standards for health and safety."

Section 96. Section 53-20-307, MCA, is amended to read:

**"53-20-307. Health and safety standards for licensing.** (1) (a) After initial certification by the state fire marshal, community homes must be certified annually for fire and life safety by the state fire marshal.

(b) The state fire marshal shall notify the department of social and rehabilitation services *and the department of family services* when a community home has been certified.

(2) (a) Local health officers shall certify community homes for compliance with health and safety standards. If for any reason the local authority cannot complete the certification in a timely manner, the department of health and environmental sciences is authorized to make the determination on certification.

(b) A reasonable fee may be charged to authorized parties as defined in 53-20-303 for the health and safety certification."

Section 97. Section 53-20-401, MCA, is amended to read:

**"53-20-401. Definitions.** As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "*Client*" means a person for whom voluntary protective services are rendered pursuant to provisions of this part.

(2) "*Department*" means the department of family services provided for in [section 2].

(3) "*Developmentally disabled person*" means a person who by reason of a developmental disability is not able, unassisted, to properly manage or care for his person or his property.

(4) "*Ward*" means a person for whom the department has been appointed guardian under Title 72, chapter 5, part 3.

(5) "*Protective services*" means case management of services directed at preventing or remedying neglect, abuse, or exploitation of developmentally disabled persons."

Section 98. Section 53-20-402, MCA, is amended to read:

**"53-20-402. Legislative findings and directives.** (1) In recognition of the need to provide supervision and protection from *abuse, neglect, and exploitation* for the developmentally disabled and in acknowledgment of the desirability of providing such services outside the state institutions, the legislature hereby finds and declares that a program should be established by the department to provide protective services for the developmentally disabled. Such a program should be designed to provide the services set forth in this part for developmentally disabled persons.

(2) The director of the department shall adopt rules for the administration of this part. The department shall develop a statewide system of protective services in accordance with regulations and standards established by the department with respect to this program. The department may:

(a) provide direct services;

(b) enter into a contract with any responsible agency, public or private, for provision of protective services by the agency;

(c) accept appointment by any district court as guardian or conservator of a mentally retarded or other developmentally disabled person. However, this subsection does not relieve the department of the duty to comply with the requirements of Title 72, chapter 5, for the appointment of a guardian or conservator or the requirements of 53-20-406."

Section 99. Section 53-20-405, MCA, is amended to read:

**"53-20-405. Protective and supportive services provided.** (1) The department shall assist each of its clients or wards to obtain those protective and supportive services which may be necessary to help the client or ward function to the extent of his capabilities as an independent, self-sufficient member of society. Services under this part may include but shall not be limited to assistance in obtaining:

- (a) housing, clothing, and food;
- (b) education and training for living in society and, where possible, for employment;
- (c) employment;
- (d) financial benefits to which the *client* or ward may be entitled;
- (e) medical services and supplies;
- (f) necessary legal services;
- (g) marshaling, protection, and insurance of the *client's* or ward's property;
- (h) financial advice and services; *and*
- (i) participation in cultural and recreational activities.

(2) Services under this part may also include but shall not be limited to assistance in preventing exploitation of the *client* or ward by others and in preventing *abuse or neglect* of the *client* or ward and injury to others.

(3) The provision of protective services pursuant to this part does not create a guardianship relationship between the department and the developmentally disabled person unless a guardianship is created in accordance with the requirements of Title 72, chapter 5, part 3.

(4) *The department may not provide a developmentally disabled person protective services that impose a legal limitation or restriction on the person unless the department has been appointed the legal guardian of or conservator for the person under the provisions of Title 72, chapter 5."*

Section 100. Section 53-20-409, MCA, is amended to read:

**"53-20-409. Costs of protective services.** (1) If the income from the assets available to a ward suffice, the department may require such ward, the custodian, guardian, or conservator of such ward or, if the governing instrument permits, the trustee of such ward to pay all reasonable and proper costs of proceedings in the interest of such ward under this part or Title 72, chapter 5, including, without limitation, court costs, sheriff fees, attorney fees, and costs of diagnostic services, and to pay for protective services rendered to the ward or to reimburse the department for funds expended for such costs or services.

(2) Upon a written petition filed by the department, the court by which the department was appointed may permit annual expenditure of up to 3% of the principal assets if such expenditure be shown to be of special advantage for the ward. The department shall file an accounting each year, and the court by which the department was appointed shall conduct a hearing to determine the propriety of any charge or charges to a ward. Upon such hearing, the court shall enter its order approving, disapproving, or modifying such charge or charges. The order of the court may be prospective as to charges of a recurring nature which reasonably may be anticipated.

(3) Except as provided in subsections (1) and (2) of this section, the net cost of proceedings under this part and of services provided by the department shall be paid from moneys appropriated for that purpose by the legislature or from moneys available from any other governmental or private source. Claims for state reimbursements shall be presented to the department at such times and in such manner as the department may prescribe. The department shall certify the amount to the department of administration. The amount so certified shall be paid from the state treasury upon the voucher of the department and the warrant of the department of administration."

Section 101. Section 53-20-410, MCA, is amended to read:

**"53-20-410. Reports required.** With respect to each *client or ward*, designated field staff shall file a written report with the director of the department no later than June 30, 1974, and annually thereafter setting forth the services which have been provided for the *client or ward*, including specifically an accounting for any transactions with property of the *client or ward* other than as a court-appointed conservator, the current condition of the *client or ward*, and the recommendations of the department as to whether its services should continue or be terminated and whether other proceedings should be instituted."

Section 102. Section 53-30-202, MCA, is amended to read:

**"53-30-202. Establishment of youth correctional facilities.** The department of *family services*, within the annual or biennial budgetary appropriation, may establish, maintain, and operate facilities to properly diagnose, care for, train, educate, and rehabilitate children in need of these services. The children must be 10 years of age or older and under 21 years of age. The facilities include but are not limited to the Mountain View school and the Pine Hills school."

Section 103. Section 53-30-203, MCA, is amended to read:

**"53-30-203. Control and management of youth correctional facilities.** The facilities provided for in 53-30-202 shall exercise their functions under the supervision and general management of the department of *family services*. Except where otherwise provided by law, the department by rules shall establish standards of care, policies of admission, transfers, discharge, and aftercare supervision in order to provide adequate care for children and adequate service to the courts. The department shall develop special programs within each facility which are adaptable to the particular needs of its operation."

Section 104. Section 53-30-204, MCA, is amended to read:

**"53-30-204. Cooperative agreements for services with governing body of Indian tribe.** (1) The department of *family services* may enter into agreements with the governing body of an Indian tribe within the state for residential, educational, *evaluation*, and *aftercare* services maintained by the department for children who have been adjudicated delinquent by the tribal court, subject to the provisions of this part and parts 1 and 2 of chapter 1.

(2) Any agreement entered into under subsection (1) must also satisfy the requirements of Title 18, chapter 11."

Section 105. Section 53-30-208, MCA, is amended to read:

**"53-30-208. Maximum age of commitment.** No child who has attained the age of 18 years shall be committed by any *youth* court to the *department of family services*, except, however, that any person under 21 years who prior to attaining the age of 18 years came under the jurisdiction of the *youth* court by reason of delinquent conduct and whose adjudication of delinquency, including the finding that commitment to some institution was necessary, is not made until after the child reaches the age of 18 years shall be committed to the department of *family services*. The department shall then have the obligation to test and evaluate the person to determine the proper place of detention for the person, who shall thereupon be confined at that institution until the person shall have attained the age of 21 years unless sooner discharged by the department."

Section 106. Section 53-30-211, MCA, is amended to read:

**"53-30-211. Transfer of child to other facility or institution — notice.** The department of *family services* upon recommendation of the superintendent of a facility may transfer a child resident in one of its *youth correctional* facilities to any other facility or institution under the jurisdiction and control of the department."

Section 107. Section 53-30-212, MCA, is amended to read:

**"53-30-212. Commutation of sentence to state prison and transfer of prisoner to youth correctional facility or Swan River forest camp.** (1) Upon the application of a person under 21 years of age who has been sentenced to the state prison or upon the application of his parents or guardian, the governor may, after consulting with the department of institutions and the department of *family services* and with the approval of the board of pardons, commute the sentence by committing such person to the department of *family services* until he is 21 years of age or until sooner placed or discharged.

(2) If such person's behavior after being committed to the department of *family services* indicates that he is not a proper person to reside at one of the *youth correctional* facilities, the governor, after consulting with the department of institutions and the department of *family services* and with the approval of the board of pardons, may revoke the commutation and return him to the state prison to serve out his unexpired term, and the time spent by him at one of the *youth correctional* facilities or while a refugee from one of the *youth correctional* facilities shall not be considered as a part of his original sentence.

(3) Upon recommendation of the warden and with the approval of the department of institutions and the department of *family services*, a person under 21 years of age who has been sentenced to the state prison may be transferred to any *youth correctional* facility under the jurisdiction and control of the department of *family services*.

(4) Upon recommendation of the warden and approval of a person sentenced to the state prison or application of a person sentenced to the state

prison and approval of the warden and with the approval of the department of institutions, such person sentenced to the state prison who is 25 years of age or younger may be transferred to the Swan River forest camp. Prior to departmental approval of the transfer, the person must undergo an evaluation by the department to determine his suitability for transfer to the camp. The results of the evaluation must include a finding that a minimum security facility is an appropriate placement for such person or the transfer shall be denied. If the person is transferred, he shall be under the supervision and control of the facility to which he is transferred.

(5) If such person's behavior after transfer to a *youth correctional facility or the Swan River forest camp* indicates he might be released on parole or his sentence be commuted and he be discharged from custody, the superintendent of such facility, with the approval of the department of institutions and the department of family services in the case of a youth correctional facility or with the approval of the department of institutions in the case of the Swan River forest camp, may make an appropriate recommendation to the board of pardons and the governor, who may in their discretion parole such person or commute his sentence.

(6) If such person's behavior after transfer to a *youth correctional facility or the Swan River forest camp* indicates he is not a proper person to reside in such facility, upon recommendation of the superintendent and with the approval of the department of institutions and the department of family services in the case of a youth correctional facility or with the approval of the department of institutions in the case of the Swan River forest camp, such person shall be returned to the state prison to serve out his unexpired term."

Section 108. Section 53-30-214, MCA, is amended to read:

**"53-30-214. Apprehension and return of youth leaving youth correctional facility without permission.** A youth who has left a youth correctional facility of the department of family services without permission may be apprehended and returned by any citizen. The term "*youth correctional facility of the department*" means any facility under the supervision and control of the department of family services which has as its primary function the care, training, custody, and control of youth and specifically includes the Pine Hills school for boys and the Mountain View school for girls."

Section 109. Section 53-30-215, MCA, is amended to read:

**"53-30-215. Penalty for aiding resident in leaving youth correctional facility.** A person who permits or assists a resident of any youth correctional facility to leave a facility without permission or who furnishes or attempts to furnish to such a resident a tool, weapon, or other article with the intent of aiding him to leave without permission or who harbors or conceals a resident who has left without permission shall on conviction be punished by imprisonment for a term of not less than 6 months or more than 2 years or by a fine not exceeding \$1,000 or by both such fine and imprisonment."

Section 110. Section 53-30-226, MCA, is amended to read:

**"53-30-226. Youth aftercare agreement.** A youth released by the department of *family services* from one of the *youth correctional* facilities to the supervision, custody, and control of the department shall, before his release, sign an aftercare agreement containing:

- (1) a statement of the terms and conditions of his release, including a list of the acts which, if committed by the youth, may result in his return to the facility; and
- (2) a statement that if the department or any person alleges any violation of the terms and conditions of the agreement, the youth is entitled to a hearing as provided for in 53-30-229 before he may be returned to the facility."

Section 111. Section 53-30-229, MCA, is amended to read:

**"53-30-229. Hearing on alleged violation of aftercare agreement — right to appeal outcome.** (1) When it is alleged by an aftercare counselor that a youth has violated the terms of his aftercare agreement, the youth shall be granted a hearing at the site of the alleged violation or in the county where the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that he should be returned to the *youth correctional* facility from which he was released or a different plan for treatment should be pursued by the department of *family services*.

(2) The youth, upon advice of an attorney, may waive his right to a hearing.

(3) With regard to this hearing, the youth shall be given:

(a) written notice of the alleged violation of his aftercare agreement, including notice of the purpose of the hearing;

(b) disclosure of the evidence against him and the facts constituting the alleged violation;

(c) opportunity to be heard in person and to present witnesses and documentary evidence to controvert the evidence against him and to show that there are compelling reasons which justify or mitigate the violation;

(d) opportunity to have the referee subpoena witnesses;

(e) the right to confront and cross-examine adverse witnesses;

(f) the right to be represented by an attorney;

(g) a record of the hearing; and

(h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the referee.

(4) The department shall appoint a referee, who shall not be an employee of the department, to conduct the hearing. In the conduct of the hearing, the department may request the county attorney's assistance as



necessary. The department shall adopt rules necessary to effect a prompt and full review.

(5) If the referee finds, by a preponderance of the evidence, that the youth did in fact commit the violation, he shall make a recommendation to the department for the placement of the youth. In making this recommendation, the referee may consider mitigating circumstances. Final approval rests with the department and must be made within 10 days of the referee's recommendation.

(6) The youth may appeal from the decision at the hearing to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the department's decision. The youth may obtain a written transcript of the hearing from the department by giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department shall not be altered except for abuse of discretion or manifest injustice.

(7) Pending the hearing on a violation and pending the department's decision, a youth may not be detained except when his detention or care is required to protect the person or property of the youth or of others or he may abscond or be removed from the community. Procedures for taking into custody and detention of a youth charged with violation of his after-care agreement shall be as provided in 41-3-1111 and 41-5-306.

(8) If the decision is made to return the youth to the *youth correctional facility* from which he was released and the youth appeals that decision, he shall await the outcome of the appeal at such *facility*."

**Section 112. Repealer.** Sections 41-3-1106, 41-3-1113, 41-3-1121, 53-4-121, 53-4-122, 53-20-404, 53-20-407, 53-20-411, and 53-20-412, MCA, are repealed.

**Section 113. Extension of authority.** Any existing authority of the department of social and rehabilitation services, the department of family services, or the department of institutions to make rules on the various functions transferred by the provisions of this act is extended to the provisions of this act.

**Section 114. Codification instructions.** (1) Section 2 is intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to section 2. Section 2-15-2211 is intended to be renumbered and codified in the same part as section 2.

(2) Section 53-20-414 is intended to be renumbered and codified by the code commissioner as an integral part of Title 53, chapter 20, part 1. The code commissioner shall conform internal references and grammar to this change.

(3) Sections 15 through 19 are intended to be codified as an integral part of Title 41, chapter 5, and the provisions of Title 41, chapter 5, apply to sections 15 through 19.

(4) Section 53-2-204 is intended to be renumbered and codified by the code commissioner in the same title, chapter, and part as section 5.

**Section 115. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 116. Reorganization procedure.** The provisions of sections 2-15-131 through 2-15-137 govern the creation of the department of family services and the transfer of the various functions contained in this act from the department of social and rehabilitation services, county welfare offices and departments, the department of institutions, and the youth court of the district court to the department of family services.

**Section 117. Implementation.** (1) The governor shall by executive order implement the provisions of this act.

(2) The governor may by executive order assign to the department of family services in a manner consistent with this act functions allocated to the department of social and rehabilitation services, county welfare offices or departments, the department of institutions, or the youth court of the district court by the 50th legislature and not transferred by this act.

**Section 118. Effective dates.** (1) Section 117 is effective on passage and approval.

(2) Sections 1 through 116 and this section are effective upon signing of the executive order under section 117(1) or on October 1, 1987, whichever occurs first.

Approved April 24, 1987.

## CHAPTER NO. 610

[HB 873]

AN ACT TO GENERALLY REVISE AND CLARIFY THE HOMICIDE LAWS; AMENDING SECTIONS 41-5-305, 45-2-103, 45-2-202, 45-5-102 THROUGH 45-5-104, 46-18-201, 46-18-231, 50-20-108, AND 50-20-112, MCA; AND REPEALING SECTION 45-5-101, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 41-5-305, MCA, is amended to read:

**“41-5-305. Detention and shelter care of youth.** (1) A youth taken into custody may not be detained in a jail or other facility for detention purposes unless he has allegedly committed an act which if committed by an adult would constitute a criminal offense, and:

(a) the alleged act is one of the following:

- (i) homicide as defined in 45-5-102 through 45-5-104;
  - (ii) arson as defined in 45-6-103;
  - (iii) aggravated or felony assault as defined in 45-5-202;
  - (iv) robbery as defined in 45-5-401;
  - (v) burglary or aggravated burglary as defined in 45-6-204;
  - (vi) sexual intercourse without consent as defined in 45-5-503;
  - (vii) aggravated kidnapping as defined in 45-5-303;
  - (viii) possession of explosives as defined in 45-8-335;
  - (ix) criminal sale of dangerous drugs for profit as included in 45-9-101;
- or
- (x) attempt as defined in 45-4-103 of any of the acts enumerated in subsections (1)(a)(i) through (1)(a)(ix);
  - (b) he has escaped from a correctional facility;
  - (c) he has violated a valid court order or an aftercare agreement; or
  - (d) he meets the criteria for detention established by the youth court.
- (2) A youth taken into custody may not be sheltered prior to the hearing on the petition except when:
- (a) the youth and his family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;
  - (b) the youth needs to be protected from physical or emotional harm;
  - (c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior;
  - (d) shelter care is necessary to assess the youth and his environment;
  - (e) shelter care is necessary to provide adequate time for case planning and disposition; or
  - (f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family."

Section 2. Section 45-2-103, MCA, is amended to read:

**"45-2-103. General requirements of criminal act and mental state.** (1) *Except for deliberate homicide as defined in 45-5-102(1)(b) or an offense which involves absolute liability, a person is not guilty of an offense unless, with respect to each element described by the statute defining the offense, he acts while having one of the mental states described in subsections (33), (37), and (58) of 45-2-101.*

(2) *In deliberate homicide under 45-5-102(1)(b), the offender must act while having the mental state of purposely or knowingly only as to the underlying felony referred to in 45-5-102(1)(b).*

(3) The existence of a mental state may be inferred from the acts of the accused and the facts and circumstances connected with the offense.

(4) If the statute defining an offense prescribes a particular mental state with respect to the offense as a whole without distinguishing among the elements thereof, the prescribed mental state applies to each such element.

(5) Knowledge that certain conduct constitutes an offense or knowledge of the existence, meaning, or application of the statute defining an offense is not an element of the offense unless the statute clearly defines it as such.

(6) A person's reasonable belief that his conduct does not constitute an offense is a defense if:

(a) the offense is defined by an administrative regulation or order which is not known to him and has not been published or otherwise made reasonably available to him and he could not have acquired such knowledge by the exercise of due diligence pursuant to facts known to him;

(b) he acts in reliance upon a statute which later is determined to be invalid;

(c) he acts in reliance upon an order or opinion of the Montana supreme court or a United States appellate court later overruled or reversed; or

(d) he acts in reliance upon an official interpretation of the statute, regulation, or order defining the offense made by a public officer or agency legally authorized to interpret such statute.

(7) If a person's reasonable belief is a defense under subsection (6), nevertheless he may be convicted of an included offense of which he would be guilty if the law were as he believed it to be.

(8) Any defense based upon this section is an affirmative defense."

Section 3. Section 45-2-202, MCA, is amended to read:

**"45-2-202. Voluntary act.** A material element of every offense is a voluntary act, which includes an omission to perform a duty which the law imposes on the offender and which he is physically capable of performing, *except for deliberate homicide under 45-5-102(1)(b) for which there must be a voluntary act only as to the underlying felony.* Possession is a voluntary act if the offender knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient time to have been able to terminate his control."

Section 4. Section 45-5-102, MCA, is amended to read:

**"45-5-102. Deliberate homicide.** (1) *A person commits the offense of deliberate homicide if:*

(a) *he purposely or knowingly causes the death of another human being;*  
or

(b) *he attempts to commit, commits, or is legally accountable for the attempt or commission of robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious escape, felony*

*assault, aggravated assault, or any other forcible felony and in the course of the forcible felony or flight thereafter, he or any person legally accountable for the crime causes the death of another human being.*

(2) A person convicted of the offense of deliberate homicide shall be punished by death or life imprisonment as provided in 46-18-301 through 46-18-310 or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-222."

Section 5. Section 45-5-103, MCA, is amended to read:

**"45-5-103. Mitigated deliberate homicide.** (1) *A person commits the offense of mitigated deliberate homicide when he purposely or knowingly causes the death of another human being but does so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the actor's situation.*

(2) *It is an affirmative defense that the defendant acted under the influence of extreme mental or emotional stress for which there was reasonable explanation or excuse, the reasonableness of which shall be determined from the viewpoint of a reasonable person in the actor's situation. This defense constitutes a mitigating circumstance reducing deliberate homicide to mitigated deliberate homicide and must be proved by the defendant by a preponderance of the evidence.*

(3) *Mitigated deliberate homicide is not an included offense of deliberate homicide as defined in 45-5-102(1)(b).*

(4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except as provided in 46-18-222."

Section 6. Section 45-5-104, MCA, is amended to read:

**"45-5-104. Negligent homicide.** (1) *A person commits the offense of negligent homicide if he negligently causes the death of another human being.*

(2) *Negligent homicide is not an included offense of deliberate homicide as defined in 45-5-102(1)(b).*

(3) A person convicted of negligent homicide shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both."

Section 7. Section 46-18-201, MCA, is amended to read:

**"46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3

years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

- (i) jail base release;
- (ii) jail time not exceeding 180 days;
- (iii) conditions for probation;
- (iv) restitution;
- (v) payment of the costs of confinement;
- (vi) payment of a fine as provided in 45-18-231;
- (vii) payment of costs as provided in 46-18-232 and 46-18-233;
- (viii) payment of costs of court appointed counsel as provided in 46-8-113;
- (ix) community service;
- (x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or
- (xi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Such reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(xi).

- (c) impose a fine as provided by law for the offense;
- (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;
- (e) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;
- (f) impose any combination of subsections (1)(b) through (1)(e).

(2) If any financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for any misdemeanor or for a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, is not a credit against the sentence unless the court orders otherwise.

(4) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-502(3), 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of such imprisonment."

Section 8. Section 46-18-231, MCA, is amended to read:

**"46-18-231. Fines in felony and misdemeanor cases.** (1) Whenever, upon a verdict or a plea of guilty, a person has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the court may impose a fine, only in accordance with subsection (3), and in lieu of or in addition to a sentence of imprisonment. For those crimes for which penalties are provided in 45-5-103, 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2), a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment.

(2) Whenever, upon a verdict or plea of guilty, a person has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the court may impose a fine only in accordance with subsection (3).

(3) The court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine. In determining the amount and method of payment, the court shall take into account the nature of the crime committed, the financial resources of the defendant, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the court not to exceed \$50,000."

Section 9. Section 50-20-108, MCA, is amended to read:

**"50-20-108. Protection of premature infants born alive.** (1) A person commits an offense, as defined in 45-5-102 through 45-5-104, if he purposely, knowingly, or negligently causes the death of a premature infant born alive, if such infant is viable.

(2) Whenever a premature infant which is the subject of abortion is born alive and is viable, it becomes a dependent and neglected child subject to the provisions of state law, unless:

(a) the termination of the pregnancy is necessary to preserve the life of the mother; or

(b) the mother and her spouse or either of them have agreed in writing in advance of the abortion or within 72 hours thereafter to accept the parental rights and responsibilities of the premature infant if it survives the abortion procedure.

(3) No person may use any premature infant born alive for any type of scientific research or other kind of experimentation except as necessary to protect or preserve the life and health of such premature infant born alive.

(4) Violation of subsection (3) of this section is a felony."

Section 10. Section 50-20-112, MCA, is amended to read:

**"50-20-112. Penalties.** (1) A person convicted of *deliberate, mitigated, or negligent* homicide under this chapter is subject to the penalties prescribed by 45-5-102 through 45-5-104.

(2) A person convicted of a felony other than *deliberate, mitigated, or negligent* homicide under this chapter is subject to a fine not to exceed \$1,000, imprisonment in the state prison for a term not to exceed 5 years, or both.

(3) A person convicted of a misdemeanor under this chapter is subject to a fine not to exceed \$500, imprisonment in the county jail for a term not to exceed 6 months, or both."

Section 11. **Repealer.** Section 45-5-101, MCA, is repealed.

Approved April 24, 1987.

## CHAPTER NO. 611

[SB 200]

AN ACT TO REPLACE THE FEE IN LIEU OF TAX ON LIGHT VEHICLES, MOTORCYCLES, QUADRICYCLES, MOTOR HOMES, TRAVEL TRAILERS, AND CAMPERS WITH A PROPERTY TAX; TO ALLOW A LOCAL OPTION VEHICLE TAX; AMENDING SECTIONS 7-1-2111, 15-1-501, 15-6-138, 15-6-140, 15-6-201, 15-8-201, 15-8-202, 15-24-101, 15-24-105, 15-24-301, 15-30-121, 15-31-114, 15-36-112, 15-50-207, 20-9-141, 20-9-331, 20-9-333, 20-9-352, 20-9-501, 20-10-144, 61-3-303, 61-3-332, 61-3-431, 61-3-501 THROUGH 61-3-504, 61-3-506, 61-3-509, 61-3-522, 61-3-523, 61-3-524, 61-3-535, 61-3-701, AND 61-6-302, MCA; REPEALING SECTIONS 7-6-301 THROUGH 7-6-309, 61-3-531 THROUGH 61-3-534, 61-3-536, 61-3-541, AND 61-3-542, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND TERMINATION DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-1-2111, MCA, is amended to read:

**"7-1-2111. Classification of counties.** (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise



provided for, and for fixing the penalties of officers' bonds, the several counties of this state shall be classified according to that percentage of the true and full valuation of the property therein upon which the tax levy is made, *except for vehicles subject to taxation under 61-3-504(2)*, as follows:

(a) first class—all counties having such a taxable valuation of \$50 million or over;

(b) second class—all counties having such a taxable valuation of more than \$30 million and less than \$50 million;

(c) third class—all counties having such a taxable valuation of more than \$20 million and less than \$30 million;

(d) fourth class—all counties having such a taxable valuation of more than \$15 million and less than \$20 million;

(e) fifth class—all counties having such a taxable valuation of more than \$10 million and less than \$15 million;

(f) sixth class—all counties having such a taxable valuation of more than \$5 million and less than \$10 million;

(g) seventh class—all counties having such a taxable valuation of less than \$5 million.

(2) As used in this section, taxable valuation means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less; and

(b) the amount of new production taxes levied, as provided in 15-23-607, divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%."

Section 2. Section 15-1-501, MCA, is amended to read:

**"15-1-501. Disposition of moneys from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund all moneys received by him from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone [company] license taxes under chapter 53; and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) Seventy-five percent of all moneys received from the collection of income taxes under chapter 30 and corporation license and income taxes

under chapter 31, except as provided in 15-31-702, shall be deposited in the general fund subject to the prior pledge and appropriation of such income tax and corporation license tax collections for the payment of long-range building program bonds. The remaining 25% of the proceeds of the corporation license tax, excluding that allocated to the counties under 15-31-702, corporation income tax, and income tax shall be deposited to the credit of the state special revenue fund for state equalization aid to the public schools of Montana.

(3) The state treasurer shall also deposit to the credit of the state general fund all moneys received by him from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(4) After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections shall be deposited in the general fund."

Section 3. Section 15-6-138, MCA, is amended to read:

**"15-6-138. Class eight property — description — taxable percentage.** (1) Class eight property includes:

- (a) all agricultural implements and equipment;
  - (b) all mining machinery, fixtures, equipment, tools, and supplies except:
    - (i) those included in class five; and
    - (ii) coal and ore haulers;
  - (c) all manufacturing machinery, fixtures, equipment, tools, and supplies except those included in class five;
  - (d) all trailers up to and including 18,000 pounds maximum gross loaded weight, except those subject to *taxation under 61-3-504(2)*;
  - (e) aircraft;
  - (f) all goods and equipment intended for rent or lease, except goods and equipment specifically included and taxed in another class; and
  - (g) all other machinery except that specifically included in another class.
- (2) Class eight property is taxed at 11% of its market value."

Section 4. Section 15-6-140, MCA, is amended to read:

**"15-6-140. Class ten property — description — taxable percentage.** (1) Class ten property includes:

- (a) radio and television broadcasting and transmitting equipment;
- (b) cable television systems;
- (c) coal and ore haulers;
- (d) trucks having a rated capacity of more than 1 ½ tons, including those prorated under 15-24-102;

(e) all trailers exceeding 18,000 pounds maximum gross loaded weight, including those prorated under 15-24-102 and except those subject to *taxation under 61-3-504(2)*;

(f) theater projectors and sound equipment; and

(g) all other property not included in any other class in this part except that property subject to a fee in lieu of a property tax.

(2) Class ten property is taxed at 16% of its market value."

Section 5. Section 15-6-201, MCA, is amended to read:

**"15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts, except, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, the property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for hospitals;

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. Such property is also exempt from taxation under 61-3-504(2) and [section 36].

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) *motor homes, travel trailers, and campers;*

(l) fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(m) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(n) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit; and

(o) all farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100.

(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) \$20,000 in the case of a single-family residential dwelling;

(b) \$100,000 in the case of a multifamily residential dwelling or a non-residential structure. (Subsection (1)(p) (now (1)(o)) applicable to taxable years beginning after December 31, 1985—sec. 4, Ch. 463, L. 1985.)"

Section 6. Section 15-8-201, MCA, is amended to read:

**"15-8-201. General assessment day.** (1) The department of revenue or its agent must, between January 1 and the second Monday of July in

each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county. The department or its agent must assess property to the person by whom it was owned or claimed or in whose possession or control it was at midnight of January 1 next preceding. It must also ascertain and assess all mobile homes arriving in the county after midnight of January 1 next preceding. No mistake in the name of the owner or supposed owner of real property, however, renders the assessment invalid.

(2) The procedure provided by this section may not apply to:

(a) motor vehicles that are required by 15-8-202 to be assessed on January 1 or upon their anniversary registration date;

(b) *motor homes, travel trailers, and campers*;

(c) livestock;

(d) property defined in 61-1-104 as "special mobile equipment" that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate; and

(e) mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade.

(3) Credits must be assessed as provided in 15-1-101(1)(d)."

Section 7. Section 15-8-202, MCA, is amended to read:

**"15-8-202. Motor vehicle assessment.** (1) The department or its agent must, in each year, ascertain and assess all motor vehicles, other than motor homes, travel trailers, *and campers* or mobile homes, in each county subject to taxation as of January 1 or as of the anniversary registration date of those vehicles *as provided by law*, subject to 61-3-313 through 61-3-316 and 61-3-501. The assessment for all motor vehicles *must* be made *in accordance with 61-3-503*. The motor vehicles shall be assessed in each year to the persons by whom owned or claimed or in whose possession or control they were at midnight of January 1 or the anniversary registration date thereof, whichever is applicable.

(2) No tax may be assessed against motor vehicles subject to taxation that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles subject to taxation brought into the state subsequent to January 1 as motor vehicle dealers' inventories shall be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers.

(3) "Purchasers" includes dealers who apply for registration or reregistration of motor vehicles, except as otherwise provided by 61-3-502.

(4) Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall be assessed at market value as of January 1."

Section 8. Section 15-24-101, MCA, is amended to read:

**"15-24-101. Assessment of proportionally registered interstate motor vehicle fleets — tax payment required for registration.** (1)

The department of revenue shall assess, for the purpose of personal property taxes, the taxable vehicles in interstate motor vehicle fleets proportionally registered under the provisions of 61-3-711 through 61-3-733, and the assessment shall be apportioned on the ratio of total miles traveled to in-state miles traveled formula as prescribed by 61-3-721. Interstate motor vehicle fleets are assessable for taxation purposes upon application for proportional registration and are assessed to the persons who own or claim or in whose possession or control the fleet is at the time of the application.

(2) With respect to any fleet contained in an original application which has a situs for purpose of property taxation in Montana by the terms of this part or any other provision of the laws of Montana between January 1 and April 1, the taxable vehicles are taxed for a full year. With respect to any fleet contained in an original application which acquires a situs for the purpose of property taxation in Montana under the provisions of this part or any other law of the state of Montana after April 1, the taxes on taxable vehicles are apportioned as provided in 15-24-303.

(3) With respect to any fleet contained in a renewal application, the taxable vehicles are assessed and taxed for a full year.

(4) Automobiles and trucks having a rated capacity of three-quarters of a ton or less that are part of an interstate motor vehicle fleet are subject to *property tax*. If the fleet is proportionally registered, the *tax* is apportioned in the same fashion as the registration fee under 61-3-721.

(5) Vehicles contained in a fleet for which current taxes, fees, or both have been assessed and paid shall not be assessed or charged fees under this section upon presentation to the department of proof of payment of taxes, or fees, or both for the current registration year. The payment of personal property taxes, fees, or both, is a condition precedent to proportional registration or reregistration of an interstate motor vehicle fleet."

Section 9. Section 15-24-105, MCA, is amended to read:

**"15-24-105. Deposit and distribution of taxes and fees on proportionally registered fleets.** The personal property taxes and license fees collected under this part shall be deposited with the state treasurer for distribution to the general fund of each county on the following basis:

(1) for personal property taxes, according to the ratio of the taxable valuation of each county to the total state taxable valuation; and

(2) for vehicle license fees, according to the ratio of vehicle license fees, other than fees derived from interstate motor vehicle fleets, collected in each county to the sum of all such fees collected in all the counties."

Section 10. Section 15-24-301, MCA, is amended to read:

**"15-24-301. Personal property brought into the state — assessment — exceptions — custom combine equipment.** (1) Except as provided in subsections (2) through (5), property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) any personal property (including livestock) brought, driven, or coming into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) property which comes to rest and becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner and to the same extent, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) Nothing in this section shall be construed to levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer.

(4) Any motor vehicle not subject to a fee in lieu of tax brought, driven, or coming into this state by any nonresident person temporarily employed in Montana and used exclusively for transportation of such person is subject to taxation and assessment for taxes as follows:

(a) The motor vehicle is taxed by the county in which it is located.

(b) One-fourth of the annual tax liability of the motor vehicle must be paid for each quarter or portion of a quarter of the year that the motor vehicle is located in Montana.

(c) The quarterly taxes are due the first day of the quarter.

(5) Agricultural harvesting machinery classified under class eight, licensed in other states, and operated on the lands of persons other than the owner of the machinery under contracts for hire shall be subject to a fee in lieu of taxation of \$35 per machine for the calendar year in which the fee is collected. The machines shall be subject to taxation under class eight only if they are sold in Montana."

Section 11. Section 15-30-121, MCA, is amended to read:

**"15-30-121. Deductions allowed in computing net income.** In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, subject to the following exceptions which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(2) federal income tax paid within the taxable year;

(3) expenses of household and dependent care services as outlined in subsections (3)(a) through (3)(c) and subject to the limitations and rules as set out in subsections (3)(d) through (3)(f) as follows:

(a) expenses for household and dependent care services necessary for gainful employment incurred for:

(i) a dependent under 15 years of age for whom an exemption can be claimed;

(ii) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to care for himself because of physical or mental illness; and

(iii) a spouse who is unable to care for himself because of physical or mental illness;

(b) employment-related expenses incurred for the following services, but only if such expenses are incurred to enable the taxpayer to be gainfully employed:

(i) household services which are attributable to the care of the qualifying individual; and

(ii) care of an individual who qualifies under subsection (3)(a);

(c) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and his spouse;

(d) the amounts deductible in subsection (3)(a) through (3)(c) are subject to the following limitations:

(i) a deduction is allowed under subsection (3)(a) for employment-related expenses incurred during the year only to the extent such expenses do not exceed \$4,800;

(ii) expenses for services in the household are deductible under subsection (3)(a) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (3)(a)(i) and only to the extent such expenses incurred during the year do not exceed:

(A) \$2,400 in the case of one qualifying individual;

(B) \$3,600 in the case of two qualifying individuals; and

(C) \$4,800 in the case of three or more qualifying individuals;

(e) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the taxable year during which the expenses are incurred, the amount of the employment-related expenses incurred must be reduced by one-half of the excess of the combined adjusted gross income over \$18,000;

(f) for purposes of this subsection (3):

(i) married couples shall file a joint return or file separately on the same form;



(ii) if the taxpayer is married during any period of the taxable year, employment-related expenses incurred are deductible only if:

(A) both spouses are gainfully employed on a substantially full-time basis; or

(B) the spouse is a qualifying individual described in subsection (3)(a)(iii);

(iii) an individual legally separated from his spouse under a decree of divorce or of separate maintenance may not be considered as married;

(iv) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(4) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the taxable year ended December 31, 1978;

(5) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 which was not otherwise deducted in computing taxable income; and

(6) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156. (Subsection (8) [now subsection (6)] terminates January 1, 1990—sec. 13, Ch. 610, L. 1985.)"

Section 12. Section 15-31-114, MCA, is amended to read:

**"15-31-114. Deductions allowed in computing income.** In computing the net income, the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

(2) (a) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, such allowance to be determined according to the provisions of

section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation shall be the same as the elections made for federal income tax purposes. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(b) (i) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term "net operating loss" means the excess of the deductions allowed by this section, 15-31-114, over the gross income, with the modifications specified in (ii) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the three taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five taxable periods following the taxable period of such loss. A net operating loss for any taxable period ending after December 31, 1975, in addition to being a net operating loss carryback to each of the three preceding taxable periods, shall be a net operating loss carryover to each of the seven taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in (ii)(B) of this subsection and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.

(ii) The modifications referred to in (i) of this subsection shall be as follows:

(A) No net operating loss deduction shall be allowed.

(B) The deduction for depletion shall not exceed the amount which would be allowable if computed under the cost method.

(C) Any net operating loss carried over to any taxable years beginning after December 31, 1978, must be calculated under the provisions of this section effective for the taxable year for which the return claiming the net operating loss carryover is filed.

(iii) A net operating loss deduction shall be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(iv) In the case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity shall not

be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

(v) Notwithstanding the provisions of 15-31-531, interest shall not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(vi) The net operating loss deduction shall not be allowed with respect to taxable periods which ended on or before December 31, 1970, but shall be allowed only with respect to taxable periods beginning on or after January 1, 1971.

(3) In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements; such reasonable allowance to be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes shall be the same as the elections made for federal income tax purposes.

(4) The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from such property or business would be taxable under this part.

(5) (a) Taxes paid within the year, except the following:

(i) Taxes imposed by this part.

(ii) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(iii) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

(iv) Taxes imposed by any other state or country upon or measured by net income or profits.

(b) Taxes deductible under this part shall be construed to include taxes imposed by any county, school district, or municipality of this state.

(6) That portion of an energy-related investment allowed as a deduction under 15-32-103.

(7) (a) Except as provided in subsection (b), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

(b) The public service commission shall not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(8) In lieu of the deduction allowed under subsection (7), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net

income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of (b) of this subsection (8)."

Section 13. Section 15-36-112, MCA, is amended to read:

**"15-36-112. Disposition of oil and gas severance taxes.** (1) Each year the department of revenue shall determine the amount of tax collected under this chapter from within each county.

(2) The severance taxes collected under this chapter are allocated as follows:

(a) the amount, if any, by which the tax collected from within a county for any fiscal year exceeds the total amount collected from within that county for the previous fiscal year, by reason of increased production and not because of increase in or elimination of federal price ceilings on oil and gas, is statutorily appropriated, as provided in 17-7-502, for allocation to the general fund of the county for distribution as provided in subsection (3);

(b) any amount not allocated to the county under subsection (2)(a) is allocated to the state general fund.

(3) (a) The county treasurer shall distribute the money received under subsection (2)(a) of this section to the county and to all the incorporated cities and towns within the county in the following manner. The county receives the available money multiplied by the ratio of the rural population to the county population. Each incorporated municipality receives the available money multiplied by the ratio of the population of the incorporated municipality to the county population. The rural population is that population of the county living outside the boundaries of an incorporated municipality. Population shall be based on the most recent figures as determined by the department of commerce.

(b) The money distributed under this subsection may be used for any purpose as determined by the governing body of the county, city, or town."

Section 14. Section 15-50-207, MCA, is amended to read:

**"15-50-207. Credit against other taxes — credit for personal property taxes and certain fees.** (1) The additional license fees withheld or otherwise paid as provided herein may be used as a credit on the contractor's corporation license tax provided for in chapter 31 of this title or on the contractor's income tax provided for in chapter 30, depending upon

the type of tax the contractor is required to pay under the laws of the state.

(2) Personal property taxes paid in Montana on any personal property of the contractor which is used in the business of the contractor and is located within this state may be credited against the license fees required under this chapter. However, in computing the tax credit allowed by this section against the contractor's corporation license tax or income tax, the personal property tax credit against the license fees herein required shall not be considered as license fees paid for the purpose of such income tax or corporation license tax credit."

Section 15. Section 20-9-141, MCA, is amended to read:

**"20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the total of the funding required for the district's final general fund budget less the amount established by the schedules in 20-9-316 through 20-9-321 by totaling:

(i) the district's nonisolated school foundation program requirement to be met by a district levy as provided in 20-9-303;

(ii) the district's permissive levy amount as provided in 20-9-352; and

(iii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-353, including any additional levies authorized by the electors of the district.

(b) Determine the total of the moneys available for the reduction of the property tax on the district for the general fund by totaling:

(i) anticipated federal moneys received under the provisions of Title I of Public Law 81-874 or other anticipated federal moneys received in lieu of such federal act;

(ii) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

(iii) general fund cash reappropriated, as established under the provisions of 20-9-104;

(iv) anticipated or reappropriated state impact aid received under the provisions of 20-9-304;

(v) *anticipated revenue from vehicle property taxes imposed under 61-3-504(2) and [section 36];*

(vi) anticipated net proceeds taxes for new production, as defined in 15-23-601;

(vii) anticipated interest to be earned or reappropriated interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(viii) any other revenue anticipated by the trustees to be received during the ensuing school fiscal year which may be used to finance the general fund.

(c) Subtract the total of the moneys available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from the total requirement determined in subsection (1)(a).

(2) The net general fund levy requirement determined in subsection (1)(c) shall be reported to the county commissioners on the second Monday of August by the county superintendent as the general fund levy requirement for the district, and a levy shall be made by the county commissioners in accordance with 20-9-142."

Section 16. Section 20-9-331, MCA, is amended to read:

**"20-9-331. Basic county tax and other revenues for county equalization of the elementary district foundation program.** (1) It shall be the duty of the county commissioners of each county to levy an annual basic tax of 28 mills on the dollars of the taxable value of all taxable property within the county, *except for vehicles subject to taxation under 61-3-504(2)*, for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of the elementary school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenues identified in subsection (2) below shall be subtracted from the sum of the county elementary transportation obligation and the total of the foundation programs of all elementary districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined above, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed by this section and the revenues from the following sources shall be used for the equalization of the elementary district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of such proceeds and revenues by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of the property taxation established by the county levy required by this section;

(f) net proceeds taxes for new production, as defined in 15-23-601; and

(g) *anticipated revenue from vehicle property taxes imposed under 61-3-504(2) and [section 36].*"

Section 17. Section 20-9-333, MCA, is amended to read:

**"20-9-333. Basic special levy and other revenues for county equalization of high school district foundation program.** (1) It shall be the duty of the county commissioners of each county to levy an annual basic special tax for high schools of 17 mills on the dollar of the taxable value of all taxable property within the county, *except for vehicles subject to taxation under 61-3-504(2)*, for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of high school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the estimated revenues identified in subsections (2)(a) and (2)(b) below shall be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined above, the county treasurer shall remit the surplus to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed in this section and the revenues from the following sources shall be used for the equalization of the high school district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of these proceeds by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state moneys distributed to the county as a payment in lieu of the property taxation established by the county levy required by this section;

- (c) net proceeds taxes for new production, as defined in 15-23-601; and
- (d) *anticipated revenue from vehicle property taxes imposed under 61-3-504(2) and [section 36].*

Section 18. Section 20-9-352, MCA, is amended to read:

**"20-9-352. Permissive amount and permissive levy.** (1) Whenever the trustees of any district shall deem it necessary to adopt a general fund budget in excess of the foundation program amount but not in excess of the maximum general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. Such excess above the foundation program amount shall be known as the "permissive amount", and it shall be financed by a levy, *as prescribed in 20-9-141*, on the taxable value of all taxable property within the district, *except for vehicles subject to taxation under 61-3-504(2)*, supplemented with any biennial appropriation by the legislature for this purpose. The proceeds of such an appropriation shall be deposited to the state special revenue fund, permissive account.

(2) The district levies to be set for the purpose of funding the permissive amount are determined as follows:

(a) For each elementary school district, the county commissioners shall annually set a levy not exceeding 6 mills on all the taxable property in the district, *except for vehicles subject to taxation under 61-3-504(2)*, for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive amount to the maximum permissive amount by 6 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy, plus *anticipated revenue from vehicle property taxes imposed under 61-3-504(2) and [section 36]*, is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the state special revenue fund according to the provisions of subsections (3) and (4) of this section.

(b) For each high school district, the county commissioners shall annually set a levy not exceeding 4 mills on all taxable property in the district, *except for vehicles subject to taxation under 61-3-504(2)*, for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive levy to the maximum permissive amount by 4 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy, plus *anticipated revenue from vehicle property taxes imposed under 61-3-504(2) and [section 36]*, and plus net proceeds taxes for new production, as defined in 15-23-601, is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the state special revenue fund according to the provisions of subsections (3) and (4) of this section.

(3) The superintendent of public instruction shall, if the appropriation by the legislature for the permissive account for the biennium is insufficient, request the budget director to submit a request for a supplemental



appropriation in the second year of the biennium. The supplemental appropriation shall provide enough revenue to fund the permissive deficiency of the elementary and high school districts of the state. The proceeds of this appropriation shall be deposited to the state special revenue fund, permissive account, and shall be distributed to the elementary and high school districts in accordance with their entitlements as determined by the superintendent of public instruction according to the provisions of subsections (1) and (2) of this section.

(4) Distribution under this section from the state special revenue fund shall be made in two payments. The first payment shall be made at the same time as the first distribution of state equalization aid is made after January 1 of the fiscal year. The second payment shall be made at the same time as the last payment of state equalization aid is made for the fiscal year. If the appropriation is not sufficient to finance the deficiencies of the districts as determined according to subsection (2), each district will receive the same percentage of its deficiency. Surplus revenue in the second year of the biennium may be used to reduce the appropriation required for the next succeeding biennium or may be transferred to the state equalization aid state special revenue fund if revenues in that fund are insufficient to meet foundation program requirements."

Section 19. Section 20-9-501, MCA, is amended to read:

**"20-9-501. Retirement fund.** (1) The trustees of any district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to such systems. The district's contribution for each employee who is a member of the teachers' retirement system shall be calculated in accordance with Title 19, chapter 4, part 6. The district's contribution for each employee who is a member of the public employees' retirement system shall be calculated in accordance with 19-3-801. The district may levy a special tax to pay its contribution to the public employees' retirement system under the conditions prescribed in 19-3-204. The district's contributions for each employee covered by any federal social security system shall be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance shall be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of any district required to make a contribution to any such system shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution and such additional moneys, within legal limitations, as they may wish to provide for the retirement fund cash reserve. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to such systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the moneys available to reduce the retirement fund levy requirement by adding:

(i) any anticipated moneys that may be realized in the retirement fund during the ensuing school fiscal year, including anticipated *revenue from vehicle property taxes imposed under 61-3-504(2) and [section 36]*;

(ii) net proceeds taxes for new production, as defined in 15-23-601; and

(iii) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the retirement fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the retirement fund. The retirement fund cash reserve shall not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and shall be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(b) subtracting the total of the moneys available for reduction of the levy requirement as determined in subsection (3)(a) from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements, and shall report each such levy requirement to the county commissioners on the second Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds. The county commissioners shall fix and set such county levy in accordance with 20-9-142.

(5) The net retirement fund levy requirement for a joint elementary district or a joint high school district shall be prorated to each county in which a part of such district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each such county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(6) The net retirement fund levy requirement for districts that are members of special education cooperative agreements shall be prorated to each county in which such district is located in the same proportion as the budget for the special education cooperative agreement of the district bears to the total budget of the cooperative. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151 and fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152."

Section 20. Section 20-10-144, MCA, is amended to read:

**"20-10-144. Computation of revenues and net tax levy requirements for the transportation fund budget.** Before the fourth Monday of July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 shall be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by such district); plus

(b) the total of all individual transportation per diem reimbursement rates for such district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if such amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or \$100, whichever is larger, the contingency amount on the preliminary budget shall be reduced to such limitation amount and used in this determination of the schedule amount.

(2) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, shall be divided by 3 and the resulting one-third amount shall be used to determine the available state and county revenue to be budgeted on the following basis:

(a) the resulting one-third amount shall be the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 shall be two-thirds of the schedule amount attributed to the transportation of special education pupils;

(b) the resulting one-third amount, except as provided for joint elementary districts in subsection (2)(e), shall be the budgeted county transportation reimbursement for elementary districts and shall be financed by the basic county tax under the provisions of 20-9-334;

(c) the resulting one-third amount multiplied by 2 shall be the budgeted county transportation reimbursement amount for high school districts financed under the provisions of subsection (5) of this section, except as provided for joint high school districts in subsection (2)(e), and except that the county transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 shall be one-third of the schedule amount attributed to the transportation of special education pupils;

(d) when the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of such district revenue and cash reappropriated shall be used to reduce the county financing obligation in subsections (2)(b) or (2)(c) and,

if such county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a); and

(e) the county revenue requirement for a joint district, after the application of any district moneys under subsection (2)(d) above, shall be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each such county.

(3) The total of the moneys available for the reduction of property tax on the district for the transportation fund shall be determined by totaling:

(a) anticipated federal moneys received under the provisions of Title I of Public Law 81-874 or other anticipated federal moneys received in lieu of such federal act; plus

(b) anticipated payments from other districts for providing school bus transportation services for such district; plus

(c) anticipated payments from a parent or guardian for providing school bus transportation services for his child; plus

(d) anticipated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4); plus

(e) *anticipated revenue from vehicle property taxes imposed under 61-3-504(2) and [section 36];* plus

(f) net proceeds taxes for new production, as defined in 15-23-601; plus

(g) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year which may be used to finance the transportation fund; plus

(h) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the transportation fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the transportation fund. Such cash reserve shall not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and shall be for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund shall be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount and, for an elementary district, adding such difference to the district obligation to finance one-third of the schedule amount as determined in subsection (2); and

(b) subtracting the amount of moneys available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a) above.

(5) The county levy requirement for the financing of the county transportation reimbursement to high school districts shall be computed by adding all such requirements for all the high school districts of the county,

including the county's obligation for reimbursements in joint high school districts.

(6) The transportation fund levy requirements determined in subsection (4) for each district and in subsection (5) for the county shall be reported to the county commissioners on the second Monday of August by the county superintendent as the transportation fund levy requirements for the district and for the county, and such levies shall be made by the county commissioners in accordance with 20-9-142."

Section 21. Section 61-3-303, MCA, is amended to read:

**"61-3-303. Application for registration.** (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as herein otherwise expressly provided, file or cause to be filed in the office of the county treasurer where the owner makes his permanent residence at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned, an application for registration or reregistration upon a blank form to be prepared and furnished by the department. The application shall contain:

(a) name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) name and address of the holder of any security interest in the motor vehicle;

(c) description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, type of body, and if truck, the rated capacity;

(d) in case of reregistration, the license number for the preceding year; and

(e) such other information as the department may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321; and

(b) unless it has been previously paid:

(i) the personal property taxes assessed against the vehicle for the current year of registration and the immediately previous year;

(ii) the new motor vehicle sales tax against the vehicle for the current year of registration; or

(iii) in the case of a motor home, travel trailer, or camper, the fee in lieu of tax for the current year of registration.

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application. The *department or its agent may not assess and the county treasurer may not collect taxes or fees for a period other than:*

(a) the current year; and

(b) the immediately previous year, if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

(4) The *department or its agent* may make full and complete investigation of the tax status of the vehicle. Any applicant for registration or reregistration must submit proof from the tax or other appropriate records of the proper county at the request of the *department or its agent.*"

Section 22. Section 61-3-332, MCA, is amended to read:

**"61-3-332. Number plates.** (1) Every motor vehicle which shall be driven upon the streets or highways of this state shall display both front and rear a number plate, bearing the distinctive number assigned such vehicle. Such number plate shall be in eight series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type which shall bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) which shall bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) which shall bear the distinctive letters "UD" or the letter "U" and the word "DEALER", and one for dealers in trailers and/or semitrailers (new or used) which shall bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER". All such markings for the aforementioned kinds of dealers' plates shall be placed on the number plates assigned thereto in such position thereon as the department may designate.

(2) All number plates for motor vehicles shall be issued for a minimum period of 4 years, shall bear a distinctive marking, and shall be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers, which shall be affixed to the license plates in use.

(3) In the case of motorcars and trucks, plates shall be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana shall be used as a distinctive border on such license plates, and the word "Montana" with the year shall be placed across the plates. Such registration plates shall be treated with a reflectorized background material according to specifications prescribed by the department.

(4) The distinctive registration numbers shall begin with a number one or with a letter-number combination such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle shall appear

on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline, and the county number shall be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of such numerals and letters shall be determined by the department, provided that all county and registration numbers shall be of equal height.

(5) For the use of tax-exempt motor vehicles, in addition to the markings herein provided, number plates shall have thereon the following distinctive markings:

(a) For vehicles owned by the state the department may designate the prefix number for the various state departments, and all numbered plates issued to state departments shall bear the words "State Owned" and no year number will be indicated thereon as these numbered plates will be of a permanent nature and will be replaced by the department at such time when the physical condition of numbered plates requires same.

(b) For vehicles owned by the counties, municipalities, irrigation districts organized under the laws of Montana and not operating for profit, and school districts and used and operated by officials and employees thereof in line of duty as such, and for vehicles on loan from the United States government or the state of Montana, to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty as such, there shall be placed on the number plates assigned thereto, in such position thereon as the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of said counties and those of the irrigation districts which obtain plates within each county shall begin with number one and be numbered consecutively.

(6) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there shall appear the letter "T" or the word "TRUCK" for plates assigned to trucks and the letters "TR" or the word "TRAILER" for plates assigned to trailers and housetrailer. The letters "MC" or the word "CYCLE" shall appear for plates assigned to vehicles of the motorcycle or quadricycle type.

(7) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. No registration or license fee may be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(8) For the purpose of this chapter, the several counties of the state shall be assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41;

Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties shall be assigned numbers by the department as they may be formed, beginning with the number 57."

Section 23. Section 61-3-431, MCA, is amended to read:

**"61-3-431. Special mobile equipment — exemption from registration and payment of fees and charges — identification plate — publicly owned special mobile equipment.** (1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in 61-1-104 and occasionally moves that equipment on, over, or across the highways of the state is not subject to registration of that equipment or required to pay the fees and charges provided for in 61-3-502, 61-4-301 through 61-4-308, or part 2 of chapter 10. Prior to movement on the highways, however, each piece of equipment shall display an equipment identification plate or a dealer's license plate attached to the equipment.

(2) Annual application for the identification plate shall be made to the county treasurer before any piece of equipment is moved on the highways. Application shall be made on a form furnished by the department of justice, together with the payment of a fee of \$5. The equipment for which a special mobile equipment plate is sought is subject to the assessment of personal property taxes on the date application is made for the plate. The personal property taxes assessed against the special mobile equipment must be paid before the issuance of a special mobile equipment plate. The fees collected under this section belong to the county road fund.

(3) The identification plate expires on December 31 of each year. If the expired identification plate is displayed, an owner of special mobile equipment registered under the provisions of this section is entitled to operate the equipment between January 1 and February 15 following expiration without displaying the identification plate or receipt of the current year.

(4) Publicly owned special mobile equipment and implements of husbandry used exclusively by an owner in the conduct of his own farming operations are exempt from this section."

Section 24. Section 61-3-501, MCA, is amended to read:

**"61-3-501. When vehicle taxes and fees are due.** (1) Property taxes, new car taxes, and fees must be paid on the date of registration or reregistration of the vehicle.

(2) If the anniversary date for reregistration of a vehicle passes while the vehicle is owned and held for sale by a licensed new or used car dealer, property taxes abate on such vehicle properly reported with the department of revenue until the vehicle is sold and thereafter the purchaser shall pay the pro rata balance of the taxes due and owing on the vehicle.

(3) In the event a vehicle's registration period is changed under 61-3-315, all taxes and other fees due thereon shall be prorated and paid from the last day of the old period until the first day of the new period in which the vehicle shall be registered. Thereafter taxes and other fees



must be paid from the first day of the new period for a minimum period of 1 year. When the change is to a later registration period, taxes and fees shall be prorated and paid based on the same tax year as the original registration period. Thereafter, during the appropriate anniversary registration period, each vehicle shall again register or reregister and shall pay all taxes and fees due thereon for a 12-month period."

Section 25. Section 61-3-502, MCA, is amended to read:

**"61-3-502. Sales tax on new motor vehicles — exemptions.** (1) In consideration of the right to use the highways of the state, there is imposed a tax upon all sales of new motor vehicles for which a license is sought and an original application for title is made. The tax shall be paid by the purchaser when he applies for his original Montana license through the county treasurer.

(2) Except as provided in subsection (4), the sales tax shall be:

(a) 1 ½% of the f.o.b. factory list price or f.o.b. port-of-entry list price, during the first quarter of the year or for a registration period other than a calendar year or calendar quarter;

(b) 1 ½% of the list price during the second quarter of the year;

(c) ¾ of 1% during the third quarter of the year;

(d) ¾ of 1% during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the f.o.b. factory list price or f.o.b. port-of-entry list price, the department may use published price lists.

(4) The new car sales tax on vehicles subject to the provisions of 61-3-313 through 61-3-316 is 1 ½% of the f.o.b. factory list price or f.o.b. port-of-entry list price regardless of the month in which the new vehicle is purchased.

(5) The proceeds from this tax shall be remitted to the state treasurer every 30 days for credit to the state highway account of the state special revenue fund.

(6) The new vehicle is not subject to any other assessment, fee in lieu of tax, or tax during the calendar year in which the original application for title is made.

(7) (a) The applicant for original registration of any new and unused motor vehicle, or a new motor vehicle furnished without charge by a dealer to a school district for use as a traffic education motor vehicle by a school district operating a state-approved traffic education program within the state, whether or not previously licensed or titled to the school district (except a mobile home as defined in 15-1-101(1)), acquired by original contract after January 1 of any year, is required, whenever the vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by this section irrespective of whether the vehicle was in the state of Montana on January 1 of the year.

(b) No motor vehicle may be registered or licensed under the provisions of this subsection unless the application for registration is accompanied by

a statement of origin to be furnished by the dealer selling the vehicle, showing that the vehicle has not previously been registered or owned, except as otherwise provided herein, by any person, firm, corporation, or association that is not a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(8) (a) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from such limits are exempt from subsection (1).

(b) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are also exempt from subsection (1).

(c) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from subsection (1) when moving to or from a dealer's place of business when unloaded or loaded with dealer's property only, and in the case of vehicles having a gross loaded weight of less than 24,000 pounds, while being demonstrated in the course of the dealer's business."

Section 26. Section 61-3-503, MCA, is amended to read:

**"61-3-503. Assessment.** (1) Except as provided in subsection (2), the following apply to the taxation of motor vehicles:

(a) Except as provided in *subsections (1)(c) through (1)(e)*, a person who files an application for registration or reregistration of a motor vehicle shall before filing such application with the county treasurer submit the application to the county assessor. The county assessor shall enter on the application in a space to be provided for that purpose the market value and taxable value of the vehicle as of January 1 of the year for which the application for registration is made.

(b) Except as provided in subsection (1)(c), motor vehicles are assessed for taxes on January 1 in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state. In no event may any motor vehicle be subject to assessment, levy, and taxation more than once in each year.

(c) Vehicles subject to the provisions of 61-3-313 through 61-3-316 shall be assessed as of the first day of the registration period, using the *average trade-in, or wholesale, value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide, the National Edition of N.A.D.A. Appraisal Guides Official Older Used Car Guide, or, for vehicles not listed in the preceding guides, the low value listed in The Value Guide to Cars of Particular Interest, not including additions or deductions for options and mileage; and a lien for taxes and fees due thereon shall occur on the anniversary date of the registration and shall continue until such fees and taxes have been paid. If the value shown in any of the appraisal guides listed in this section is less than \$1,000, the department shall value the vehicle at \$1,000.*

(d) *Motorcycles and quadricycles shall be assessed, using the greater of the following:*

(i) *\$250; or*

(ii) *the average trade-in, or wholesale, value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the applicable National Edition of the N.A.D.A. Motorcycle/Moped/ATV Appraisal Guide or N.A.D.A. Recreational Vehicle Appraisal Guide, not including additions or deductions for options and mileage.*

(e) *If a vehicle assessed under subsection (1)(c) or (1)(d) is not originally listed in the applicable N.A.D.A. guide, the department of revenue or its agent shall depreciate the original f.o.b. factory list price, f.o.b. port-of-entry list price, or the manufacturer's suggested list price, using the following methods:*

(i) *if the new car sales tax has been previously paid and the vehicle is less than 1 year in age, the depreciation percentage shall be 20%; or*

(ii) *if the vehicle is 1 year or older in age and it is not listed in any of the appraisal guides listed in this section, the department of revenue shall determine the depreciation percentage to approximate the average wholesale or trade-in values in the current N.A.D.A. guides referred to in this subsection. For purposes of this subsection (1), the age of the vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year of assessment.*

(f) *When a minimum value of \$500 is reached, the value shall remain at that minimum so long as the vehicle is registered.*

(g) *If a previously registered vehicle is no longer listed in the applicable N.A.D.A. guide, the department or its agent shall depreciate the value of the vehicle at the rate of 10% a year until a minimum amount of \$500 is attained, and the value shall remain at that amount so long as the vehicle is registered.*

(2) *The provisions of subsections (1)(a) through (1)(g) do not apply to motor homes, travel trailers, campers, or mobile homes as defined in 15-1-101(1)."*

Section 27. Section 61-3-504, MCA, is amended to read:

**"61-3-504. Computation of tax.** (1) *The amount of taxes on a motor vehicle, other than an automobile, truck having a rated capacity of three-quarters of a ton or less, motorcycle, quadricycle, motor home, travel trailer, camper, or mobile home, is computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration.*

(2) *The amount of tax on an automobile or truck having a rated capacity of three-quarters of a ton or less, except for vehicles owned by disabled veterans qualifying for special license plates under 61-3-451, and on a motorcycle or quadricycle is 2% of the value determined under 61-3-503.*

(3) *For all taxable motor vehicles, the amount of tax is entered on the application form in a space provided therefor."*

Section 28. Section 61-3-506, MCA, is amended to read:

**"61-3-506. Rules.** The department of revenue shall adopt rules for the payment of property taxes and the department of highways shall adopt rules for the payment of new car taxes under the provisions of 61-3-313 through 61-3-316 and 61-3-501. The department of revenue may adopt rules for the proration of taxes for the implementation and administration of 61-3-313 through 61-3-316 and 61-3-501, but shall specifically provide that new car taxes shall be for a 12-month period."

Section 29. Section 61-3-509, MCA, is amended to read:

**"61-3-509. (Temporary) Disposition of taxes.** (1) Except as provided in *subsection (2)*, the county treasurer shall, *after deducting the district court fee* credit all taxes on motor vehicles and fees in lieu of tax on motor homes, travel trailers, and campers collected under 61-3-504, 61-3-521, and [section 36] to a motor vehicle suspense fund, and at some time between March 1 and March 10 of each year and every 60 days thereafter, the county treasurer shall distribute the money in the motor vehicle suspense fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(2) *The county treasurer shall deduct as a district court fee 7% of the amount of the 2% tax collected on an automobile or truck having a rated capacity of three-quarters of a ton or less. The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the state treasurer at the time the county treasurer distributes the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the general fund to be used for purposes of state funding of the district court expenses enumerated in 3-5-901. Any amount forwarded to the state treasurer under this subsection not used for district court expenses must be refunded to the counties in the proportion that the amount collected from each county bears to the total amount collected.*

**61-3-509. (Effective July 1, 1987) Disposition of taxes.** (1) *Except as provided in subsection (2), the county treasurer shall, after deducting the district court fee, credit all taxes on motor vehicles and fees in lieu of tax on motor homes, travel trailers, and campers collected under 61-3-504, 61-3-521, and [section 36] to a motor vehicle suspense fund, and at some time between March 1 and March 10 of each year and every 60 days thereafter, the county treasurer shall distribute the money in the motor vehicle suspense fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.*

(2) *The county treasurer shall deduct as a district court fee 7% of the amount of the 2% tax collected on an automobile or truck having a rated capacity of three-quarters of a ton or less. The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the state treasurer at the time the county treasurer distributes the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the general fund to*

*be used for purposes of state funding of the district court expenses enumerated in 3-5-901. Any amount forwarded to the state treasurer under this subsection not used for district court expenses must be refunded to the counties in the proportion that the amount collected from each county bears to the total amount collected."*

Section 30. Section 61-3-522, MCA, is amended to read:

**"61-3-522. Schedule of fees for motor homes.** (1) The owner of a motor home shall pay a fee based on the age of the motor home according to the following schedule:

|                                             |       |
|---------------------------------------------|-------|
| less than 2 years old .....                 | \$250 |
| 2 years old and less than 3 years old ..... | 230   |
| 3 years old and less than 4 years old ..... | 195   |
| 4 years old and less than 5 years old ..... | 150   |
| 5 years old and less than 6 years old ..... | 125   |
| 6 years old and less than 7 years old ..... | 100   |
| 7 years old and less than 8 years old ..... | 75    |
| 8 years old and older .....                 | 65    |

(2) The age of a motor home is determined by subtracting the manufacturer's designated model year from the current calendar year."

Section 31. Section 61-3-523, MCA, is amended to read:

**"61-3-523. Schedule of fees for travel trailers and campers.** (1) The fee imposed by 61-3-521 on a travel trailer less than 3 years old is \$60. In all other cases the fee is \$22.50.

(2) The fee imposed by 61-3-521 on a camper less than 3 years old is \$52.50. In all other cases the fee is \$22.50.

(3) The age of a travel trailer or camper is determined by subtracting the manufacturer's designated model year from the current calendar year."

Section 32. Section 61-3-524, MCA, is amended to read:

**"61-3-524. Tax-paid decal required on camper — application for decal — application fee — issuance.** (1) No camper, subject to taxation in Montana, may be operated by any person on the public highways or streets in this state unless there is displayed in a conspicuous place thereon a decal as visual proof that the tax has been paid thereon for the current year.

(2) Application for the issuance of the decal shall be made to the department of revenue or the county treasurer upon forms to be furnished for this purpose, which may be obtained from the department or at the county treasurer's office in the county wherein the owner resides, and is to provide for substantially the following information:

- (a) name of owner;
- (b) address;
- (c) name of manufacturer;
- (d) model number;

- (e) make;
- (f) year of manufacture;
- (g) statement evidencing payment of the property tax; and
- (h) such other information as the department may require.

(3) The application must be signed by the county treasurer and transmitted by him to the department accompanied by an application fee of \$1. Upon receipt of the application in approved form the department or county treasurer shall issue to the applicant a decal in the style and design prescribed by the department and of a different color than the preceding year, numbered numerically."

Section 33. Section 61-3-535, MCA, is amended to read:

**"61-3-535. Vehicle reregistration by mail.** (1) The department shall develop a procedure to permit the reregistration of light vehicles *and other vehicles subject to tax under 61-3-504(2)* with the county treasurer by mail at the option of the owner of the vehicle. The option to reregister by mail need only be made available for vehicles registered at the close of the expiring registration period in the name of the applicant for reregistration.

(2) The form to be returned to the county treasurer by the applicant, with the appropriate *tax and fees*, is to contain a statement, to be subscribed to by the applicant, stating compliance with the financial liability requirements of 61-6-301.

(3) The department may adopt rules to implement the mail reregistration procedure."

Section 34. Section 61-3-701, MCA, is amended to read:

**"61-3-701. Foreign vehicles used in gainful occupation to be registered — reciprocity.** (1) Before any foreign licensed motor vehicle may be operated on the highways of this state for hire, compensation, or profit or before the owner and/or user thereof uses the vehicle if such owner and/or user is engaged in gainful occupation or business enterprise in the state, including highway work, the owner of the vehicle shall make application to a county treasurer for registration upon an application form furnished by the department. Upon satisfactory evidence of ownership submitted to the county treasurer and the payment of property taxes, if appropriate, as required by 15-8-201, 15-8-202, 15-24-301, *61-3-504*, or *[section 36]*, the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle.

(2) The treasurer shall thereupon issue to the applicant a copy of the certificate entitled "Owner's Certificate of Registration and Payment Receipt" and forward a duplicate copy of the certificate to the department. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which shall at all times be displayed upon the vehicle when operated or driven upon roads and highways of this state during the period of the life of the license.

(3) The registration receipt shall not constitute evidence of ownership but shall be used only for registration purposes. No Montana certificate of ownership shall be issued for this type of registration.

(4) This section is not applicable to any vehicle covered by a valid and existing reciprocal agreement or declaration entered into under the provisions of the laws of Montana."

Section 35. Section 61-6-302, MCA, is amended to read:

**"61-6-302. Proof of compliance.** (1) Except as provided in subsection (2), before any applicant required to register his motor vehicle may do so, the applicant must certify to the county treasurer that he possesses an automobile liability insurance policy, a certificate of self-insurance, or a posted indemnity bond or that he is eligible for an exemption under 61-6-303 covering the motor vehicle. The certification shall be on a form prescribed by the department. The department may immediately cancel the registration and license plates of the vehicle upon notification that the insurance certification was not correctly represented. Any person who intentionally provides false information on an insurance certification is guilty of unsworn falsification to authorities, punishable as provided in 45-7-203.

(2) An applicant for registration of a *motor vehicle* who wishes to register the vehicle by mail must sign a statement on the application stating that the applicant is in compliance with the financial liability requirements of 61-6-301.

(3) An owner of a motor vehicle who ceases to maintain the insurance or bond required or whose certificate of self-insurance is canceled or whose vehicle ceases to be exempt shall immediately surrender the registration and license plates for the vehicle to the county treasurer for delivery to the department and may not operate or permit operation of the vehicle in Montana until insurance has again been furnished as required and the vehicle is again registered and licensed.

(4) Every person shall carry in a motor vehicle being operated by him an insurance card approved by the department but issued by the insurance carrier to the motor vehicle owner as proof of compliance with 61-6-301. A motor vehicle operator shall exhibit the insurance card upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrolman, or a field deputy or inspector of the department. However, no person charged with violating this subsection may be convicted if he produces in court or the office of the arresting officer proof of insurance valid at the time of his arrest."

Section 36. **Local option vehicle tax.** (1) A county may impose a local vehicle tax on vehicles subject to a property tax under 61-3-504(2) at a rate of up to 0.5% of the value determined under 61-3-503, in addition to the tax imposed under 61-3-504(2).

(2) A local vehicle tax is payable at the same time and in the same manner as the tax imposed under 61-3-504(2) and is distributed in the same manner, based on the registration address of the owner of the motor vehicle.

(3) The governing body of a county may impose a local vehicle tax for a fiscal year by adopting a resolution before July 1 of the fiscal year, after conducting a public hearing on the proposed resolution.

Section 37. **Anniversary reregistration.** A person may not change the anniversary date for reregistration of a vehicle pursuant to the provisions of 61-3-315 from [the effective date of this act] until January 1, 1988.

Section 38. **Repealer.** (1) Sections 7-6-301 through 7-6-309, MCA, are repealed.

(2) Sections 61-3-531 through 61-3-534, 61-3-536, 61-3-541, and 61-3-542, MCA, are repealed.

Section 39. **Extension of authority.** Any existing authority of the department of revenue, the department of justice, or the department of commerce to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 40. **Effective dates — applicability — termination.** (1) Section 38(1) is effective July 1, 1987.

(2) This act is effective on passage and approval and applies to motor vehicles registered on or after July 1, 1987.

(3) (a) Section 36 terminates July 1, 1989.

(b) Section 37 terminates January 1, 1988.

Approved April 27, 1987.

## CHAPTER NO. 612

[HB 163]

AN ACT PROVIDING A DEFINITION OF "UNDER THE INFLUENCE" TO BE APPLIED IN CASES OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; REPLACING THE EXISTING STANDARD; AND AMENDING SECTIONS 61-5-205, 61-5-208, AND 61-8-401, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-8-401, MCA, is amended to read:

**"61-8-401. Persons under the influence of alcohol or drugs.** (1) It is unlawful and punishable as provided in 61-8-714 for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a narcotic drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any drug to drive or be in actual physical control of a vehicle within this state.



(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) *"Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination thereof, a person's ability to safely operate a motor vehicle has been diminished.*

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(a) If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that fact shall not give rise to any presumption that the person was or was not under the influence of alcohol but such fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.10 or more, it shall be presumed that the person was under the influence of alcohol. Such presumption is rebuttable.

(5) The provisions of subsection (4) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol.

(6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and subsections (1) through (5) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided."

Section 2. Section 61-5-205, MCA, is amended to read:

**"61-5-205. Mandatory revocation of license upon proper authority.** The department upon proper authority shall revoke the license or operating privilege of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction or forfeiture of bail not vacated of any of the following offenses, when such conviction or forfeiture has become final:

(1) negligent homicide resulting from the operation of a motor vehicle;

(2) driving a motor vehicle while under the influence of alcohol or any drug or a combination thereof, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more;

(3) any felony in the commission of which a motor vehicle is used;

(4) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(5) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(6) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months."

Section 3. Section 61-5-208, MCA, is amended to read:

**"61-5-208. Period of suspension or revocation.** (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as permitted under 61-5-207, 61-5-212, 61-6-123, and 61-11-211.

(2) Any person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked is not entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of such revocation or suspension, the person may make application for a new license as provided by law but the department may not then issue a new license unless and until it is satisfied, after investigation of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in this state. When any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination thereof or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of such conviction or forfeiture of bail or collateral not vacated, suspend the license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year.

(3) The period for all revocations made mandatory by 61-5-205 shall be 1 year except as provided in subsection (2) of this section.

(4) The period of revocation for any person convicted of any offense which makes mandatory the revocation of the operator's or chauffeur's license commences from date of conviction or forfeiture of bail."

Section 4. **Extension of authority.** Any existing authority of the department of justice to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 27, 1987.

**CHAPTER NO. 613**

[HB 436]

AN ACT REQUIRING THE DEPARTMENT OF REVENUE TO CONDUCT A SALES ASSESSMENT RATIO STUDY FOR THE PURPOSE OF ANNUALLY DETERMINING THE CORRECT ASSESSMENT LEVEL FOR SIMILAR PROPERTY LOCATED IN SPECIFIC AREAS OF THE STATE OF MONTANA; AMENDING SECTIONS 15-1-101, 15-7-102, 15-7-103, AND 15-7-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-1-101, MCA, is amended to read:

**"15-1-101. Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to the raising of livestock, poultry, bees, and other species of domestic animals and wildlife in domestication or a captive environment, and the raising of field crops, fruit, and other animal and vegetable matter for food or fiber.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and profit margin shown in national appraisal guides and manuals or the valuation schedules of the department of revenue.

(d) (i) The term "commercial", when used to describe property, means any property used or owned by a business, a trade, or a nonprofit corporation as defined in 35-2-102 or used for the production of income, except that property described in subsection (ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes used exclusively as a residence except when held by a distributor or dealer of trailers or mobile homes as his stock in trade;

(E) all property described in 15-6-135;

(F) all property described in 15-6-136; and

(G) all property described in 15-6-146.

(e) The term "comparable property" means property that has similar use, function, and utility; that is influenced by the same set of economic trends and physical, governmental, and social factors; and that has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed.

(h) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on such leasehold improvements are a lien only on such leasehold improvements.

(i) The term "livestock" means cattle, sheep, swine, goats, horses, mules, and asses.

(j) The term "mobile home" means forms of housing known as "trailers", "housetrainers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

(k) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(l) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(m) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(n) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(o) The term "taxable value" means the percentage of market or assessed value as provided for in 15-6-131 through 15-6-140.

(p) *The term "weighted mean assessment ratio" means the total of the assessed values divided by the total of the selling prices of all area sales in the stratum.*

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board."

Section 2. Section 15-7-102, MCA, is amended to read:

**"15-7-102. Notice of classification and appraisal to owners — appeals.** (1) It shall be the duty of the department of revenue to cause to be mailed to each owner and purchaser under contract for deed a notice of the classification of the land owned or being purchased by him and the appraisal of the improvements thereon only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

- (a) change in ownership;
- (b) change in classification;
- (c) change in valuation; or
- (d) addition or subtraction of personal property affixed to the land.

(2) The notice of classification and appraisal provided by the department under subsection (1) must be on a standardized form adopted by the department containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of his property and of changes over the prior tax year.

(3) If the owner of any land and improvements is dissatisfied with the appraisal or classification of his land or improvements, he may submit his objection in writing to the department's agent. The department shall give reasonable notice to such taxpayer of the time and place of hearing and hear any testimony or other evidence which the taxpayer may desire to produce at such time and afford the opportunity to other interested persons to produce evidence at such hearing. Thereafter, the department shall determine the true and correct appraisal and classification of such land or improvements and forthwith notify the taxpayer of its determination. In the notification, the department must state its reasons for revising the classification or appraisal. When so determined, the land shall be classified and improvements appraised in the manner ordered by the department.

(4) Whether a hearing as provided in subsection (3) is held or not, the department or its agent may not adjust an appraisal or classification upon taxpayer's objection unless:

- (a) the taxpayer has submitted his objection in writing; and
- (b) the department or its agent has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. Each county appraiser shall make such records available for inspection during regular office hours.

(6) If any property owner shall feel aggrieved at the classification and/or the appraisal so made by the department, he shall have the right to appeal to the county tax appeal board and then to the state tax appeal board, whose findings shall be final subject to the right of review in the proper court or courts. *While the property owner may appeal the base year valuation and classification determination, the property owner may not appeal the yearly percentage adjustments that are specified in 15-7-111 and that may be made as a result of the sales assessment ratio study. The property owner may not appeal the stratum or area designations as specified in 15-7-111."*

Section 3. Section 15-7-103, MCA, is amended to read:

**"15-7-103. Classification and appraisal — general and uniform methods.** (1) It is the duty of the department of revenue to implement the provisions of 15-7-101 through 15-7-103 by providing:

(a) for a general and uniform method of classifying lands in the state for the purpose of securing an equitable and uniform basis of assessment of said lands for taxation purposes;

(b) for a general and uniform method of appraising city and town lots;

(c) for a general and uniform method of appraising rural and urban improvements;

(d) for a general and uniform method of appraising timberlands.

(2) All lands shall be classified according to their use or uses and graded within each class according to soil and productive capacity. In such classification work, use shall be made of soil surveys and maps and all other pertinent available information.

(3) All lands must be classified by parcels or subdivisions not exceeding 1 section each, by the sections, fractional sections, or lots of all tracts of land that have been sectionized by the United States government, or by metes and bounds, whichever yields a true description of the land.

(4) All agricultural lands must be classified and appraised as agricultural lands without regard to the best and highest value use of adjacent or neighboring lands.

(5) In any periodic revaluation of taxable property completed under the provisions of 15-7-111 after January 1, 1986, all property classified in 15-6-134 must be appraised on its market value in the same year. The department *shall* publish a rule specifying the year used in the appraisal.

(6) All sewage disposal systems and domestic use water supply systems of all dwellings may not be appraised, assessed, and taxed separately from the land, house, or other improvements in which they are located. In no event may the sewage disposal or domestic water supply systems be included twice by including them in the valuation and assessing them separately."

Section 4. Section 15-7-111, MCA, is amended to read:

**"15-7-111. Periodic revaluation of taxable property.** (1) The department of revenue shall administer and supervise a program for the revaluation of all taxable property within the state at least every 5 years. A comprehensive written *reappraisal* plan shall be promulgated by the department. The *reappraisal* plan so adopted shall provide that all property in each county shall be revalued at least every 5 years or that no less than 20% of the property in each county shall be revalued in each year. The department shall furnish a copy of the plan and all amendments thereto to the board of county commissioners in each county.

(2) *For the taxable year beginning January 1, 1988, and for every taxable year thereafter, the department shall conduct a stratified sales assessment ratio study of all residential real property and improvements, of all commercial and industrial real property and improvements, and of all other real property and improvements. The study must include such property as vacant land, agricultural improvements, and the 1-acre homesite beneath the agricultural residence.*

(3) *The study required in subsection (2) must be based on:*

(a) *the standards and methodology adopted by the international association of assessing officers in their publication "Standard on Assessment Ratio Studies";*

(b) *assessments of the property described in subsection (2) as of January 1 of the year immediately preceding the taxable year for which the study is conducted;*

(c) *a statistically valid sample of sales, using data from realty transfer certificates filed for the taxable year immediately following the assessment date identified in subsection (3)(b); and*

(d) *the assessments and sales for areas of the state that are economically, demographically, and geographically similar in order to determine the sales assessment ratio for a specific area.*

(4) *For purposes of conducting the study required by subsection (2), the sales assessment areas are as follows:*

(a) *area 1:*

(i) *Daniels County;*

(ii) *Sheridan County;*

(iii) *Roosevelt County;*

(iv) *McCone County;*

- (v) *Valley County;*
- (vi) *Phillips County;*
- (vii) *Petroleum County;*
- (viii) *Garfield County; and*
- (ix) *Prairie County;*
- (b) *area 2:*
  - (i) *Richland County;*
  - (ii) *Dawson County;*
  - (iii) *Wibaux County;*
  - (iv) *Fallon County;*
  - (v) *Carter County;*
  - (vi) *Powder River County;*
  - (vii) *Rosebud County;*
  - (viii) *Big Horn County; and*
  - (ix) *Custer County;*
- (c) *area 3: city of Billings;*
- (d) *area 4:*
  - (i) *Yellowstone County (excluding the city of Billings);*
  - (ii) *Treasure County;*
  - (iii) *Musselshell County;*
  - (iv) *Carbon County; and*
  - (v) *Stillwater County;*
- (e) *area 5:*
  - (i) *Golden Valley County;*
  - (ii) *Wheatland County;*
  - (iii) *Fergus County;*
  - (iv) *Judith Basin County;*
  - (v) *Meagher County; and*
  - (vi) *Sweet Grass County;*
- (f) *area 6:*
  - (i) *Park County;*
  - (ii) *Gallatin County;*
  - (iii) *Broadwater County; and*



- (iv) *Lewis and Clark County;*
- (g) *area 7: city of Great Falls;*
- (h) *area 8:*
- (i) *Cascade County (excluding the city of Great Falls);*
- (ii) *Chouteau County;*
- (iii) *Teton County;*
- (iv) *Hill County;*
- (v) *Liberty County;*
- (vi) *Toole County;*
- (vii) *Pondera County;*
- (viii) *Glacier County; and*
- (ix) *Blaine County;*
- (i) *area 9:*
- (i) *Madison County;*
- (ii) *Beaverhead County;*
- (iii) *Silver Bow County;*
- (iv) *Jefferson County;*
- (v) *Deer Lodge County;*
- (vi) *Granite County; and*
- (vii) *Powell County;*
- (j) *area 10: city of Missoula;*
- (k) *area 11:*
- (i) *Missoula County (excluding the city of Missoula); and*
- (ii) *Ravalli County;*
- (l) *area 12:*
- (i) *Mineral County;*
- (ii) *Sanders County; and*
- (iii) *Lincoln County;*
- (m) *area 13:*
- (i) *Flathead County; and*
- (ii) *Lake County.*

(5) *The department shall use the following procedures to resolve situations in similar areas of the state that have inadequate numbers of sales to conduct the statistically valid sample in a specific tax year:*

(a) an extension of the time period from which sales are drawn and an adjustment of the sales price to acknowledge the different time period. At a minimum, the time adjustment must coincide with the consumer price index for that same time period.

(b) the use of fee appraisals in lieu of sales prices. The fee appraisal must be conducted by a certified appraiser who is not an employee of the department.

(c) the input of assessment ratio statistics developed from a model of the area. The information to be input into the study must be statistically valid and must be developed by a certified statistician who is not an employee of the department.

(6) The department shall use the following procedure to validate sales information:

(a) Department field staff are required to manually review each sales transaction evidenced by a realty transfer certificate. The review must be conducted to determine whether each sale was a valid, arm's-length transaction. Only valid, arm's-length sales may be used in the sales assessment ratio study.

(b) The valid sales information must be transmitted to the department. The department staff shall enter the sales information on the computer-assisted appraisal system in order to make the sales assessment ratio study. The sales information contained on the computer-assisted appraisal system is considered confidential, as provided in 15-7-308.

(c) The department shall exclude from the sales assessment ratio study any parcels in which the improvements have been remodeled, reconstructed, or expanded or that are wholly new construction after the assessment date identified in subsection (3)(b).

(d) The department shall exclude sales assessment ratios of less than 50% or greater than 200%.

(7) The department shall have equalized property values throughout the state when the following conditions are met:

(a) the overall assessment level for each stratum within each area identified in subsection (4) is within an interval of plus or minus 10% of the legal level of assessment, given an adequate sample size;

(b) coefficients of dispersion with respect to the weighted mean assessment ratio for residential properties located within each area identified in subsection (4) are equal to or less than 20%;

(c) coefficients of dispersion with respect to the weighted mean assessment ratio for income-producing properties located within each area identified in subsection (4) are equal to or less than 20%; and

(d) coefficients of dispersion with respect to the weighted mean assessment ratio for other types of real property and improvements located within each area identified in subsection (4) are equal to or less than 20%.

(8) (a) *When the overall assessment level of each stratum exceeds 10% of the legal level of assessment and when the coefficients of dispersion with respect to the weighted mean for each stratum exceed 20%, the department shall make percentage adjustments to the valuations of all the properties in a specific area stratum. The percentage adjustments must create compliance with subsection (7). The percentage adjustments must account for unique factors that affect values in the various areas.*

(b) *Under this method, all taxable property in each area is considered revalued for each tax year, based on the results of the sales assessment ratio study and any percentage adjustments required by that study."*

**Section 5. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 6. Effective date — applicability.** (1) This act is effective on passage and approval.

(2) This act applies to taxable years beginning after December 31, 1987.

Approved April 27, 1987.

## CHAPTER NO. 614

[HB 581]

AN ACT EXEMPTING THE FIRST \$50 EARNED EACH MONTH FROM THE MONTHLY INCOME STANDARD FOR GENERAL RELIEF AND ALLOWING A GENERAL RELIEF RECIPIENT WITH INCOME FROM EMPLOYMENT TO KEEP A PORTION OF HIS MONTHLY GRANT; REQUIRING REIMBURSEMENT OR EXEMPTION OF RECIPIENTS WHO LIVE MORE THAN 10 MILES FROM THE TRAINING OR WORK SITE; AMENDING SECTIONS 53-3-205 AND 53-3-304, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 53-3-205, MCA, is amended to read:

**"53-3-205. Eligibility for general relief.** (1) A person or persons constituting a household may receive general relief assistance for basic necessities if the household is determined to be eligible under the provisions of this section and is in need of such assistance as a result of their infirmity, misfortune, or indigency.

(2) A household is eligible for general relief if the household income, exclusive of the first \$50 earned each month by each household member, does not exceed that set forth in the following table:

| Number of Persons<br>in Household | Monthly Income Standard |
|-----------------------------------|-------------------------|
| 1                                 | \$212                   |
| 2                                 | 282                     |
| 3                                 | 354                     |
| 4                                 | 426                     |
| 5                                 | 501                     |
| 6                                 | 570                     |
| 7                                 | 642                     |
| 8                                 | 713                     |
| 9                                 | 785                     |
| 10 or more                        | 857                     |

(3) Able-bodied persons without dependent minor children living in the household are not eligible for nonmedical general relief assistance, except as provided in 53-3-209.

(4) (a) When the household's income exceeds the monthly income standard for a household of that size because of receipt of lump-sum income, the household will be ineligible for general relief for the full number of months, beginning with the month of receipt, derived by dividing the total of the lump-sum income and other income by the monthly income standard for a household of that size. Any income remaining from this calculation will be considered as income in the first month following the period of ineligibility.

(b) The period of ineligibility may be recalculated if the household size changes or if a portion of the lump sum was used to pay medical bills for a serious medical condition.

(c) Ineligibility due to the receipt of a lump sum does not preclude eligibility for general relief medical assistance.

(5) All applicants for and recipients of general relief assistance who reside in the same residence are considered as one household.

(6) Prospective income that is reasonably certain to be received by the household during an eligibility period must be considered when determining eligibility.

(7) The following resources of a household must be excluded from consideration of resources for eligibility purposes:

(a) the domicile of the household, including necessary appurtenant land not exceeding 10 acres;

(b) a motor vehicle that has no more than \$1,500 in equity value;

(c) personal items, clothing, household furniture, appliances, and other essential household items, the total equity value of which does not exceed resource eligibility limits established by rule; and

(d) tools of a trade that are essential to the current or future employment of a household member.

(8) A person who is committed or sentenced by legal process to a state institution or a secure facility or who is incarcerated in a secure facility pending resolution of legal process is not eligible for general relief.

(9) A person who resides for a period of 1 day or more in any state or federally operated institution or residence is not eligible for general relief for the period of that residency.

(10) For the purposes of an eligibility determination, an applicant for or recipient of general relief may be requested to produce all financial and other information concerning the household.

(11) Whenever practical, an eligibility determination must be made within 30 days of the date of application and the applicant must be notified in writing of the eligibility determination and the reasons for the determination.

(12) An alien determined to be illegally within the United States is not eligible for general relief."

Section 2. Section 53-3-304, MCA, is amended to read:

**"53-3-304. Power to require recipient to participate in job search, training, and work programs.** (1) The department shall cooperate with the department of labor and industry and other designated agencies to initiate, promote, and develop job search, training, and work programs that will contribute to the employability of persons receiving general relief under the provisions of this chapter. These programs must be designed to preserve and improve the work habits and job-finding skills of recipients for whom jobs are not otherwise immediately available.

(2) For each county with state-assumed welfare services, the department shall contract with the department of labor and industry or other designated agencies to institute a job search, training, and work program that provides able-bodied general relief recipients with the necessary job-finding skills to seek unsubsidized employment independently.

(3) In a county with state-assumed welfare services, an able-bodied recipient of general relief shall enroll in a structured job search and training program at an employment office or other site designated by the department. The program must include but is not limited to the following elements:

- (a) assessment and testing;
- (b) an employability plan;

(c) remedial education or job skills training, if it is called for in the employability plan and if it provides for immediate referral to an appropriate Job Training Partnership Act program;

(d) a job readiness and job search program that must include but is not limited to:

- (i) self-assessment and occupational testing;
- (ii) instruction in completing applications, writing resumes, and preparing for interviews;

- (iii) identification of and contact with potential employers; and
- (iv) participation in simulated job interviews;
- (e) a supervised effort to find employment; and
- (f) efforts to address barriers to employment.

(4) (a) In addition to the training required in subsection (3), if a public agency or a private nonprofit agency has work available which a recipient of general relief is capable of performing or the department of social and rehabilitation services is required to operate a work program under the provisions of 53-2-822, then the county department of public welfare or the department of social and rehabilitation services may require a recipient to perform work at the minimum wage or may pay a recipient at the prevailing rate of wages paid in that county by that agency for similar work, to be paid from the county poor fund or state funds, in place of granting him general relief.

(b) No currently employed worker may be displaced by any recipient (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits).

(c) No recipient may be employed when any other person is on layoff from the same or any substantially equivalent job or when the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a recipient whose wages are subsidized under this section.

(5) The county department of public welfare or the department of social and rehabilitation services, as the case may be, shall provide coverage under the Workers' Compensation Act for those recipients of general relief working under the provisions hereof and may enter into such agreements with the division of workers' compensation of the department of labor and industry as may be necessary to carry out the provisions of this section.

(6) A recipient who has completed the assessment and testing portions of the program and has developed an employability plan shall participate in the job readiness and job search program provided for in subsection (3)(d) for at least 80 hours in any 5-week period and shall spend at least 8 hours a week in a supervised effort to find employment.

(7) A recipient who has completed the job search program provided for in subsection (3) shall:

(a) continue to spend at least 8 hours a week in a supervised effort to find employment; and

(b) for the duration of his eligibility for general relief, spend 32 hours a week, as called for in the employability plan, in:

- (i) remedial education;
- (ii) counseling;
- (iii) job skills training;

(iv) work for a public agency or a private nonprofit agency, as required in subsection (4); or

(v) job-seeking or other related activities.

(8) Nothing in this chapter requires a recipient to:

(a) *participate in the job search and training program required by subsection (3) or to perform work under subsection (4) if the training or work site is more than 10 miles from his residence, unless the department provides transportation or reimburses the recipient for transportation costs; or*

(b) continue the activities required by subsection (7) for longer than 6 months.

(9) Where a labor organization represents a substantial number of employees who are engaged in similar work or training in the area where it is proposed to assign the recipient to work or training, an opportunity must be provided for that organization to submit comments with respect to such proposal.

(10) No work program may impair existing contracts for services or collective bargaining agreements, and no work program that would be inconsistent with the terms of a collective bargaining agreement may be undertaken without the written concurrence of the labor organization and employer concerned."

**Section 3. Extension of authority.** Any existing authority of the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Effective date.** This act is effective July 1, 1987.

Approved April 27, 1987.

## CHAPTER NO. 615

[HB 666]

**AN ACT TO PERMIT MUNICIPALITIES, AFTER A PUBLIC HEARING, TO PLEDGE REVENUES OTHER THAN PROPERTY TAXES TO THE PAYMENT OF BONDS ISSUED TO FINANCE URBAN RENEWAL PROJECTS OR COSTS; AMENDING SECTIONS 7-15-4290 AND 7-15-4301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-15-4290, MCA, is amended to read:

**"7-15-4290. Use of property taxes and other revenues for payment of bonds.** (1) The tax increment may be pledged for the payment of revenue bonds issued for urban renewal projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay urban

renewal costs described in 7-15-4289. Any municipality issuing such bonds may, by resolution of its governing body, enter into a covenant for the security of the bondholders, detailing the calculation and adjustment of the tax increment and the taxable value on which it is based *and, after a public hearing, pledging or appropriating other revenues of the municipality, except property taxes prohibited by subsection (2), to the payment of such bonds if collections of the tax increment are insufficient.*

(2) No property taxes, except the tax increment derived from property within the urban renewal area and tax collections used to pay for services provided to the municipality by an urban renewal project, may be applied to the payment of bonds issued pursuant to 7-15-4301 for which a tax increment has been pledged."

Section 2. Section 7-15-4301, MCA, is amended to read:

**"7-15-4301. Authorization to issue urban renewal bonds and refunding bonds.** (1) A municipality shall have the power to:

(a) issue bonds from time to time in its discretion, to finance the undertaking of any urban renewal project under this part and part 42, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans for urban renewal projects; and

(b) issue refunding bonds for the payment or retirement of such bonds previously issued by it.

(2) Such bonds shall not pledge the general credit of the municipality and shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from or held in connection with its undertaking and carrying out of urban renewal projects under this part and part 42, including the tax increment received and pledged by the municipality pursuant to 7-15-4282 through 7-15-4292, *and, if such income, proceeds, revenues, and funds of the municipality are insufficient for such payment, from other revenues of the municipality pledged to such payment.* Payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source in aid of any urban renewal projects of the municipality under this part and part 42 or by a mortgage on all or part of any such projects.

(3) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body."

Section 3. **Applicability.** This act does not apply to bonds issued before the effective date of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 27, 1987.



**CHAPTER NO. 616**

[HB 703]

AN ACT TO CLARIFY THE CORPORATE LICENSE OR INCOME TAX AND TO ALLOW CORPORATE LICENSE OR INCOME TAXPAYERS TO APPORTION INCOME FOR CORPORATE LICENSE OR INCOME TAX PURPOSES UNDER THE WATER'S-EDGE UNITARY COMBINATION METHOD OR CONTINUE TO FILE UNDER CURRENT LAW AS PROVIDED FOR IN TITLE 15, CHAPTER 31, MCA; TO IMPOSE A 7 PERCENT TAX RATE ON CORPORATIONS MAKING A WATER'S-EDGE ELECTION; TO IMPOSE A 4 PERCENT SURCHARGE ON THE CORPORATE LICENSE OR INCOME TAX FOR TAX YEAR 1988; AMENDING SECTION 15-31-121, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definitions.** As used in [sections 1 through 6], unless the context requires otherwise, the following definitions apply:

(1) "Affiliated corporation" means a United States parent corporation and any subsidiary of which more than 50% of the voting stock is owned directly or indirectly by another corporate member of the water's-edge combined group.

(2) "United States" means the 50 states of the United States and the District of Columbia.

(3) "Water's-edge combined group" means all corporations or entities included in the election of a taxpayer under [section 2].

Section 2. **Water's-edge election.** Notwithstanding any other provisions of law, a taxpayer subject to the taxes imposed under this chapter may apportion its income under this section. A return under a water's-edge election must include the income and apportionment factors of the following affiliated corporations only:

(1) a corporation incorporated in the United States in a unitary relationship with the taxpayer and eligible to be included in a federal consolidated return as described in sections 1501 through 1505 of the Internal Revenue Code that has more than 20% of its payroll and property assignable to locations inside the United States. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection (1), the 80% stock ownership requirements of section 1504 of the Internal Revenue Code must be reduced to ownership of over 50% of the voting stock directly or indirectly owned or controlled by an includable corporation.

(2) domestic international sales corporations, as described in sections 991 through 994 of the Internal Revenue Code, and foreign sales corporations, as described in sections 921 through 927 of the Internal Revenue Code;

(3) export trade corporations, as described in sections 970 and 971 of the Internal Revenue Code;

(4) foreign corporations deriving gain or loss from disposition of a United States real property interest to the extent recognized under section 897 of the Internal Revenue Code;

(5) a corporation incorporated outside the United States if over 50% of its voting stock is owned directly or indirectly by the taxpayer and if more than 20% of the average of its payroll and property is assignable to a location inside the United States.

**Section 3. Apportionment factors.** For purposes of [section 2(1) and (5)], the location of payroll and property is determined under the individual state's laws and regulations that set forth the apportionment formulas used to assign net income subject to taxes on or measured by net income. If a state does not impose a tax on or measured by net income, apportionment is determined under this chapter.

**Section 4. Water's-edge election period — consent.** (1) A water's-edge election may be made by a taxpayer and is effective only if every affiliated corporation subject to the taxes imposed under this chapter consents to the election. Consent by the common parent of an affiliated group constitutes consent of all members of the group. An affiliated corporation that becomes subject to taxes under this chapter subsequent to the water's-edge election is considered to have consented to the election.

(2) Each water's-edge election must be for 3-year renewable periods, except as follows:

(a) No water's-edge election may be made for an income year beginning before [the effective date of this act].

(b) A water's-edge election may be changed by a taxpayer prior to the end of each 3-year period only with the permission of the department of revenue. In granting a change of election, the department shall impose reasonable conditions that are necessary to prevent the avoidance of tax or clearly reflect income for the election period prior to the change.

**Section 5. Treatment of dividends.** For purposes of [sections 1 through 6], dividends must be treated as follows:

(1) Dividends received from corporations incorporated outside the United States, to the extent taxable, are considered income subject to apportionment.

(2) The after-tax net income of United States corporations excluded from eligibility as affiliated corporations under [section 2(1)] and possession corporations described in sections 931 through 934 and 936 of the Internal Revenue Code are considered dividends received from corporations incorporated outside the United States.

(3) Amounts included in income under sections 951 through 962 and 964 of the Internal Revenue Code are considered dividends from corporations incorporated outside the United States.

(4) Eighty percent of all dividends apportionable under this section must be excluded from income subject to apportionment.

(5) "Deemed" distributions, as set forth in section 78 of the Internal Revenue Code, and corresponding amounts with respect to dividends considered received under subsection (2) of this section must be excluded from the income of the water's-edge combined group.

(6) The dividends apportionable under this section are in lieu of any expenses attributable to dividend income.

(7) A dividend from a corporation required to be combined in the water's-edge combined group must be eliminated from the calculation of apportionable income.

**Section 6. Domestic disclosure spreadsheet.** The department of revenue may require taxpayers making a water's-edge election to submit within 6 months after the taxpayer files its federal income tax return a domestic disclosure spreadsheet to provide full disclosure of the income reported to each state for the year, the tax liability for each state, the method used for allocating or apportioning income to the states, and the identity of the water's-edge corporate group and those of its United States affiliated corporations.

**Section 7.** Section 15-31-121, MCA, is amended to read:

**"15-31-121. Rate of tax — minimum tax — surtax.** (1) *Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 shall be 6 ¾% of all net income for the taxable period. The rate set forth in this subsection (1) shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971.*

(2) *For a taxpayer making a water's-edge election, the percentage of net income to be paid under 15-31-101 shall be 7% of all taxable net income for the taxable period.*

(3) Every corporation subject to taxation under this part shall, in any event, pay a minimum tax of not less than \$50.

(4) *After the amount of tax liability has been computed under subsections (1) through (3), each corporation subject to taxation under this part shall add as a surtax for tax year 1988, 4% of the tax liability, and the amount so derived is the amount due the state."*

**Section 8. Codification instruction.** Sections 1 through 6 are intended to be codified as an integral part of Title 15, chapter 31, part 3, and the provisions of Title 15, chapter 31, part 3, apply to sections 1 through 6, except as otherwise provided.

**Section 9. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 10. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this

act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 11. Applicability.** This act applies to taxable years beginning after December 31, 1987.

Approved April 27, 1987.

## CHAPTER NO. 617

[HB 743]

AN ACT AMENDING THE LAWS RELATING TO THE SALE OF LANDS FOR DELINQUENT TAXES AND SPECIAL ASSESSMENTS; CHANGING THE TIME PERIOD FOR REDEMPTION FROM SUCH SALES; AMENDING SECTIONS 7-8-2301, 7-12-2163, 7-12-4182, 7-12-4183, 15-18-101, 15-18-401, AND 15-18-403, MCA; AND PROVIDING AN APPLICABILITY PROVISION AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-8-2301, MCA, is amended to read:

**"7-8-2301. Auction sale of county tax-deed land.** (1) Whenever the county shall acquire any land by tax deed, it shall be the duty of the board of county commissioners, within 6 months after acquiring title, to make and enter an order for sale of such lands at public auction at the front door of the courthouse.

(2) No sale shall be made for a price less than the fair market value thereof, as determined and fixed by the board prior to making the order of sale. *In determining fair market value, the board shall subtract the amount of outstanding assessments that are a lien on the land from the unencumbered value of the land, but the minimum sale price for a parcel of land may not be less than \$10.*

(3) *If no bids are received at a sale of tax-deed land, the board shall order another auction sale of such land under this part within 6 months and shall, if required by the circumstances, redetermine the fair market value of the land under subsection (2)."*

Section 2. Section 7-12-2163, MCA, is amended to read:

**"7-12-2163. Collection of district assessments by county treasurer — delinquencies.** (1) Where any resolution of assessment, either for construction or maintenance, has been duly certified by the county clerk, it shall be the duty of the county treasurer, in accordance with the provisions of this title, to collect such assessment in the same manner and at the same time as taxes for general and municipal purposes are collected by him.

(2) *When the payment of an installment of a special assessment becomes delinquent, all payments of subsequent installments of the special assessment may, at the option of the board of county commissioners and upon adoption of the appropriate resolutions, become delinquent. Upon delinquency in one or all installments, the whole property must be sold the same as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent."*

Section 3. Section 7-12-4182, MCA, is amended to read:

**"7-12-4182. Collection of district assessments by city treasurer in cities collecting their own taxes — delinquencies.** (1) In every city or town which shall provide by ordinance for the collection of its taxes for general, municipal, and administrative purposes by its city treasurer or town clerk, such city treasurer or town clerk shall collect all special assessments and taxes levied and assessed in accordance with any of the provisions of this part and part 42 in the same manner and at the same time as said taxes for general, municipal, and administrative purposes are collected by him. All of the provisions of 7-6-4423 shall apply to the collection of such special taxes and assessments in the same manner as such provisions apply to the collection of other city or town taxes.

(2) *When the payment of an installment of a special assessment becomes delinquent, all payments of subsequent installments may, at the option of the city or town council and upon adoption of the appropriate resolutions, become delinquent. Upon delinquency in one or all installments, the whole property shall be sold the same as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent."*

Section 4. Section 7-12-4183, MCA, is amended to read:

**"7-12-4183. Collection of district assessments by city treasurer in cities where county collects taxes.** (1) In any city or town where taxes for general, municipal, and administrative purposes are certified to and collected by the county treasurer in accordance with the provisions of 7-6-4407 and 7-6-4423, the city or town may, nevertheless, provide by ordinance for the collection by its city treasurer or town clerk of all special assessments and taxes levied and assessed in accordance with any of the provisions of this part and part 42 in the same manner and at the same time as said taxes for general, municipal, and administrative purposes are collected by the county treasurer. All of the provisions of 7-6-4423 shall apply to the collection of such special taxes and assessments in the same manner as such provisions apply to the collection of other city or town taxes.

(2) When the payment of any one installment of any special assessment becomes delinquent, all payments of subsequent installments shall, at the option of the city or town council and by appropriate resolution duly adopted, become delinquent. Such delinquent special assessments shall be certified to the county clerk of the county in which such city or town is

situated, and the county treasurer must collect such delinquent special assessments and taxes in the same manner and at the same time as said taxes for general, municipal, and administrative purposes are collected by him. In case the same are not paid, the whole property shall be sold, the same as other property is sold for taxes. *The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent.*"

Section 5. Section 15-18-101, MCA, is amended to read:

**"15-18-101. Time for redemption.** (1) *Except as provided in subsection (2), a redemption of the property sold may be made by the owner or any party having any interest in or lien upon such property within 36 months from the date of purchase for homestead property or within 18 months from the date of purchase for other property or at any time prior to the giving of the notice and the application for a deed as provided in this chapter.*

(2) *A redemption of property subdivided as a residential or commercial lot upon which taxes or special assessments are delinquent and upon which no habitable dwelling or commercial structure is situated may be made by the owner or any party having any interest in or lien upon such property within 18 months from the date of purchase or at any time prior to the giving of the notice and the application for a deed as provided in this chapter.*"

Section 6. Section 15-18-401, MCA, is amended to read:

**"15-18-401. Action to quiet title to tax deed property — notice.** (1) In any action brought to set aside or annul any tax deed or to quiet title or to determine the rights of a purchaser, including the county, or his successors to real property claimed to have been acquired by reason of tax proceedings or a tax sale, the purchaser or his successor, upon filing an affidavit, may obtain from the court an order directed to the person claiming to own the property or to have any interest in or lien upon said property or a right to redeem the same or claiming rights hostile to the tax title (which person is herein, for convenience, called the true owner), commanding him to:

(a) deposit in court to the use of the tax purchaser or his successors:

(i) the amount of all taxes, interest, and penalties which would have accrued if said property had been regularly and legally assessed and taxed as the property of said true owner and sold for delinquent taxes and was about to be redeemed by him; and

(ii) the amount of all sums reasonably paid thereafter by said purchaser or his successors after *expiration of the redemption period* for said tax sale in preserving said property or in making improvements thereon while in possession thereof, as the total amount of said taxes, interest, penalties, and improvements is alleged by the plaintiff and as shall appear in said order; or

(b) show cause on a date to be fixed in said order, not exceeding 30 days from the date thereof, why such payments should not be made.

(2) Said affidavit shall set forth the place of residence of said true owners and whether they are in the state of Montana, if known to the plaintiff, or that the same is not known to the plaintiff.

(3) Said order shall be filed with the clerk and recorder and a copy served personally upon all persons shown in said affidavit to be residents of and in the state of Montana, and jurisdiction shall be acquired over all other persons by publishing the same once in a newspaper in the county and by posting the same in three public places in the county at least 10 days before the day fixed for the hearing and by leaving a copy with the county treasurer."

Section 7. Section 15-18-403, MCA, is amended to read:

**"15-18-403. Title conveyed by deed — procedure to cure defects.** (1) All deeds executed after *the expiration of the redemption period* for any tax sale shall be deemed to convey to the grantee the absolute title to the lands described therein as of the date of the expiration of *the redemption period*, including all the right, title, interest, estate, lien, claim, and demand of the state of Montana and of the county in and to said real estate and including the right, if said tax deed or tax sale or any of the tax proceedings upon which said deed may be based shall be attacked and held irregular or void, to recover the unpaid taxes, interest, and penalties which would accrue if said tax proceedings had been regular and it was desired to redeem said property, free of all encumbrances except the lien for taxes which may have attached subsequent to the sale *and the lien of any special, local improvement, irrigation, or drainage assessments levied against the property, payable after the execution of the tax deed*, and except when the land is owned by the United States or the state, in which case it is prima facie evidence of the right of possession accruing as of the date of the expiration of such period for redemption.

(2) If any tax deed or deed purporting to be such has been or shall be issued more than 30 days after *the expiration of the redemption period following* any tax sale or attempted tax sale, the grantee may publish in a newspaper in the county published at the county seat or, if none, in a newspaper of *general circulation in the county*, once a week for 2 weeks a notice entitled "a notice of claim of a tax title" which shall set forth a description of any property claimed to have been acquired by a tax deed; an estimate of the amount due thereon for taxes, interest, and penalties; and a statement that for further particulars reference is made to the records in the office of the county treasurer; also the name of the person claiming to have obtained a tax deed to said property and the name of the person in whose name said property was assessed or taxed and a statement that demand is made that such person shall, within 30 days after the first publication of said notice, pay to said claimant or to the county treasurer to his use the amount of the taxes, interest, and penalties as the same may appear in the records of the county treasurer or bring a suit to quiet his title or to set aside said tax deed or deeds. Any mistake in the amount or in any name specified in said notice shall not invalidate the same.

(3) If, within said period of 30 days, said taxes, interest, and penalties shall not have been paid or said suit brought, all defects in the tax proceedings and any right of redemption shall be deemed waived and thereupon

the title to said property described in said notice and in the tax deed shall be valid and binding, irrespective of any irregularities, defects, or omissions or total failures to observe any of the provisions of the statutes of Montana regarding the assessment, levying of taxes, or sale of property for taxes and the giving of notices including notices of redemption, whether or not such omissions or failures make said proceedings void (other than that the taxes were not delinquent or have been paid)."

**Section 8. Definitions.** Unless the context indicates otherwise, as used in [sections 8 through 12], the following definitions apply:

(1) "Improvement fund" means, with respect to any special assessments, the fund of the municipality into which collections of the special assessments have been pledged or appropriated.

(2) "Municipality" means, with respect to special assessments levied under Title 7, chapter 12, parts 41 through 46, the city or town that levied such assessments.

**Section 9. Municipality as purchaser.** Whenever property has been struck off to the county at a tax sale under 15-17-207, is subject to the lien of delinquent special assessments, and has not been assigned under 15-17-208 or 15-17-303, at the request of the municipality the county treasurer shall assign all of the rights of the county acquired therein at the sale to the municipality upon payment of any delinquent taxes (excluding assessments) and costs, without penalty or interest. The duplicate certificate of sale must be delivered to the treasurer of the municipality and filed by him in his office. No charge may be made for the duplicate certificate when the municipality is the purchaser, and in such case the county treasurer shall make an entry "sold to the municipality" on the assessment book opposite the tax, and he must be credited with the delinquent amount thereof in the settlement. Property sold to the municipality must be held in trust by the municipality for the improvement fund into which the delinquent special assessments are payable.

**Section 10. Assignment of municipality's interest.** (1) At any time after a parcel of land has been acquired by a municipality, as provided in [section 9], and has not been redeemed, the treasurer of the municipality shall assign all the rights of the municipality in the property to any person who pays:

- (a) the purchase price paid by the municipality;
- (b) the delinquent assessments;
- (c) interest on the purchase price and delinquent assessments at the rate of  $\frac{5}{6}$  of 1% a month; and
- (d) penalties and costs as provided by law.

(2) The treasurer of the municipality shall execute to such person a certificate of sale for the parcel, which may be in substantially the form provided in 15-17-303 for the assignment of the interests of the county. If the certificate of sale becomes lost or accidentally destroyed by the assignee, the treasurer of the municipality shall issue a duplicate certificate to the assignee after the assignee delivers to the treasurer evidence satisfactory to



him, including an affidavit of the assignee, that the certificate has been lost or destroyed.

(3) An assignment by a municipality under this section discharges the trust created under [section 9]. The municipality may also discharge the trust created under [section 9] by paying into the improvement fund the amount of the delinquent assessments and interest accrued thereon.

**Section 11. Sale or lease and disposition of proceeds from lands acquired by municipality.** A municipality may sell or lease property it acquires under [section 9] in the same manner as a county may sell or lease tax-deed property under Title 7, chapter 8, part 23. All money received by the municipality from the sale or lease of such land, after payment of the cost of sale, not to exceed \$25, must be paid into the improvement fund to the extent of the delinquent assessments, interest, and penalties. The surplus, if any, must be paid into any revolving fund that secures payment of such special assessments or, if none, to the general fund of the municipality.

**Section 12. Taxes and subsequent installments of special assessments on land acquired by a municipality.** For property that is acquired by a municipality as provided in [section 9], subsequent installments of the special assessment or assessments, if any, and other special assessments not then delinquent must be levied, and taxes for the following years must be assessed in the same manner as if the property had not been so acquired. If the special assessments or installments thereof or taxes are not paid when due, the property must again be sold in the manner provided by law and the levies of special assessments, assessments of taxes, and the sale of the property for delinquent special assessments and taxes must continue until the time when the property has been redeemed from such sale.

**Section 13. Codification instruction.** Sections 8 through 12 are intended to be codified as an integral part of Title 15, chapter 17, part 3, and the provisions of Title 15, chapter 17, part 3, apply to sections 8 through 12.

**Section 14. Coordination instruction.** If Senate Bill No. 162, including repeal of 15-18-101, 15-18-401, and 15-18-403, is passed and approved, sections 6 and 7 of this act are void and section 16 of Senate Bill No. 162, relating to time for redemption, is amended as follows (3rd reading copy of SB 162):

1. Page 16, line 18.

Following: "(1)"

Strike: "Redemption"

Insert: "Except as provided in subsection (2), redemption"

2. Page 16.

Following: line 24

Insert: "(2) For property subdivided as a residential or commercial lot upon which taxes or special assessments are delinquent and upon which no

habitable dwelling or commercial structure is situated, redemption of a property tax lien acquired at a tax sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, or any interested party within 18 months from the date of the first day of the tax sale or within 60 days following the giving of the notice required in [section 21], whichever is later."

Renumber: subsequent subsection and subsequent sections

Section 15. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 16. **Applicability.** This act applies to the enforcement of all outstanding and future tax and assessment liens except those installments of outstanding special assessments that are delinquent and have been the subject of a sale for delinquent taxes or assessments before the effective date of this act.

Section 17. **Effective date.** This act is effective on passage and approval.

Approved April 27, 1987.

## CHAPTER NO. 618

[HB 816]

AN ACT CREATING A NEW CLASS TWENTY CLASSIFICATION FOR PROPERTY TAX PURPOSES; ESTABLISHING REQUIREMENTS FOR DETERMINING THE MARKET VALUE OF CLASS TWENTY PROPERTY; ESTABLISHING LOCAL GOVERNMENT APPROVAL AS A PREREQUISITE FOR CLASSIFICATION AS CLASS TWENTY PROPERTY; CLARIFYING TERMINOLOGY RELATING TO TAXABLE VALUE, MARKET VALUE, AND ASSESSED VALUE; AMENDING SECTION 15-8-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Class twenty property — description — method of valuation — taxable percentage.** (1) Class twenty property includes all real and personal property that:

- (a) is integrally related in a single working unit;
- (b) is devoted exclusively to the processing of agricultural or timber products; and
- (c) (i) has not been in production for 12 consecutive months or has been acquired in an arm's-length transaction by an unrelated person, including an acquisition in a foreclosure sale or bankruptcy proceeding; or

(ii) has been acquired in a foreclosure or bankruptcy proceeding by a person, as defined in 15-1-102, having no relationship to or interest in the property prior to the transaction.

(2) In determining the market value of class twenty property, the department shall reduce the assessed value by 25% a year for each year the plant continues to be out of production until the market value is reduced to salvage value.

(3) Upon commencement of production or an acquisition described in subsection (1)(c)(ii), property classified as class twenty must remain at the preceding year's valuation for the succeeding 12 months. Following the end of the 12-month period, the property may be considered new or expanding industry as provided in Title 15, chapter 24, part 14.

(4) Property in class twenty is taxable at 3.86% of its market value.

**Section 2. Application for classification as class twenty property — local government approval required.** (1) A person applying for classification of property as class twenty property shall make an application to the department of revenue on a form provided by the department without cost.

(2) The department may not grant an application for classification of property as class twenty property unless the governing body of the affected county or incorporated city or town approves the application by resolution, following due notice as defined in 76-15-103 and a public hearing, for its respective jurisdiction.

(3) The resolution provided for in subsection (2) must specify the property that the taxing jurisdiction approves for classification as class twenty property.

(4) The property valuation reduction granted to class twenty property under [section 1] applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by an approving governing body over which it has sole discretion. In no case may the property valuation reduction for class twenty property apply to levies or assessments required under Title 15, chapter 10; 20-9-331; 20-9-333; or otherwise required under state law.

**Section 3.** Section 15-8-111, MCA, is amended to read:

**"15-8-111. Assessment — market value standard — exceptions.** (1) All taxable property must be assessed at 100% of its market value except as *otherwise* provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) Except as provided in subsection (3), the market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to aircraft and boats and all watercraft, is

the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the loan value as shown in the Official Guide, Tractor and Farm Equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri;

(b) for agricultural implements and machinery not listed in the official guide, the department shall prepare a supplemental manual where the values reflect the same depreciation as those found in the official guide; and

(c) *as otherwise authorized in Title 15 and Title 61.*

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(6) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-143, under class thirteen, are assessed at 100% of the combined appraised value of the standing timber and grazing productivity of the land when valued as timberland.

(7) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town. (Subsections (3)(a) and (3)(b) applicable to tax years beginning after December 31, 1985—sec. 4, Ch. 463, L. 1985. Subsection (6)(d) and references in (8) [now deleted] to class thirteen and 15-6-143 terminate January 1, 1991—sec. 10, Ch. 681, L. 1985.)"

**Section 4. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 5. Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 15, chapter 6, part 1, and the provisions of Title 15, chapter 6, apply to sections 1 and 2.

**Section 6. Effective date — applicability.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1986.

Approved April 27, 1987.

## CHAPTER NO. 619

[HB 837]

AN ACT TO GENERALLY REVISE THE PROVISIONS CONCERNING FILING FINANCIAL STATEMENTS IN TITLE 30, CHAPTER 9, MCA, UNIFORM COMMERCIAL CODE—SECURED TRANSACTIONS; AMENDING SECTIONS 30-9-402, 30-9-403, 30-9-407, AND 30-9-421, MCA; REPEALING SECTION 30-9-422, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 30-9-402, MCA, is amended to read:

**“30-9-402. Formal requisites of financing statement — amendments — mortgage as financing statement.** (1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address *and the county of residence* of the debtor, and contains a statement indicating the types or describing the items of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. Except for financing statements filed pursuant to 30-9-409 when the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or when the financing statement is filed as a fixture filing (30-9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in:

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances.

(b) proceeds under 30-9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(c) collateral as to which the filing has lapsed; or

(d) collateral acquired after a change of name, identity, or corporate structure of the debtor (subsection (7)).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) ....

Address ....

*County of residence* ....

Name of secured party (or assignee) ....

Address ....

1. This financing statement covers the following types (or items) of property:

(Describe) ....

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate) ....

3. (If applicable) The above goods are to become fixtures on:

(Describe Real Estate) ....

and this financing statement is to be filed in the real estate record. (If the debtor does not have an interest or record) The name of a record owner is ....

4. (If products of collateral are claimed) Products of the collateral are also covered.

(Use whichever  
is applicable)

Signature of Debtor (or Assignor) ....  
Signature of Secured Party (or Assignee) ....

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or a financing statement filed as a fixture filing (30-9-313) when the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(6) (a) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if:

- (i) the goods are described in the mortgage by item or type;
- (ii) the goods are or are to become fixtures related to the real estate described in the mortgage;
- (iii) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and
- (iv) the mortgage is duly recorded.

(b) No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership, or corporate name of the debtor, whether or not it adds other trade names or the names of partners. If the debtor so changes his name or in the case of an organization its name, identity, or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the change unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading."

Section 2. Section 30-9-403, MCA, is amended to read:

**"30-9-403. What constitutes filing — duration of filing — fees — effect of lapsed filing — duties of filing officer — computerized farm statement system.** (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(2) Except as provided in subsections (6) and (11), a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the

5-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of 60 days or until expiration of the 5-year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is considered to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective, whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after 1 year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than 5 years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fees for filing, indexing, and stamping a copy furnished by the filing party to show the date and place of filing shall be set pursuant to subsection (13).

(6) If the debtor is a transmitting utility and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage that is effective as a fixture filing under 30-9-402(6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5) or is filed as a fixture filing, the filing officer shall index it under the names



of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or if indexing is by description, in the same fashion as if the financing statement were a mortgage of the real estate described.

(8) When a financing or continuation statement filed by a financial institution covers farm products or accounts, livestock, general intangibles arising from or relating to the sale of farm products by a farmer, crops growing or to be grown, or equipment used in farming operations, the fee for filing must be established by the secretary of state in an amount commensurate with the costs of establishing and operating the computerized access system described in subsection (9).

(9) Within one working day of receipt of a financing or continuation statement, the secretary of state shall record the information contained in the statement on a centralized computer system that he shall establish. The computer system must allow access to financing statement information by any type of communications which conform to standards used by the state central computer. The system must have safeguards to allow only access to UCC data and to prevent alteration, addition, or deletion of the UCC data. The computer must be accessible whenever the state computer system is available. A perfected security interest is not created until the financing statement information is recorded on the system. A printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement. The secretary of state shall maintain adequate errors and omissions liability coverage to protect against input errors causing loss to a secured party.

*(10) The secretary of state shall, upon request of a clerk and recorder, mail a certified copy of a financing statement, continuation statement, assignment, amendment, or termination covering collateral described in subsection (8) to the clerk and recorder in the county of the principal debtor's residence. The secretary of state shall mail the requested copies at least once each week. This subsection does not require the secretary of state to mail a copy of any document which does not specifically indicate the county of the principal debtor's residence on its face.*

(11) When a financing or continuation statement covers property described in subsection (8), its effectiveness lapses on July 1, 1986, unless prior to that date there is filed in the office of the secretary of state a certified copy of the statement on file with the county clerk and all related documents.

(12) Financing statement information in the computer system constitutes public writings within the meaning of 2-6-101, but the information may not be used to compile mailing lists.

(13) The secretary of state, with advice from the county clerk and recorders, shall by administrative rule establish fees as required by this part. The fees must be commensurate with the costs of processing the

documents. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this subsection. *The secretary of state shall deposit in a state special revenue fund in the state treasury all fees he collects, and the fee money may be paid out of the treasury only on appropriation made by the legislature as provided in 17-8-101. Any fee money collected under this part and remaining in the state treasury after all current fiscal year expenditures are met must be transferred to the general fund. The secretary of state shall disseminate the uniform fee schedule to the county clerk and recorders for their use.*

Section 3. Section 30-9-407, MCA, is amended to read:

**"30-9-407. Information from filing officer.** (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and, if there is, giving the date and hour of filing of each such statement and the name and address of each secured party therein. *For financing statements recorded on the system described in 30-9-403(9), the filing officer shall, upon request of any person, also furnish written information concerning the collateral described for any presently effective financing statement covering collateral described in 30-9-403(8). However, such information is not a part of the filing officer's certificate and may not constitute a complete description of the collateral covered by the financing statement. The uniform fee for such a certificate and description of collateral shall be set pursuant to 30-9-403. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of 50 cents per page.*

(3) A computer printout from the system described in 30-9-403(9) constitutes the certificate of the secretary of state as to whether there is on file, on the date and hour stated thereon, such a financing statement covering the collateral described in 30-9-403(8). The fee for requesting a printout from the secretary of state must cover the cost of the printout. If a certificate is made on a requestor's own computer using telephone dial-up access, a fee commensurate with costs must be charged.

(4) *Within 30 days after [the effective date of this act], the secretary of state shall provide a listing of all financing statements recorded on the system described in 30-9-403(9) covering collateral described in 30-9-403(8) to each county clerk and recorder. The secretary of state shall compile the listing alphabetically by debtor's name and may distribute the listing on microfilm or microfiche. The secretary of state shall provide the listing without charge to the county.*

(5) *The secretary of state shall ensure that the system described in 30-9-403(9) complies with the requirements for a central filing system as defined by 7 U.S.C. 1631 as that statute read on January 1, 1987. The*

*secretary of state shall distribute portions of the master list to registered buyers at least once each month. He may distribute portions of the master list more frequently if he determines it is necessary to improve the flow of agricultural credit."*

Section 4. Section 30-9-421, MCA, is amended to read:

**"30-9-421. Rules for agricultural lien filing — duties — perfection and priority rights.** (1) The secretary of state may adopt rules concerning the operation of the central agricultural security interest computer filing system, prescribing such matters as format for data and the type of information to be recorded from the financing statement.

(2) A financing statement covering the collateral described in 30-9-403(8) which was filed with a county clerk and recorder prior to July 1, 1985, and which was sufficient on that date to perfect a security interest in the collateral described therein retains its perfection and priority rights upon being centrally filed."

Section 5. **Repealer.** Section 30-9-422, MCA, is repealed.

Section 6. **Extension of authority.** Any existing authority of the secretary of state to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 7. **Effective dates.** (1) Sections 1 and 3 of this act are effective July 1, 1987.

(2) All other sections of this act are effective on passage and approval.

Approved April 27, 1987.

## CHAPTER NO. 620

[HB 864]

AN ACT TO INCREASE CERTAIN LICENSE AND PERMIT FEES COLLECTED BY THE DEPARTMENT OF AGRICULTURE FROM DEALERS, MERCHANTS, AND WAREHOUSEMEN OF VARIOUS AGRICULTURAL COMMODITIES; AMENDING SECTIONS 80-3-603, 80-3-701, 80-3-704, 80-4-503, 80-4-602, AND 80-7-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 80-3-603, MCA, is amended to read:

**"80-3-603. Application for license — bond --- expiration date.**

(1) Licenses to engage in the business of a dealer at wholesale in this state shall be issued by the department to reputable persons who apply for a license and pay the prescribed fee.

(2) The application shall be in writing, accompanied by the prescribed fee, and under oath. It shall state:

(a) the place where the applicant intends to carry on the business for which the license is desired;

(b) the estimated amount of business to be done monthly;

(c) the full names of the persons constituting the firm, if the applicant is a partnership;

(d) the names of the officers and the place of incorporation, if the applicant is a corporation; and

(e) a financial statement showing in a general way the value and character of the assets and the amount of liabilities of the applicant.

(3) Before issuing a license, the department shall require the applicant to file with it a bond to the state in an amount to be fixed by the department based on the monthly business to be transacted by the applicant. The bond may not be for less than \$1,000. The department may require, under penalty of revoking the license, additional bond if the business transacted warrants an increase. The bond shall cover all wholesale produce business transacted in this state. The bond shall be executed by the applicant as principal and a surety company authorized to do business in the state as surety. The form of the bond shall be fixed by the department, conditioned upon:

(a) faithful performance of his duties as a dealer at wholesale;

(b) observance of all laws relating to the business of a dealer at wholesale;

(c) payment, when due, of the purchase price of produce purchased by him;

(d) the prompt reporting of sales as required by law to all persons consigning produce to the dealer as licensee for sale on commission; and

(e) the prompt payment to persons entitled to the proceeds of the sales less lawful charges, disbursements, and commissions.

(4) All licenses expire December 31 of each year. The license or a certified copy of the license shall be kept posted in the office of the licensee at each place in this state where he transacts business. The fee for each license is \$200 and for each certified copy of a license, \$10. If a truck is the place of business, the license fee for the first truck is \$200 and for each additional truck, \$75.

(5) A separate license is required for each place of business. Each truck used for assembling and distributing produce, other than from a permanently established place of business through which all business of sales and accounts is handled, is a separate place of business and must be licensed."

Section 2. Section 80-3-701, MCA, is amended to read:

**"80-3-701. Definitions.** For the purpose of this part, the following definitions apply:

(1) "Itinerant merchant" means a person who buys, offers to buy, sells, or offers to sell in this state, at wholesale or retail, any produce as defined

by 80-3-601, who does not hold a license under the provisions of part 6 of this chapter and transports the produce in this state by use of a motor vehicle or by any other method of transportation, except as otherwise provided, or who has not secured a permit of exemption. The term "itinerant merchant" does not include the following:

(a) a person using a motor vehicle owned by him, whether operated by him or his agent, for the transportation of produce produced by him on owned or leased premises when the entire course of the transportation extends not more than 150 miles from his residence, whether the residence is within or outside this state;

(b) a person handling produce grown by him who has secured from the department of agriculture, before offering the produce for sale, a permit of exemption. The permit shall be issued by the department upon application and payment of a fee of \$20. The applicant must first be able to satisfactorily show that he will sell or offer for sale only produce of his own production. The permit shall allow only the sale of produce of his own production and is forfeited if the holder sells or offers to sell any produce not of his own production.

(c) a person transporting property owned by him in a motor vehicle owned by him, whether operated by him or his agent, when the transportation is incident to a business conducted by him at an established place of business operated by him, either within or outside this state, and when the property is being transported to or from an established place of business operated by him in this state;

(d) a person transporting property for his own consumption or use and not for sale.

(2) "Established place of business" means a permanent warehouse, building, or structure in which a permanent business is carried on in good faith and not for the purpose of evading this part and in which stocks of the property being transported are produced, stored, or kept in quantities reasonably adequate for and usually carried for the requirements of the business and which is recognized, licensed, and taxed as a permanent business at the place. The term does not mean residences, tents, temporary stands or other temporary quarters, a railway car, or permanent quarters occupied under a temporary arrangement."

Section 3. Section 80-3-704, MCA, is amended to read:

**"80-3-704. Application for license — fee.** (1) An application for a license to engage in business as an itinerant merchant shall be made to the department upon forms prepared by it.

(2) A separate application and license is required for each motor vehicle to be operated. The application shall contain those facts the department requires. The fee for each license is \$200 for the calendar year in which it is issued, and each license expires December 31 of the calendar year in which issued. The proper fee shall accompany the application. The application shall be signed and sworn to by the applicant."

Section 4. Section 80-4-503, MCA, is amended to read:

**"80-4-503. Fees of department.** (1) The department shall collect an annual warehouseman license fee, based on the number of warehouses owned by the warehouseman, according to the following schedule:

For each warehouse listed in the application:

| <u>Capacity in Hundredweight</u> | <u>Rate</u> |
|----------------------------------|-------------|
| 0 to 25,000                      | \$ 35       |
| 25,001 to 50,000                 | 60          |
| 50,001 to 125,000                | 85          |
| 125,001 to 250,000               | 110         |
| 250,001 to 375,000               | 135         |
| over 375,000                     | 160         |

(2) The department shall collect a fee of \$50 for each initial licensing inspection of a warehouse or station.

(3) The department shall collect a fee of \$25 for each amendment of a license.

(4) The department shall collect a fee of \$150 a day or fraction thereof for maintaining an employee of the department at a warehouse to supervise the correction of a deficiency.

(5) All fees must be deposited into the state treasury and credited to the general fund account."

Section 5. Section 80-4-602, MCA, is amended to read:

**"80-4-602. License fees.** (1) The department shall collect an annual fee for each commodity dealer license according to the following schedule:

| <u>Hundredweight</u><br><u>(Previous license year cwt</u><br><u>volume or estimated yearly cwt)</u> | <u>Rate</u><br><u>(per</u><br><u>facility)</u> |
|-----------------------------------------------------------------------------------------------------|------------------------------------------------|
| 0 to 25,000                                                                                         | \$ 35                                          |
| 25,001 to 50,000                                                                                    | 60                                             |
| 50,001 to 125,000                                                                                   | 85                                             |
| 125,001 to 250,000                                                                                  | 110                                            |
| 250,001 to 375,000                                                                                  | 135                                            |
| over 375,000                                                                                        | 160                                            |

(2) Each applicant shall also pay a fee of \$25 for each truck operated by it in the operation of its business as a commodity dealer.

(3) All fees collected under this section must be placed in the general fund."

Section 6. Section 80-7-102, MCA, is amended to read:

**"80-7-102. License required of nurserymen — application and payment of fees.** (1) A person, before engaging in the business of selling, dealing in, or importing nursery stock into this state for sale or distribution or acting as agent, salesman, or solicitor for any nurseryman or dealer in

nursery stock or soliciting orders for the purchase of nursery stock, must obtain a license for each place of business from the department. A person may not falsely represent that he is an agent, salesman, solicitor, or representative of any nurseryman or dealer in nursery stock.

(2) The department shall provide application forms for prospective licensees. Applications for licenses may be made at any time before engaging in business, except seasonal nurserymen must make application at least 30 days in advance of doing business in this state.

(3) Licenses shall be in the name of the person licensed and shall indicate the purpose for which issued and the name and location of the nursery or place of business of the nurseryman or dealer licensed or represented by an agent, salesman, or solicitor. Licenses, except seasonal nurserymen's licenses, shall bear the date of issue and expire July 1 next following the date of issue. Seasonal nurserymen's licenses shall bear the date of issue and expire on the date provided on the license by the department.

(4) The license fee is \$50 a year for a general nursery, dealing in all kinds of nursery products; \$35 a year for a nursery dealing in small fruits, ornamental shrubs, bulbs, and perennials; \$20 a year for a nursery dealing in bulbs and perennials only; and \$50 a year for seasonal nurserymen. Agents, salesmen, and solicitors for licensed nurseries shall be granted salesmen's licenses, free of charge, upon the request of the licensee."

Section 7. **Effective date.** This act is effective July 1, 1987.

Approved April 27, 1987.

## CHAPTER NO. 621

[HB 870]

AN ACT REQUIRING THE DEPARTMENT OF INSTITUTIONS TO ADJUST PAY SCHEDULES FOR INSTITUTIONAL TEACHERS; PROVIDING AN APPROPRIATION FOR ADJUSTING THE PAY SCHEDULES; AMENDING SECTIONS 2-18-303 AND 2-18-313, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-18-303, MCA, is amended to read:

**"2-18-303. Procedures for utilizing pay schedules.** (1) The pay schedules provided in 2-18-311 and 2-18-312 shall be implemented as follows:

(a) The pay schedule provided in 2-18-311 indicates the annual compensation for the fiscal year ending June 30, 1986, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(b) The pay schedule provided in 2-18-312 indicates the annual compensation for the fiscal year ending June 30, 1987, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(c) Each new employee shall advance from step 1 to step 2 of a grade after successfully completing 6 months of probationary service. The anniversary date of an employee shall be established at the end of the probationary period in accordance with rules promulgated by the department.

(d) (i) The compensation of each employee on the first day of the first pay period in fiscal year 1986 shall be that amount which corresponds to the grade and step occupied on the last day of the preceding fiscal year of 1985.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1987 shall be that amount which corresponds to the grade and step occupied on the last day of the fiscal year 1985.

(iii) In compliance with rules adopted to implement this part, each employee is eligible on his anniversary date to advance one step in the pay matrix for fiscal year 1987. However, if the employee's anniversary date falls between (inclusive) July 1 and the first day of the first pay period of fiscal year 1987, he will advance one step on the first day of that pay period.

(2) The pay schedules provided in 2-18-311 and 2-18-312 and the provisions of subsection (1) of this section do not apply to those institutional teachers, liquor store occupations, or blue-collar occupations compensated under the pay schedules provided in 2-18-313, 2-18-314, or 2-18-315.

(3) The pay schedules provided in 2-18-313, 2-18-314, or 2-18-315 shall be implemented as follows:

(a) (i) The pay schedules provided *for* in 2-18-313 indicate the annual compensation for the contracted school term for teachers employed by institutions under the authority of the department of institutions for fiscal years 1988 and 1989.

(ii) The compensation of each teacher on the first day of the first pay period in July, 1987, shall be that amount which corresponds to his level of academic achievement and the step occupied on June 30, 1987.

(iii) The compensation of each teacher on the first day of the first pay period in July, 1988, shall be that amount which corresponds to his level of achievement and the step occupied on June 30, 1987.

(b) (i) The pay schedules provided in 2-18-314 indicate the maximum hourly compensation for fiscal years ending June 30, 1986, and June 30, 1987, for those employees in liquor store occupations who have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1986 or 1987, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(c) (i) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, 1986, and June 30, 1987, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are



members of units that have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1986 or 1987, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) No member of a bargaining unit may receive the amounts indicated in the respective pay schedules provided in 2-18-311 through 2-18-315 until the bargaining unit of which he is a member ratifies a completely integrated collective bargaining agreement covering the biennium ending June 30, 1987.

(ii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, 1985, retroactivity to that date may be negotiated.

(iii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, 1985, members of the bargaining unit involved will continue to receive the compensation they were receiving as of June 30, 1985.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules provided in 2-18-313 through 2-18-315 may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee shall not be reduced by the implementation of the pay schedules provided for in 2-18-311 through 2-18-315.

(6) The department may authorize a separate pay schedule for medical doctors if the rates provided in 2-18-311 and 2-18-312 are not sufficient to attract and retain fully licensed and qualified physicians at the state institutions.

(7) The department may develop programs which will enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. Insofar as the program may apply to employees within a collective bargaining unit, it shall be a negotiable subject under 39-31-305."

Section 2. Section 2-18-313, MCA, is amended to read:

**"2-18-313. Institutional teachers' pay schedules.** *The department of institutions shall adjust the 1987 pay schedules for institutional teachers so that the cost of implementing the adjusted schedules is equal to the appropriation provided for in [section 3]. The adjusted schedules must be applied as provided in 2-18-303."*

Section 3. **Appropriation.** There is appropriated \$98,667 for each year of the biennium ending June 30, 1989, from the general fund to the department of institutions for adjusting the pay schedules for institutional teachers as provided in 2-18-313.

Section 4. **Coordination instruction.** If House Bill No. 233 and this act are passed and approved, the amendments to 2-18-303(3)(a) and 2-18-313 contained in House Bill No. 233 are void.

Section 5. **Effective date.** This act is effective July 1, 1987.

Approved April 27, 1987.

## CHAPTER NO. 622

[HB 880]

AN ACT PROVIDING FOR A UNIFORM PREMIUM TAX; AUTHORIZING THE COMMISSIONER OF INSURANCE TO COLLECT PREMIUM TAX PAYMENTS ON A QUARTERLY BASIS; PROVIDING PENALTIES FOR FAILURE TO PAY THE PREMIUM TAX WHEN DUE; APPROPRIATING MONEY; AMENDING SECTIONS 15-31-101, 33-2-311, AND 33-2-705, MCA; AND PROVIDING RETROACTIVE APPLICABILITY AND EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-31-101, MCA, is amended to read:

**"15-31-101. Organizations subject to tax.** (1) The term "corporation" includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity, and all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States.

(2) The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) Every corporation, except as hereinafter provided and except as provided in 33-2-705(4), engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state such percentage or percentages of its total net income for the preceding taxable year at the rate hereinafter set forth. In the case of corporations having income from business activity which is taxable both within and without this state, the license fee shall be measured by the net income derived from or attributable to Montana sources as determined under part 3. This tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation; however, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

(4) Every bank organized under the laws of the state of Montana, of any other state, or of the United States and every savings and loan association organized under the laws of this state or of the United States is subject to the Montana corporation license tax provided for under this

chapter. For taxable years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."

Section 2. Section 33-2-311, MCA, is amended to read:

**"33-2-311. Tax on surplus lines.** There is imposed upon premiums collected for surplus line insurance transacted in this state a tax at the same rate and computed in the same manner as provided in 33-2-705 as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes, and in excess of the premium otherwise required, shall not be deemed to be part of the premium for the purposes of such computation. Upon filing of the annual statement referred to in 33-2-310(2), the surplus line agent shall pay to the commissioner the amount of tax owing as to surplus line insurance business transacted by him during the preceding calendar year. If a surplus line policy covers risk or exposures only partially in this state, the tax payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state."

Section 3. Section 33-2-705, MCA, is amended to read:

**"33-2-705. Report on premiums and other consideration — tax.**  
(1) Each authorized insurer and each formerly authorized insurer with respect to premiums so received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report in form as prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by it during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to such property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from such total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to such policies. As to title insurance, "premium" includes the total charge for such insurance. No deduction shall be made of the cash surrender values of policies. Considerations received on annuity contracts shall not be included in total direct premium income and shall not be subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each such insurer shall pay to the commissioner a tax upon such net premiums *computed at the rate of 2 3/4%.*

(3) That portion of the tax paid hereunder by an insurer on account of premiums received for fire insurance shall be separately specified in the report as required by the commissioner, for apportionment as provided by law. Where insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make such reasonable allocation from such entire premium to the fire portion of the coverage as shall be stated in such report and as may be approved or accepted by the commissioner.

(4) With respect to authorized insurers the premium tax provided by this section shall be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(5) The commissioner may suspend or revoke the certificate of authority of any insurer which fails to pay its taxes as required under this section.

(6) *In addition to the penalty provided for in subsection (5), the commissioner may impose upon an insurer who fails to pay the tax required under this section a fine of \$100 a day for each day the tax remains unpaid past the due date or 1% of the amount owed in tax, whichever is greater.*

(7) *The commissioner may by rule provide a quarterly schedule for payment of portions of the premium tax under this section during the year in which such tax liability is accrued."*

**Section 4. Appropriation.** There is appropriated to the commissioner of insurance from the insurance regulatory trust account in the state special revenue fund the following sum for each fiscal year of the biennium ending June 30, 1989, to be used to fund one FTE administrative assistant to implement the provisions of this act:

FY 1988  
\$18,208

FY 1989  
\$17,108

**Section 5. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 6. Applicability.** This act applies to all premium income of an authorized insurer received after December 31, 1986.

**Section 7. Effective dates.** (1) Section 3(7) and this section are effective on passage and approval.

(2) The remaining provisions of this act are effective October 1, 1987.

Approved April 27, 1987.

**CHAPTER NO. 623**

[SB 219]

**AN ACT TO PROVIDE A LANDOWNER PREFERENCE FOR A CLASS A-7 ANTLERLESS ELK LICENSE OR A SPECIAL ELK PERMIT; AND AMENDING SECTIONS 87-2-501 AND 87-2-705, MCA.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-2-705, MCA, is amended to read:

**"87-2-705. Drawing for special elk permits.** (1) In the event the number of valid applications for special elk permits for a hunting district exceeds the quota set by the department for the district, these permits shall be awarded by a drawing. The department shall provide for those persons making valid application for special elk permits a method of selecting first, second, and third choice hunting districts for any drawing held pursuant to this section.

(2) *Subject to the limitation of subsection (4), a person who holds fee title to 640 acres or more of contiguous land, at least some of which is used by elk, in a hunting district where elk permits are awarded under this section shall be issued, upon application, a permit to hunt elk on land owned by him.*

(3) *An applicant who receives a permit under subsection (2) may designate that the permit be issued to an immediate family member or a person employed by the landowner. A corporation owning qualifying land under subsection (2) may designate one of its shareholders to receive the permit.*

(4) *Fifteen percent of the special elk permits available each year under this section in a hunting district must be available to landowners under subsection (2).*

(5) *The department may promulgate the rules necessary to implement this section."*

Section 2. Section 87-2-501, MCA, is amended to read:

**"87-2-501. (Effective March 1, 1986) Class A-3, A-4, A-5, A-6, A-7—resident deer, elk, and bear licenses — special Class A-7 license requirements and preference.** (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the proper fee or fees, be entitled to purchase one each of the following licenses at the prescribed cost which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department rules:

- (a) Class A-3, deer A tag, \$9;
- (b) Class A-4, deer B tag, \$6;
- (c) Class A-5, elk tag, \$10;

- (d) Class A-6, black or brown bear tag, \$8;
- (e) Class A-7, antlerless elk tag, \$10.

(2) The holder of a Class A-7 antlerless elk license is entitled to take surplus antlerless elk in areas designated by the commission and at such times and upon such terms as set forth by the commission but may not simultaneously possess a Class A-5 and a Class A-7 license in the same year. The commission shall include in the terms of issuance of the Class A-7 license a requirement for surrender of a current Class A-5 license if held by a person at the time he purchases a Class A-7 license. If a current Class A-5 license is surrendered, as required by this section, the Class A-7 license must be issued without cost to the holder. No person may take more than one elk during any license year, and a person holding a Class A-7 antlerless elk tag may not take an elk during the same license year with a Class A-5 elk tag.

*(3) Subject to the limitation of subsection (5), a person who holds fee title to 640 acres or more of contiguous land, at least some of which is used by elk, in a hunting district where Class A-7 licenses are awarded under this section shall be issued, upon application, a Class A-7 license.*

*(4) An applicant who receives a Class A-7 license under subsection (3) may designate that the license be issued to an immediate family member or a person employed by the landowner. A corporation owning qualifying land under subsection (3) may designate one of its shareholders to receive the license.*

*(5) Fifteen percent of the Class A-7 licenses available each year under this section in a hunting district must be available to landowners under subsection (3)."*

**Section 3. Extension of authority.** Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 27, 1987.

## CHAPTER NO. 624

[SB 256]

**AN ACT TO ALLOW THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO CHARGE A FEE FOR CUSTODY INVESTIGATIONS; AMENDING SECTION 40-4-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 40-4-215, MCA, is amended to read:

**"40-4-215. Investigations and reports.** (1) In contested custody proceedings and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. *If the court orders the*

*department of social and rehabilitation services to conduct the investigation, the department may charge a reasonable fee. The department shall waive the fee for conducting the investigation if the parent or the child's custodian requesting the investigation is a recipient of aid to families with dependent children, food stamps, or general relief benefits. The cost of the investigation and report shall be paid according to the final order.*

(2) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of 16 unless the court finds that he lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing."

**Section 2. Extension of authority.** Any existing authority of the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved April 27, 1987.

## CHAPTER NO. 625

[SB 363]

**AN ACT TO ESTABLISH THE MINIMUM AMOUNT THAT MUST BE DEDUCTED FROM AN OBLIGOR'S INCOME UNDER THE CHILD SUPPORT INCOME DEDUCTION ACT OF 1981; AND AMENDING SECTION 40-5-309, MCA.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 40-5-309, MCA, is amended to read:

**"40-5-309. Amount to be deducted from income.** (1) The amount of money to be deducted each pay period from the obligor's income shall be:

(a) (i) the amount of money necessary to pay current installments of child support as they become due and payable; plus

(ii) the amount of money which, when deducted in equal amounts each payday, will pay off all outstanding child support payments delinquent within 2 years; or

(b) *not less than 25% of the obligor's disposable earnings but may not be more than the maximum amount allowable by federal garnishment law if the sum provided in subsection (1)(a) exceeds that amount.*

(2) The district court may allow a fee of not to exceed \$5 per deduction, which the employer may deduct from the obligor's wages or salary for the expense of administering the deduction.

(3) The child support income deduction shall cease when there is no past-due child support owing unless the district court orders continued income deductions for payment of child support installments as they become due and payable."

Approved April 27, 1987.

## CHAPTER NO. 626

[HB 326]

AN ACT TO PROVIDE THAT A JUDGE MUST SPECIFY CREDIT FOR ELAPSED TIME SERVED ON DEFERRED AND SUSPENDED SENTENCES THAT ARE REVOKED; AND AMENDING SECTION 46-18-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-18-201, MCA, is amended to read:

**"46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

- (i) jail base release;
- (ii) jail time not exceeding 180 days;
- (iii) conditions for probation;
- (iv) restitution;
- (v) payment of the costs of confinement;



- (vi) payment of a fine as provided in 46-18-231;
- (vii) payment of costs as provided in 46-18-232 and 46-18-233;
- (viii) payment of costs of court appointed counsel as provided in 46-8-113;
- (ix) community service;
- (x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or
- (xi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Such reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(xi).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e).

(2) If any financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for any misdemeanor or for a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, *the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail time already served.*

(4) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102(2) may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under

45-5-502(3), 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of such imprisonment."

Approved April 27, 1987.

## CHAPTER NO. 627

[HB 442]

AN ACT TO GENERALLY REVISE THE LAW RELATING TO PUNITIVE DAMAGES; LIMITING THE RIGHT TO RECOVER PUNITIVE DAMAGES; RESTRICTING THE AWARD OF PUNITIVE DAMAGES IN CONTRACT-RELATED CASES; PERMITTING INSURANCE COVERAGE OF PUNITIVE DAMAGES; AMENDING SECTIONS 27-1-220 AND 27-1-221, MCA; AND PROVIDING APPLICABILITY DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 27-1-220, MCA, is amended to read:

**"27-1-220. Punitive damages — when allowed.** (1) *Except as otherwise expressly provided by statute, a judge or jury may award, in addition to compensatory damages, punitive damages for the sake of example and for the purpose of punishing a defendant.*

(2) (a) *Unless otherwise expressly provided by statute, punitive damages may not be recovered in any action arising from:*

(i) *contract; or*

(ii) *breach of contract.*

(b) *Subsection (2)(a) does not prohibit recovery of punitive damages in a products liability action or an action arising under 33-18-201."*

Section 2. Section 27-1-221, MCA, is amended to read:

**"27-1-221. Punitive damages — liability — proof — award.** (1) *Subject to subsection (2) and the provisions of 27-1-220, reasonable punitive damages may be awarded where the defendant has been guilty of actual fraud or actual malice.*

(2) *A defendant is guilty of actual malice if he has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and:*

(a) *deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff; or*

(b) *deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.*

(3) *A defendant is guilty of actual fraud if he:*

(a) *makes a representation with knowledge of its falsity; or*

(b) *conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.*

(4) *Actual fraud exists only where the plaintiff has a right to rely upon the representation of the defendant and suffers injury as a result of such reliance. The contract definitions of fraud expressed in Title 28, chapter 2, do not apply to proof of actual fraud under this section.*

(5) *All elements of the claim for punitive damages must be proved by clear and convincing evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence, but less than beyond a reasonable doubt.*

(6) *Liability for punitive damages must be determined by the trier of fact, whether judge or jury.*

(7) (a) *Evidence regarding a defendant's financial affairs, financial condition, and net worth is not admissible in a trial to determine whether a defendant is liable for punitive damages. When the jury returns a verdict finding a defendant liable for punitive damages, the amount of punitive damages must then be determined by the jury in an immediate, separate proceeding and be submitted to the judge for review as provided in subsection (7)(c). In the separate proceeding to determine the amount of punitive damages to be awarded, the defendant's financial affairs, financial condition, and net worth must be considered.*

(b) *When an award of punitive damages is made by the judge, he shall clearly state his reasons for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the following matters:*

(i) *the nature and reprehensibility of the defendant's wrongdoing;*

(ii) *the extent of the defendant's wrongdoing;*

(iii) *the intent of the defendant in committing the wrong;*

(iv) *the profitability of the defendant's wrongdoing, if applicable;*

(v) *the amount of actual damages awarded by the jury;*

(vi) *the defendant's net worth;*

(vii) *previous awards of punitive or exemplary damages against the defendant based upon the same wrongful act;*

(viii) *potential or prior criminal sanctions against the defendant based upon the same wrongful act; and*

(ix) *any other circumstances which may operate to increase or reduce, without wholly defeating, punitive damages.*

(c) *The judge shall review a jury award of punitive damages, giving consideration to each of the matters listed in subsection (7)(b). If after review the judge determines that the jury award of punitive damages should be*

*increased or decreased, he may do so. The judge shall clearly state his reasons for increasing, decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection (7)(b).*

*(8) Nothing in this section is intended to alter the Montana Rules of Civil Procedure governing discovery of a defendant's financial affairs, financial condition, and net worth."*

**Section 3. Insurance coverage of punitive damages.** (1) Insurance coverage does not extend to punitive or exemplary damages unless expressly included by the contract of insurance.

(2) Prior to renewal of any policy in effect on [the effective date of this act], the insurer shall provide the insured with notice of nonrenewal of coverage of punitive or exemplary damages in the same manner as required by the commissioner of insurance for the renewal of policies with altered terms.

**Section 4. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 5. Applicability.** This act applies to claims arising after the effective date of this act, except that subsections (6), (7), and (8) of 27-1-221 apply to trials that begin after the effective date of this act whether or not the claim arose after the effective date of this act.

Approved April 27, 1987.

## CHAPTER NO. 628

[HB 567]

AN ACT PROVIDING FOR THE REDUCTION OF JURY AWARDS BY THE TRIAL COURT FOR AMOUNTS PAID OR PAYABLE FROM COLLATERAL SOURCES AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** As used in [sections 1 and 2]:

(1) "Collateral source" means a payment for something that is later included in a tort award and which is made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:

(a) for medical expenses and disability payments under the federal Social Security Act, any federal, state, or local income disability act, or any other public program;

(b) under any health, sickness, or income disability insurance or automobile accident insurance that provides health benefits or income disability coverage, and any other similar insurance benefits available to the plaintiff, except life insurance;

(c) under any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except gifts or gratuitous contributions or assistance;

(d) any contractual or voluntary wage continuation plan provided by an employer, or other system intended to provide wages during a period of disability; and

(e) any other source, except the assets of the plaintiff or of his immediate family if he is obligated to repay a member of his immediate family.

(2) "Person" includes individuals, corporations, associations, societies, firms, partnerships, joint stock companies, government entities, political subdivisions, and any other entity or aggregate of individuals.

(3) (a) "Plaintiff" means a person who alleges that he sustained bodily injury, or on whose behalf recovery for bodily injury or death is sought, or who would have a beneficial, legal, or equitable interest in a recovery.

(b) The term includes:

(i) a legal representative;

(ii) a person with a wrongful death or surviving cause of action;

(iii) a person seeking recovery on a claim for loss of consortium, society, assistance, companionship, or services; and

(iv) any other person whose right of recovery or whose claim or status is derivative of one who has sustained bodily injury or death.

**Section 2. Collateral source reductions in actions arising from bodily injury or death — subrogation rights.** (1) In an action arising from bodily injury or death when the total award against all defendants is in excess of \$50,000 and the plaintiff will be fully compensated for his damages, exclusive of court costs and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral source that does not have a subrogation right.

(2) Before an insurance policy payment is used to reduce an award under subsection (1), the following amounts must be deducted from the amount of the insurance policy payment:

(a) the amount the plaintiff paid for the 5 years prior to the date of injury;

(b) the amount the plaintiff paid from date of injury to date of judgment; and

(c) the present value of the amount the plaintiff is thereafter obligated to pay to keep the policy in force for the period for which any reduction of an award is made pursuant to subsection (3).

(3) The jury shall determine its award without consideration of any collateral sources. After the jury determines its award, reduction of the award must be made by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and amount of collateral sources. Evidence is admissible at the hearing to show that the plaintiff has been or may be reimbursed from a collateral source that does not have a subrogation right. If the trial judge finds that, at the time of hearing, it is not reasonably determinable whether or in what amount a benefit from such a collateral source will be payable, he shall:

(a) order any person against whom an award was rendered and who claims a deduction under this section to make a deposit into court of the disputed amount, at interest; and

(b) reduce the award by the amount deposited. The amount deposited and any interest thereon are subject to the further order of the court, pursuant to the requirements of this section.

(4) Except for subrogation rights specifically granted by state or federal law, there is no right to subrogation for any amount paid or payable to a plaintiff from a collateral source if an award is reduced by that amount under subsection (1).

**Section 3. Applicability.** This act applies only to causes of action arising after the effective date of this act.

Approved April 27, 1987.

## CHAPTER NO. 629

[HB 586]

AN ACT TO MODIFY THE STATE LIQUOR DIVISION'S MARKETING ARRANGEMENTS FOR TABLE WINE; TO PROVIDE A TAX ON TABLE WINE SOLD BY A DISTRIBUTOR TO CERTAIN COMMISSION AGENTS; AMENDING SECTIONS 16-2-301, 16-2-302, AND 16-3-403, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 16-2-301, MCA, is amended to read:

**"16-2-301. Retail selling price on table wine — tax on certain table wine.** (1) The retail selling price at which table wine is sold either by the department, through a state employee-operated store, or by a commission agent, who was appointed before April 30, 1987, including subsequent renewals of such appointment, and who elects to order table wine from the department, is computed by adding to the statewide weighted average cost of table wine the tax and state markup as designated by the department.

(2) The retail selling price at which table wine is sold by a commission agent appointed by the department after May 1, 1987, is as determined by the agent.

(3) *In addition to the tax on wine assessed under 16-1-411, there is a tax of 1 cent a liter on table wine sold by a table wine distributor to an agent as described in subsection (2). This additional tax must be paid to the department by the distributor in the same manner as the tax under 16-1-411 is paid. The department shall deposit the tax paid under this section in the general fund."*

Section 2. Section 16-2-302, MCA, is amended to read:

**"16-2-302. State distribution.** The department may import and distribute one or more named table wines to one or more designated state employee-operated liquor stores, or agency stores appointed on or before April 30, 1987, including subsequent renewals of such appointments, in the same manner as if the table wine contained more than 14% alcohol by volume."

Section 3. Section 16-3-403, MCA, is amended to read:

**"16-3-403. To whom table wine distributor may sell.** (1) A table wine distributor may sell and deliver table wine purchased or acquired by him to:

(a) another table wine distributor, retailer, or common carrier which holds a license issued by the department of revenue;

(b) the department; and

(c) a commission agent of the department.

(2) It shall be unlawful for any table wine distributor to sell, deliver, or give away any table wine to be consumed on such distributor's premises or to give, sell, deliver, or distribute any table wine purchased or acquired by him to the public."

Section 4. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Effective date.** This act is effective May 1, 1987.

Approved April 27, 1987.

## CHAPTER NO. 630

[HB 627]

AN ACT REQUIRING THE DEPARTMENT OF INSTITUTIONS TO ESTABLISH AND MAINTAIN ADDITIONAL YOUTH EVALUATION PROGRAMS TO REPLACE THOSE DONE AT STATE INSTITUTIONS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Department of institutions to establish additional youth evaluation programs.** (1) Subject to the availability of funding, the department of institutions shall provide for additional youth evaluation

programs, in addition to the youth evaluation program in Great Falls, to conduct comprehensive evaluations of youths ordered by a youth court to replace similar programs performed at state institutions. The programs must be located in geographically strategic locations in the state to best serve the youths and families in need of these services. Each program must be capable of serving 10 to 15 youths at any one time.

(2) In addition to providing services to youths requiring evaluations, each program established under subsection (1) may provide detention services for up to five youths alleged to be delinquent youths. The county determined by the youth court as the residence of a detained youth is responsible for the cost of detention, including medical expenses incurred during detention.

**Section 2. Extension of authority.** Any existing authority of the department of institutions to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved April 27, 1987.

## CHAPTER NO. 631

[HB 697]

AN ACT REVISING THE LAWS RELATING TO SPECIAL IMPROVEMENT DISTRICTS AND RURAL SPECIAL IMPROVEMENT DISTRICTS; PROVIDING FOR SEMIANNUAL BOND PAYMENTS; CLARIFYING WHEN BONDS MAY BE REFUNDED; PROVIDING FOR THE ASSESSED VALUATION OPTION FOR SPECIAL IMPROVEMENT DISTRICTS; AMENDING SECTIONS 7-12-2167, 7-12-2193, 7-12-4190, AND 7-12-4194, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-12-2167, MCA, is amended to read:

**"7-12-2167. Term of payment of assessments.** (1) Except as provided in subsection (2), the payment of the assessment to defray the cost of constructing any improvements in special improvement districts may be spread over a term of not to exceed 30 years.

(2) If federal loans are available, payments may be spread over a term of not to exceed 40 years.

(3) *The assessments are payable in equal semiannual installments of principal, with interest on the unpaid installments, or if the board of county commissioners so prescribes in the resolution authorizing issuance of the special improvement district bonds, in equal semiannual installments of principal and interest, each in the amount required to pay the principal over the term of payment, with interest at the rate then borne by the assessment.*



(4) Any assessment that is not delinquent may be prepaid, in whole but not in part, at any time after the assessment is levied, by the payment of the assessment, with interest accrued and to accrue thereon through the next date on which interest on bonds of the special improvement district is payable."

Section 2. Section 7-12-2193, MCA, is amended to read:

**"7-12-2193. Refunding bonds.** (1) A county may issue special improvement district bonds for the purpose of providing the money needed to pay principal of and interest on outstanding special improvement district bonds. To issue bonds for such purpose, the board of county commissioners, at a regular meeting or a duly called special meeting, shall adopt a resolution setting forth:

- (a) the facts regarding the outstanding bonds that are to be refunded;
- (b) the reasons for issuing refunding bonds; and
- (c) the term and details of the refunding bonds.

(2) If the refunding bonds are proposed to be issued in an amount greater than the amount of outstanding bonds to be refunded, the board may not authorize the issuance of such bonds until it has conducted a public hearing on the desirability of issuing the bonds, after published and mailed notice as provided in 7-12-2105(2), and found by resolution that such an issuance of refunding bonds is in the best interest of the special improvement district.

(3) After the adoption of the required resolution or resolutions, the board may:

- (a) sell the refunding bonds at a private negotiated sale; or

(b) at its option, give notice of the sale and sell the refunding bonds in the same manner that other special improvement district bonds are sold.

(4) *Unless there is, or will be on the next payment date, a default in the payment of bond principal or interest, bonds may not be refunded by the issuance of refunding bonds unless the rate of interest offered on the refunding bonds is at least ½ of 1% a year less than the rate of interest on the bonds to be refunded.*

(5) (a) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which such bonds mature or are subject to redemption, but the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale thereof, must be deposited with other funds appropriated for the payment of the outstanding bonds in escrow with a suitable banking institution or trust company, which may be located either in or out of the state.

(b) Funds so deposited must be invested in securities that are general obligations of the United States or securities the principal of and interest on which are guaranteed by the United States. Such securities must mature or be callable at the option of the holder on such dates and bear interest at such rates and be payable on such dates as may be required to provide

funds sufficient, with any cash deposited in the escrow account, to pay when due:

(i) the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption;

(ii) the principal on each refunded bond at maturity or upon such redemption date; and

(iii) any redemption premium.

(c) The escrow account must be irrevocably appropriated to the payment of the principal of an interest and redemption premium, if any, on the refunded bonds.

(d) Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal thereof or interest thereon due prior to issuance of the refunding bonds may be appropriated by the board to the escrow account.

(e) The county may pay the reasonable costs and expenses of issuing the refunding bonds and of establishing and maintaining the escrow account.

(6) Refunding bonds may be issued under this section to pay principal of or interest on special improvement district bonds outstanding on April 30, 1985, only if:

(a) one-third or more of the term for which such bonds were issued has expired; or

(b) there is a deficiency in the bond account or interest account of the special improvement district fund from which such bonds are payable."

Section 3. Section 7-12-4190, MCA, is amended to read:

**"7-12-4190. Payment of assessments in installments.** (1) The payment of assessments to defray the cost of acquiring or constructing any improvements in special improvement districts may be spread over a term of not to exceed 20 years.

(2) *The assessments are payable in equal semiannual installments of principal, with interest on the unpaid installments, or if the city council or commission so prescribes in the resolution authorizing the issuance of special improvement district bonds, in equal semiannual installments of principal and interest, each in the amount required to pay the principal over the term of payment, with interest at the rate then borne by the assessment.*

(3) Any assessment that is not delinquent may be prepaid, in whole but not in part, at any time after the assessment is levied, by the payment of the assessment, with interest accrued and to accrue thereon through the next date on which interest on bonds of the special improvement district is payable."

Section 4. Section 7-12-4194, MCA, is amended to read:

**"7-12-4194. Refunding bonds.** (1) A city may issue special improvement district bonds for the purpose of providing the money needed to pay principal of and interest on outstanding special improvement district bonds. To issue bonds for such purpose, the city council, at a regular meeting or a duly called special meeting, shall adopt a resolution setting forth:

- (a) the facts regarding the outstanding bonds that are to be refunded;
- (b) the reasons for issuing refunding bonds; and
- (c) the term and details of the refunding bonds.

(2) If the refunding bonds are proposed to be issued in an amount greater than the amount of outstanding bonds to be refunded, the city council may not authorize the issuance of such bonds until it has conducted a public hearing on the desirability of issuing the bonds, after published and mailed notice as provided in 7-12-4106(2), and found by resolution that such an issuance of refunding bonds is in the best interest of the special improvement district.

(3) After the adoption of the required resolution or resolutions, the council may:

- (a) sell the refunding bonds at a private negotiated sale; or
- (b) at its option, give notice of the sale and sell the refunding bonds in the same manner that other special improvement district bonds are sold.

(4) *Unless there is, or will be on the next payment date, a default in the payment of bond principal or interest, bonds may not be refunded by the issuance of refunding bonds unless the rate of interest offered on the refunding bonds is at least ½ of 1% a year less than the rate of interest on the bonds to be refunded.*

(5) (a) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which such bonds mature or are subject to redemption, but the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale thereof, must be deposited with other funds appropriated for the payment of the outstanding bonds in escrow with a suitable banking institution or trust company, which may be located either in or out of the state.

(b) Funds so deposited must be invested in securities that are general obligations of the United States or securities the principal of and interest on which are guaranteed by the United States. Such securities must mature or be callable at the option of the holder on such dates and bear interest at such rates and be payable on such dates as may be required to provide funds sufficient, with any cash deposited in the escrow account, to pay when due:

(i) the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption;

(ii) the principal on each refunded bond at maturity or upon such redemption date; and

(iii) any redemption premium.

(c) The escrow account must be irrevocably appropriated to the payment of the principal of an interest and redemption premium, if any, on the refunded bonds.

(d) Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal thereof or interest thereon due prior to issuance of the refunding bonds may be appropriated by the council to the escrow account.

(e) The city may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account.

(6) Refunding bonds may be issued under this section to pay principal of or interest on special improvement district bonds outstanding on April 30, 1985, only if:

(a) *the proceeds of such refunding bonds do not redeem such outstanding bonds until one-third or more of the term for which such bonds were issued has expired; or*

(b) *there is a deficiency in the bond account or interest account of the special improvement district fund from which such bonds are payable."*

**Section 5. Assessment of costs — assessed valuation option.** The city council or city commission may assess the cost of an improvement against each lot or parcel of land in the district based on the assessed value of the benefited lots or parcels of land within the district if the council or commission determines such assessment to be equitable and in proportion to and not exceeding the benefits derived from the improvement by the lot or parcel.

**Section 6. Codification instructions.** Section 5 is intended to be codified as an integral part of Title 7, chapter 12, part 41, and the provisions of Title 7, chapter 12, part 41, apply to section 5.

**Section 7. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 8. Saving clause.** Sections 2 and 4 of this act are remedial in nature and do not imply any lack of authority or invalidity of refunding bonds issued prior to the effective date of this act.

**Section 9. Effective date.** This act is effective on passage and approval.

Approved April 27, 1987.

## CHAPTER NO. 632

[HB 752]

THE UNIFORM HEALTH CARE INFORMATION ACT; AMENDING SECTIONS 50-5-106, 50-15-704, 53-21-166, AND 53-24-306, MCA; AND REPEALING SECTIONS 50-16-301 THROUGH 50-16-305 AND 50-16-311 THROUGH 50-16-314, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 25] may be cited as the "Uniform Health Care Information Act".

**Section 2. Legislative findings.** The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) patients need access to their own health care information as a matter of fairness, to enable them to make informed decisions about their health care and to correct inaccurate or incomplete information about themselves;

(3) in order to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information;

(4) persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of his health care information survives even when the information is held by persons other than health care providers.

(5) the movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information.

**Section 3. Uniformity of application and construction.** [Sections 1 through 25] must be applied and construed to effectuate their general purpose to make uniform the laws with respect to the treatment of health care information among states enacting them.

**Section 4. Definitions.** As used in [sections 1 through 25], unless the context indicates otherwise, the following definitions apply:

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider, to determine compliance with:

- (a) statutory, regulatory, fiscal, medical, or scientific standards;
  - (b) a private or public program of payments to a health care provider;
- or
- (c) requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence and the general health condition of a patient who is an inpatient in a health care facility or who is receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of critical, poor, fair, good, excellent, or terms denoting similar conditions.

(4) "Health care" means any care, service, or procedure provided by a health care provider, including medical or psychological diagnosis, treatment, evaluation, advice, or other services that affect the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(8) "Institutional review board" means a board, committee, or other group formally designated by an institution or authorized under federal or state law to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain", as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Peer review" means an evaluation of health care services by a committee of a state or local professional organization of health care providers or a committee of medical staff of a licensed health care facility. The committee must be:

(a) authorized by law to evaluate health care services; and

(b) governed by written bylaws approved by the governing board of the health care facility or an organization of health care providers.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

**Section 5. Disclosure by health care provider.** (1) Except as authorized in [sections 9 and 10] or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years except for an agent or employee of the health care provider or a person who has examined the recorded health care information under [section 9(2)]. The record of disclosure must

include the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information, the date of the receipt or examination, and to the extent practicable a description of the information disclosed.

**Section 6. Patient authorization to health care provider for disclosure.** (1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under [section 14].

(2) A health care provider may charge a reasonable fee, not to exceed his actual cost for providing the health care information, and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider must:

- (a) be in writing, dated, and signed by the patient;
- (b) identify the nature of the information to be disclosed; and
- (c) identify the person to whom the information is to be disclosed.

(4) Except as provided by [sections 1 through 25], the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the Montana Rules of Evidence, or common law.

**Section 7. Patient authorization — retention — effective period.**

(1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) An authorization in effect on [the effective date of sections 1 through 25] remains valid for 30 months after [the effective date of sections 1 through 25] unless an earlier date is specified or it is revoked under [section 8]. Health care information disclosed under such an authorization is otherwise subject to [sections 1 through 25]. An authorization written after [the effective date of sections 1 through 25] becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

**Section 8. Patient's revocation of authorization for disclosure.** A patient may revoke a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosures made in good-faith reliance on an

authorization if the health care provider had no notice of the revocation of the authorization.

**Section 9. Disclosure without patient's authorization based on need to know.** A health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

- (1) to a person who is providing health care to the patient;
- (2) to any other person who requires health care information for health care education; to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; or for assisting the health care provider in the delivery of health care and if the health care provider reasonably believes that the person will:
  - (a) not use or disclose the health care information for any other purpose; and
  - (b) take appropriate steps to protect the health care information;
- (3) to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider not to make the disclosure;
- (4) to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with the laws of the state and good medical or other professional practice, unless the patient has instructed the health care provider not to make the disclosure;
- (5) to a health care provider who is the successor in interest to the health care provider maintaining the health care information;
- (6) for use in a research project that an institutional review board has determined:
  - (a) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;
  - (b) is impracticable without the use or disclosure of the health care information in individually identifiable form;
  - (c) contains reasonable safeguards to protect the information from improper disclosure;
  - (d) contains reasonable safeguards to protect against directly or indirectly identifying any patient in any report of the research project; and
  - (e) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;
- (7) to a person who obtains information for purposes of an audit, if that person agrees in writing to:



(a) remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(b) not disclose the information further, except to accomplish the audit or to report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient or other unlawful conduct by a health care provider; and

(8) to an official of a penal or other custodial institution in which the patient is detained.

**Section 10. Disclosure without patient's authorization — other bases.** A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

(1) directory information, unless the patient has instructed the health care provider not to make the disclosure;

(2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extent required by law;

(4) to a law enforcement officer about the general physical condition of a patient being treated in a health care facility, if the patient was injured on a public roadway, or was injured by the possible criminal act of another; or

(5) pursuant to compulsory process in accordance with [sections 11 and 12].

**Section 11. When health care information available by compulsory process.** Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(1) the patient has consented in writing to the release of the health care information in response to compulsory process or a discovery request;

(2) the patient has waived the right to claim confidentiality for the health care information sought;

(3) the patient is a party to the proceeding and has placed his physical or mental condition in issue;

(4) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(5) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(6) a patient's health care information is to be used in the patient's commitment proceeding;

(7) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for his health care or unless authorized under subsection (9);

(8) the health care information is relevant to a proceeding brought under [sections 23 through 25]; or

(9) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest.

**Section 12. Method of compulsory process.** (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under subsection (2), (4), or (5) of [section 11] or in a civil proceeding or investigation under subsection (9) of [section 11], the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or his authorized representative, identifying at least one subsection of [section 11] under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under subsection (2), (4), or (5) of [section 11] or in a civil proceeding under subsection (9) of [section 11], that the requirements of subsection (1) for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of [section 11] identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) Production of health care information under [section 11] and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

**Section 13. Requirements and procedures for patient's examination and copying.** (1) Upon receipt of a written request from a patient to examine or copy all or part of his recorded health care information, a health care provider, as promptly as required under the circumstances but no later than 10 days after receiving the request, shall:

(a) make the information available to the patient for examination during regular business hours or provide a copy, if requested, to the patient;

(b) inform the patient if the information does not exist or cannot be found;

(c) if the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;

(d) if the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than 21 days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or

(e) deny the request in whole or in part under [section 14] and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, he is not required to create a new record or reformulate an existing record to make the information available in the requested form. The health care provider may charge a reasonable fee, not to exceed the health care provider's actual cost, for providing the health care information and is not required to permit examination or copying until the fee is paid.

**Section 14. Denial of examination and copying.** (1) A health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) knowledge of the health care information would be injurious to the health of the patient;

(b) knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) the health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes;

(e) the health care provider obtained the information from a person other than the patient; or

(f) access to the health care information is otherwise prohibited by law.

(2) Except as provided in [section 19], a health care provider may deny access to health care information by a patient who is a minor if:

(a) the patient is committed to a mental health facility; or

(b) the patient's parents or guardian have not authorized the health care provider to disclose the patient's health care information.

(3) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection

(1) from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

(4) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (1)(c), he shall permit examination and copying of the record by another health care provider who is providing health care services to the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection.

**Section 15. Request for correction or amendment.** (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which he has access under [section 13].

(2) As promptly as required under the circumstances but no later than 10 days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) make the requested correction or amendment and inform the patient of the action and of the patient's right to have the correction or amendment sent to previous recipients of the health care information in question;

(b) inform the patient if the record no longer exists or cannot be found;

(c) if the health care provider does not maintain the record, inform the patient and provide him with the name and address, if known, of the person who maintains the record;

(d) if the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing the earliest date, not later than 21 days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) inform the patient in writing of the provider's refusal to correct or amend the record as requested, the reason for the refusal, and the patient's right to add a statement of disagreement and to have that statement sent to previous recipients of the disputed health care information.

**Section 16. Procedure for adding correction, amendment, or statement of disagreement.** (1) In making a correction or amendment, the health care provider shall:

(a) add the amending information as a part of the health record; and

(b) mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

(a) permit the patient to file as a part of the record of his health care information a concise statement of the correction or amendment requested and the reasons therefor; and

(b) mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances.

**Section 17. Dissemination of corrected or amended information or statement of disagreement.** (1) A health care provider, upon request of a patient, shall take reasonable steps to provide copies of corrected or amended information or of a statement of disagreement to all persons designated by the patient and identified in the health care information as having examined or received copies of the information sought to be corrected or amended.

(2) A health care provider may charge the patient a reasonable fee, not exceeding the provider's actual cost, for distributing corrected or amended information or the statement of disagreement, unless the provider's error necessitated the correction or amendment.

**Section 18. Content and dissemination of notice.** (1) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a notice of information practices, in substantially the following form:

#### NOTICE

"We keep a record of the health care services we provide for you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at \_\_\_\_\_."

(2) The health care provider shall post a copy of the notice of information practices in a conspicuous place in the health care facility and upon request provide patients or prospective patients with a copy of the notice.

**Section 19. Health care representatives.** (1) A person authorized to consent to health care for another may exercise the rights of that person under [sections 1 through 25] to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized under 41-1-402 to consent to health care without parental consent, only the minor may exclusively exercise the rights of a patient under [sections 1 through 25] as to information pertaining to health care to which the minor lawfully consented.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient.

**Section 20. Representative of deceased patient.** A personal representative of a deceased patient may exercise all of the deceased patient's rights under [sections 1 through 25]. If there is no personal representative

or upon discharge of the personal representative, a deceased patient's rights under [sections 1 through 25] may be exercised by persons who are authorized by law to act for him.

**Section 21. Duty to adopt security safeguards.** A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

**Section 22. Retention of record.** A health care provider shall maintain a record of existing health care information for at least 1 year following receipt of an authorization to disclose that health care information under [section 6] and during the pendency of a request for examination and copying under [section 13] or a request for correction or amendment under [section 15].

**Section 23. Criminal penalty.** (1) A person who by means of bribery, theft, or misrepresentation of identity, purpose of use, or entitlement to the information examines or obtains, in violation of [sections 1 through 25], health care information maintained by a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 1 year, or both.

(2) A person who, knowing that a certification under [section 12(2)] or a disclosure authorization under [sections 6 and 7] is false, purposely presents the certification or disclosure authorization to a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 1 year, or both.

**Section 24. Civil enforcement.** The attorney general or appropriate county attorney may maintain a civil action to enforce [sections 1 through 25]. The court may order any relief authorized by [section 25].

**Section 25. Civil remedies.** (1) A person aggrieved by a violation of [sections 1 through 25] may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with [sections 1 through 25] and may order any other appropriate relief.

(3) A health care provider who relies in good faith upon a certification, pursuant to [section 12(2)], is not liable for disclosures made in reliance on that certification.

(4) No disciplinary or punitive action may be taken against a health care provider or his employee or agent who brings evidence of a violation of [sections 1 through 25] to the attention of the patient or an appropriate authority.

(5) In an action by a patient alleging that health care information was improperly withheld under [sections 13 and 14], the burden of proof is on the health care provider to establish that the information was properly withheld.

(6) If the court determines that there is a violation of [sections 1 through 25], the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of \$5,000, exclusive of any pecuniary loss.

(7) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably incurred in the litigation.

(8) An action under [sections 1 through 25] is barred unless the action is commenced within 3 years after the cause of action accrues.

Section 26. Section 50-5-106, MCA, is amended to read:

**"50-5-106. Records and reports required of health care facilities — confidentiality.** Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provisions of 45-7-401 and [section 23], unless the disclosure was authorized in writing by the patient, his guardian, or his agent *in accordance with [sections 1 through 25]*. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state."

Section 27. Section 50-15-704, MCA, is amended to read:

**"50-15-704. Confidentiality.** Information received by the department pursuant to this part may not be released unless:

- (1) it is in statistical, nonidentifiable form;
- (2) the provisions of [sections 1 through 25] are satisfied;
- (3) the release or transfer is to a person or organization that is qualified to perform data processing or data analysis and that has safeguards against unauthorized disclosure of that information; or
- (4) the release or transfer is to a central tumor registry of another state and is of information concerning a person who is residing in that state."

Section 28. Section 53-21-166, MCA, is amended to read:

**"53-21-166. Records to be confidential — exceptions.** All information obtained and records prepared in the course of providing any services under this part to individuals under any provision of this part shall be confidential and privileged matter. *Except as provided in [sections 1 through 25]*, information and records may be disclosed only:

(1) in communications between qualified *professionals* in the provision of services or appropriate referrals;

(2) when the recipient of services designates persons to whom information or records may be released, provided that if a recipient of services is a ward and his guardian or conservator designates in writing persons to whom records or information may be disclosed, such designation shall be valid in lieu of the designation by the recipient; except that nothing in this section shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him in confidence by members of a patient's family;

(3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which he may be entitled;

(4) for research if the department has promulgated rules for the conduct of research; such rules shall include but not be limited to the requirement that all researchers must sign an oath of confidentiality;

(5) to the courts as necessary to the administration of justice;

(6) to persons authorized by an order of court, after notice and opportunity for hearing to the person to whom the record or information pertains and the custodian of the record or information pursuant to the rules of civil procedure;

(7) to members of the mental disabilities board of visitors or their agents when necessary to perform their functions as set out in 53-21-104."

Section 29. Section 53-24-306, MCA, is amended to read:

**"53-24-306. Records of chemically dependent persons, intoxicated persons, and family members.** (1) The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1), the department may make available *in accordance with [sections 1 through 25]* information from patients' records for purposes of research into the causes and treatment of chemical dependency. Information under this subsection shall not be published in a way that discloses patients' names or other identifying information."

**Section 30. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 31. Repealer.** Sections 50-16-301 through 50-16-305 and 50-16-311 through 50-16-314, MCA, are repealed.

Approved April 27, 1987.



**CHAPTER NO. 633**

[HB 721]

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE V, SECTION 6, OF THE MONTANA CONSTITUTION TO REQUIRE THAT THE LEGISLATURE MEET NOT MORE THAN 100 LEGISLATIVE DAYS IN REGULAR SESSION DURING THE TERM FOR WHICH A MEMBER OF THE HOUSE OF REPRESENTATIVES IS ELECTED; TO REQUIRE THE LEGISLATURE TO APPORTION THE ALLOWABLE LEGISLATIVE DAYS BETWEEN SESSIONS; TO PROVIDE LIMITATIONS ON THE BUSINESS THAT MAY BE CONDUCTED IN EACH SESSION; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Article V, section 6, of The Constitution of the State of Montana is amended to read:

**"Section 6. Sessions.** The legislature shall be a continuous body for 2-year periods, beginning when the newly elected members take office as may be determined by the legislature. The legislature shall meet once a year in regular session. The legislature may not meet in regular sessions more than 100 legislative days during the term for which members of the house of representatives are elected. The legislature shall limit by law the length of each regular session. The length of a regular session so established may not exceed 60 legislative days. The session in even-numbered years must be limited to consideration of general legislation\* not relating to revenue or appropriations. The session in odd-numbered years must be limited to consideration of legislation relating to revenue or appropriations. No bill introduced in one session may be carried over to any other session of that legislature. The legislature may adopt rules permitting consideration of legislation unrelated to the subject limitations of that session. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members."

Section 2. **Effective date.** If approved by the electorate, this amendment is effective January 1, 1991.

Section 3. **Submission to electorate.** This amendment shall be submitted to the electors of Montana at the general election to be held November 8, 1988, by printing on the ballot the full title of this act and the following:

- ☐ FOR requiring the legislature to meet each year, with limitations on legislative days and business to be conducted.
- ☐ AGAINST requiring the legislature to meet each year, with limitations on legislative days and business to be conducted.

Approved May 11, 1987.

**CHAPTER NO. 634**

[SB 48]

AN ACT PROVIDING FOR THE PERIODIC PAYMENT OF FUTURE DAMAGES IN AN ACTION FOR PERSONAL INJURY, PROPERTY DAMAGE, OR WRONGFUL DEATH IF THE AMOUNT OF FUTURE DAMAGES AWARDED EQUALS OR EXCEEDS \$100,000 AND IF PERIODIC PAYMENT IS IN THE BEST INTERESTS OF THE CLAIMANT; AND PROVIDING FOR A SEPARATE STATEMENT AND METHOD OF CALCULATION OF ATTORNEY FEES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** In [sections 2 through 6]:

(1) "future damages" includes damages for future medical treatment, care, or custody, loss of future earnings, and future pain and suffering of the judgment creditor; and

(2) "periodic payment" means the payment of money to the judgment creditor at regular intervals.

**Section 2. Findings by trier of fact — civil actions.** In any action for personal injury, property damage, or wrongful death where liability is found after trial and in which \$100,000 or more in future damages is awarded to the claimant, the trier of fact shall make a separate finding as to the amount of any future damages so awarded and state whether the amount of future damages has been reduced to present value.

**Section 3. Request for periodic payment of future damages.** (1) A party to an action for personal injury, property damage, or wrongful death in which \$100,000 or more of future damages is awarded may, prior to the entry of judgment, request the court to enter a judgment ordering future damages to be paid in whole or in part by periodic payments rather than by a lump-sum payment. Upon such request, the court may enter an order for periodic payment of future damages if the court finds that such payment is in the best interests of the claimant. The total dollar amount of the ordered periodic payments must equal the total dollar amount of the future damages without a reduction to present value.

(2) A court ordering the payment of future damages by periodic payments shall make specific findings as to the dollar amount of periodic payments needed to compensate the judgment creditor for future damages and as to whether an order for periodic payment of future damages is in the best interests of the claimant.

(3) The judgment order must specify the recipient or recipients of periodic payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made.

(4) A court ordering periodic payment of future damages shall order that the payments be made, during the life of the judgment creditor or during the continuance of the compensable injury or disability of the judgment creditor, through the purchase of an inflation-indexed annuity approved by the court. The annuity must be in the form of an inflation-indexed annuity contract purchased from a qualified insurer that, in the most recent edition of A.M. Best, has an "A" (excellent) or higher rating

and is in a class 7 or higher classification. The annuity also serves as any required supersedeas bond. Upon purchase of a court-approved annuity, the court may order that the judgment is satisfied and that the judgment debtor is discharged. If the judgment creditor dies before all periodic payments have been made, the remaining payments become the property of his estate.

**Section 4. Payment of attorney fees.** A judgment must order payment of attorney fees and litigation expenses separately from an order for periodic payments of future damages. The attorney fees and expenses must be paid either in a lump sum or by periodic payments pursuant to an agreement entered into between the claimant and his attorney. An agreement for the immediate lump-sum payment of that portion of the attorney fees incurred to recover future damages to be paid by periodic payments must be calculated on the basis of the present value of the future damages.

**Section 5. Failure to pay — penalty.** If the court finds that the insurer that sold the annuity to the judgment debtor has unjustifiably exhibited a continuing pattern of failing to make periodic payments, the court shall find the insurer in contempt of court and order the insurer to pay past-due payments and the judgment creditor's damages caused by the failure to make payments, including court costs and attorney fees.

**Section 6. Assignment of periodic installments.** An assignment of or an agreement to assign any right to periodic installments for future damages contained in a judgment entered under [sections 1 through 6] is enforceable only as to amounts:

- (1) to secure payment of alimony, maintenance, or child support; or
- (2) for the costs of products, services, or accommodations provided or to be provided by the assignee for medical or other health care.

**Section 7. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 11, 1987.

## CHAPTER NO. 635

[SB 183]

AN ACT TO PROVIDE, THROUGH THE NET LOTTERY REVENUE, STATE AID TO ASSIST HIGH-LEVY COUNTIES IN PAYMENT OF A PORTION OF THE RETIREMENT FUND OBLIGATIONS OF ELEMENTARY AND HIGH SCHOOL DISTRICTS; TO PROVIDE A METHOD OF ESTABLISHING COUNTY ENTITLEMENT AND FOR DISTRIBUTING SUCH AID; AMENDING SECTIONS 20-3-106 AND 20-9-501, MCA, AND SECTION 13, CHAPTER 669, LAWS OF 1985; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. State retirement equalization account — authorization to appropriate.** There is a state retirement equalization account in the state special revenue fund. Money determined in [section 2] must be

deposited in the account. The legislature may appropriate the money in the account to the superintendent of public instruction to assist the counties in equalizing a portion of the retirement fund obligations as provided in 20-9-501.

**Section 2. Calculation and distribution of retirement equalization aid.** (1) The superintendent of public instruction shall administer the distribution of retirement equalization aid by:

(a) determining the estimated revenue available from the net lottery revenue as provided in [section 4 of House Bill No. 374];

(b) establishing a list containing each county that levied in the prior school fiscal year in excess of 9 mills to fund its required contribution for retirement fund obligations;

(c) establishing the estimated dollar amount per average number belonging (ANB) by dividing the amount determined in subsection (1)(a) by the total ANB of the counties listed pursuant to subsection (1)(b) for the prior school fiscal year;

(d) notifying the county superintendent of each county listed in subsection (1)(b) by the fourth Monday in July of the estimated retirement equalization aid available to the county, calculated separately for elementary and high school districts and prorated as specified in 20-9-501 for any joint school district, so that each county superintendent may use the amounts in the manner prescribed in 20-9-501 to calculate the retirement fund levy requirements for elementary and high school districts in the county;

(e) distributing by October 1 the amount of retirement equalization aid for each county listed pursuant to subsection (1)(b); and

(f) keeping a record of the complete data concerning revenue available for retirement equalization aid and the distribution of such aid.

(2) If the actual proceeds available for retirement equalization are not sufficient to finance the estimated dollar amount per ANB provided for in subsection (1)(c), each county listed pursuant to subsection (1)(b) must receive a prorated amount.

**Section 3.** Section 20-3-106, MCA, is amended to read:

**"20-3-106. Supervision of schools — powers and duties.** The superintendent of public instruction has the general supervision of the public schools and districts of the state, and he shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) serve on the teachers' retirement board in accordance with the provisions of 2-15-1010;

(5) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 20-6-311;

(6) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(7) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(8) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(9) establish a system of communication for calculating joint district revenues in accordance with the provisions of 20-9-151;

(10) approve or disapprove the adoption of a district's emergency budget resolution under the conditions prescribed in 20-9-163 and publish rules for an application for additional state aid for an emergency budget in accordance with the approval and disbursement provisions of 20-9-166;

(11) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(12) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(5) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(13) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(14) distribute state equalization aid in support of the foundation program in accordance with the provisions of 20-9-342, 20-9-346, and 20-9-347;

(15) distribute state impact aid in accordance with the provisions of 20-9-304;

(16) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(17) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 20-7-705;

(18) request, accept, deposit, and expend federal moneys in accordance with the provisions of 20-9-603;

(19) authorize the use of federal moneys for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(20) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(21) approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of 20-1-303 and 20-1-304;

(22) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with such standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(23) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(24) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(25) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(26) as the governing agent and executive officer of the state of Montana for vocational education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(27) consider applications for the designation of a postsecondary vocational-technical center in accordance with the provisions of 20-7-311;

(28) establish a fund for the handling of postsecondary vocational-technical center fees in accordance with the provisions of 20-7-333;

(29) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(30) administer the traffic education program in accordance with the provisions of 20-7-502;

(31) administer the school food services program in accordance with the provisions of 20-10-201, 20-10-202, and 20-10-203;

(32) review school building plans and specifications in accordance with the provisions of 20-6-622;

(33) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408;

(34) *administer the distribution of state retirement equalization aid in accordance with [section 2]; and*

(35) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

Section 4. Section 20-9-501, MCA, is amended to read:

**"20-9-501. Retirement fund.** (1) The trustees of any district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to such systems. The district's contribution for each employee who is a member of the teachers' retirement system shall be calculated in accordance with Title

19, chapter 4, part 6. The district's contribution for each employee who is a member of the public employees' retirement system shall be calculated in accordance with 19-3-801. The district may levy a special tax to pay its contribution to the public employees' retirement system under the conditions prescribed in 19-3-204. The district's contributions for each employee covered by any federal social security system shall be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance shall be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of any district required to make a contribution to any such system shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution and such additional moneys, within legal limitations, as they may wish to provide for the retirement fund cash reserve. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to such systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the moneys available to reduce the retirement fund levy requirement by adding:

(i) any anticipated moneys that may be realized in the retirement fund during the ensuing school fiscal year, including anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536;

(ii) net proceeds taxes for new production, as defined in 15-23-601; and

(iii) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the retirement fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the retirement fund. The retirement fund cash reserve shall not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and shall be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(b) subtracting the total of the moneys available for reduction of the levy requirement as determined in subsection (3)(a) from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements;

(b) *reduce the total retirement fund levy requirements of elementary school districts and high school districts by the amount available in state retirement equalization aid as calculated and distributed under the provisions of [section 2]; and*

(c) report each such levy requirement to the county commissioners on the second Monday of August as the respective county levy requirements

for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners shall fix and set such county levy in accordance with 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint high school district shall be prorated to each county in which a part of such district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each such county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements shall be prorated to each county in which such district is located in the same proportion as the budget for the special education cooperative agreement of the district bears to the total budget of the cooperative. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151 and fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152."

Section 5. Section 13, Chapter 669, Laws of 1985, is amended to read:

"Section 13. **Disposition of revenue.** (1) As near as possible to 45% of the money paid for tickets or chances in each separate state lottery game must be paid out as prize money for the game.

(2) Up to 15% of the gross revenue from the state lottery may be used by the director to pay the operating expenses of the state lottery. Commissions paid to lottery ticket or chance sales agents are a state lottery operating expense.

(3) That part of all gross revenue not used for the payment of prizes and operating expenses is net revenue and must be paid quarterly from the enterprise fund established by [section 12] to the superintendent of public instruction for distribution as equalization aid to the retirement *fund obligations of elementary and high school districts in the manner provided in [section 2].*"

Section 6. **Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 20, chapter 9, part 5, and the provisions of Title 20 apply to sections 1 and 2.

Section 7. **Coordination instruction.** If this bill is passed and approved, the last sentence of section 13, Chapter 669, Laws of 1985, as it appears in section 4 of House Bill No. 374 is void. The sentence reads: "The superintendent of public instruction shall then distribute by state warrant the total amount of net lottery revenue available that has been deposited in the superintendent of public instruction lottery account for each county by October 1 of the school fiscal year."

Section 8. **Effective date.** This act is effective July 1, 1988.

Approved May 11, 1987.



**CHAPTER NO. 636**

[SB 331]

AN ACT TO ESTABLISH A PHEASANT ENHANCEMENT PROGRAM TO BE ADMINISTERED BY THE DEPARTMENT OF FISH, WILD-LIFE, AND PARKS; TO PROVIDE FUNDING THROUGH INCREASED LICENSE FEES; AMENDING SECTIONS 87-2-401, 87-2-402, 87-2-505, AND 87-2-711, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Funding of pheasant enhancement program.** The amount of money specified in this section from the sale of each hunting license listed must be used exclusively by the department to preserve and enhance pheasant populations in Montana in accordance with [sections 1 through 4], subject to appropriation by the legislature:

- (1) Class A-1, resident game bird, \$2;
- (2) Class B-1, nonresident game bird, \$23;
- (3) Class AAA, sportsman's, \$2; and
- (4) Class B-10, nonresident big game combination, \$23.

**Section 2. Authorized use of funds.** (1) Not more than 10% of the money generated under [section 1] may be used by the department to:

- (a) prepare and disseminate information to landowners and organizations concerning the pheasant enhancement program;
- (b) review potential pheasant release sites;
- (c) assist applicants in preparing management plans for project areas; and
- (d) evaluate the pheasant enhancement program.

(2) The remainder of the money raised must be used to share, up to \$3 a bird, in the cost of releasing pheasants in suitable habitat, in such numbers and under conditions determined by the department.

**Section 3. Qualification of pheasant enhancement projects.** (1) A project eligible for funding under this program must contain the proper combination of winter cover, food, nesting cover, and other pheasant habitat components determined necessary by the department to provide for a viable permanent pheasant population.

(2) No project containing hunting preserves or any commercial hunting enterprise or wherein hunting rights are leased or paid for is eligible for funding.

(3) Preference must be given for project applications submitted by youth organizations, 4-H clubs, sportsmen's groups, and other associations

of sufficient size to guarantee completion of all project requirements. However, individual landowners may also apply, so long as the land in the project area remains open to public hunting in accordance with reasonable use limitations imposed by the landowner.

**Section 4. Rules.** The department shall adopt rules for the administration of the pheasant enhancement program created in [sections 1 through 4].

**Section 5.** Section 87-2-401, MCA, is amended to read:

**"87-2-401. Class A-1—resident game bird license.** Except as otherwise provided, a resident, as defined by 87-2-102, who is 12 years of age or older may, upon payment of a fee of \$6, receive a Class A-1 license which will entitle the holder to pursue, hunt, shoot, and kill game birds and possess the carcasses of game birds as authorized by department rules."

**Section 6.** Section 87-2-402, MCA, is amended to read:

**"87-2-402. Class B-1—nonresident game bird license.** Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of a fee of \$53 may receive a Class B-1 license which shall entitle the holder thereof to pursue, hunt, shoot, and kill game birds and possess the carcasses of game birds as authorized by department rules."

**Section 7.** Section 87-2-505, MCA, is amended to read:

**"87-2-505. Class B-10—nonresident big game combination license.** Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the fee of \$373 and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license which shall entitle the holder to all the privileges of Class B, Class B-1, Class B-7, and black bear licenses, and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 17,000 Class B-10 licenses may be sold in any one license year."

**Section 8.** Section 87-2-711, MCA, is amended to read:

**"87-2-711. Class AAA—sportsman's license.** Any resident, as defined by 87-2-102, who will be 12 years of age or older prior to September 15 of the season for which the license is issued, upon payment of the sum of \$38, shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5, A-6, and resident conservation licenses as prescribed in 87-2-202. The department shall furnish each holder of a sportsman's license an appropriate decal."

**Section 9. Report.** The department shall report to the fish and game committee of each house of the legislature concerning pheasant enhancement activities undertaken pursuant to [sections 1 through 4] during the preceding biennium, together with any recommendations concerning the operation of the program.

Section 10. **Codification instruction.** Sections 1 through 4 are intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87 apply to sections 1 through 4.

Section 11. **Coordination instruction.** (1) If Senate Bill No. 171 is passed and approved, the reference to "game bird" in subsections (1) and (2) of section 1 is changed to "upland game bird".

(2) If House Bill No. 526 and the provisions therein increasing the costs of the Class B-10 and Class AAA sportsmen's licenses are passed and approved:

(a) \$23 of the \$100 increase of the cost of Class B-10 license shall be used for the pheasant enhancement program; and

(b) \$2 of the \$9 increase of the cost of the Class AAA sportsman's license shall be used for the pheasant enhancement program.

Section 12. **Effective date.** This act is effective March 1, 1988.

Approved May 11, 1987.

## CHAPTER NO. 637

[SB 360]

AN ACT REVISING THE NOTICE REQUIREMENTS CONCERNING A SUPPLIER'S RIGHT OF ACTION ON A BOND UNDER A PUBLIC CONSTRUCTION CONTRACT; AMENDING SECTION 18-2-206, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 18-2-206, MCA, is amended to read:

**"18-2-206. Notice to contractor concerning subcontractor.** (1) Every person, firm, or corporation furnishing provender, provisions, materials, or supplies to be used in the construction, performance, carrying on, prosecution, or doing of any work for the state or any county, city, town, district, municipality, or other public body shall, not later than 30 days after the date of the first delivery to any subcontractor or agent of any person, firm, or corporation having a subcontract for the construction, performance, carrying on, prosecution or doing of such work, *give a notice of a right of action on the bond.*

(2) (a) *The notice must be delivered personally or sent by certified mail to the contractor.*

(b) *The notice must be in writing and state:*

(i) *that it is a notice of a right of action on the bond;*

(ii) *that the person, firm, or corporation giving the notice has commenced to deliver provender, provisions, materials, or supplies;*

(iii) *the name of the subcontractor or agent who placed the order or to whom the provender, provisions, materials, or supplies were delivered; and*

(iv) *that the contractor and his bond will be held for the unpaid price if the supplier is not paid.*

(3) *To have a right of action against the contractor and his bond under this part, a person, firm, or corporation must give the written notice required by this section in substantially this form. Any other type of actual or constructive notice is not sufficient.*

(4) *No suit or action may be maintained in any court against the contractor or his bond to recover for such provender, provisions, material, or supplies or any part thereof unless the provisions of this part have been complied with."*

**Section 2. Applicability.** This act applies to contracts made on and after October 1, 1987.

Approved May 11, 1987.

## CHAPTER NO. 638

[SB 371]

AN ACT PERMITTING INSURERS TO ENTER INTO AGREEMENTS WITH HEALTH CARE PROVIDERS AND TO ISSUE POLICIES THAT INCLUDE INCENTIVES FOR UTILIZING SERVICES RENDERED BY PROVIDERS WITH WHOM THE INSURER HAS AN AGREEMENT; AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 7] may be cited as the "Preferred Provider Agreements Act".

**Section 2. Purpose.** The purpose of [sections 1 through 7] is to allow a health care insurer providing disability insurance benefits to negotiate and contract with health care providers to:

(1) provide health care services to its insureds or subscribers at a reduction in the fees customarily charged by the provider; or

(2) enter into agreements in which the participating providers accept negotiated fees as payment in full for health care services the health care insurer is obligated to provide or pay for under the health benefit plan.

**Section 3. Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Emergency services" means services provided after suffering an accidental bodily injury or the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe

pain) that without immediate medical attention the subscriber or insured could reasonably expect that:

- (a) his health would be in serious jeopardy;
- (b) his bodily functions would be seriously impaired; or
- (c) a bodily organ or part would be seriously damaged.

(2) "Health benefit plan" means the health insurance policy or subscriber arrangement between the insured or subscriber and the health care insurer that defines the covered services and benefit levels available.

(3) "Health care insurer" means:

- (a) an insurer that provides disability insurance as defined in 33-1-207;
- (b) a health service corporation as defined in 33-30-101;
- (c) a health maintenance organization [as defined in section 2 of Senate Bill No. 353];
- (d) a fraternal benefit society as defined in 33-7-102;
- (e) an administrator as defined in 33-17-601; or
- (f) any other entity regulated by the commissioner that provides health coverage.

(4) "Health care services" means health care services or products rendered or sold by a provider within the scope of the provider's license or legal authorization or services provided under Title 33, chapter 22, part 7.

(5) "Insured" means an individual entitled to reimbursement for expenses of health care services under a policy or subscriber contract issued or administered by an insurer.

(6) "Preferred provider" means a provider or group of providers who have contracted to provide specified health care services.

(7) "Preferred provider agreement" means a contract between or on behalf of a health care insurer and a preferred provider.

(8) "Provider" means an individual or entity licensed or legally authorized to provide health care services or services covered within Title 33, chapter 22, part 7.

(9) "Subscriber" means a certificate holder or other person on whose behalf the health care insurer is providing or paying for health care coverage.

**Section 4. Preferred provider agreements authorized.** (1) Notwithstanding any other provision of law to the contrary, a health care insurer may:

(a) enter into agreements with providers relating to health care services that may be rendered to insureds or subscribers on whose behalf the health care insurer is providing health care coverage, including preferred provider agreements relating to:

- (i) the amounts an insured may be charged for services rendered; and
- (ii) the amount and manner of payment to the provider; and

(b) issue or administer policies or subscriber contracts in this state that include incentives for the insured to use the services of a provider that has entered into an agreement with the insurer pursuant to subsection (1)(a).

(2) A preferred provider agreement issued or delivered in this state may not unfairly deny health benefits for health care services covered.

(3) [Sections 1 through 7] do not require that an insurer negotiate or enter into agreements with any specific provider or class of providers.

**Section 5. Incentives in health benefit plans.** (1) A health care insurer may issue a policy or a health benefit plan that provides for incentives for covered persons to use the health care services of preferred providers. The policy or health benefit plan must contain at least:

(a) a provision that if a covered person receives emergency care for services specified in the preferred provider agreement and cannot reasonably reach a preferred provider, the care rendered during the course of the emergency will be reimbursed as though the covered person had been treated by a preferred provider; and

(b) a provision that clearly identifies the difference in benefit levels for health care services of a preferred provider and benefit levels for the same health care services of a nonpreferred provider.

(2) A health care insurer may not require hospital staff privileges as criteria for designation as a preferred provider in a preferred provider agreement.

**Section 6. Permissible provisions in provider agreements, insurance policies, and subscriber contracts.** (1) A provider agreement, insurance policy, or subscriber contract issued or delivered in this state may contain certain other components designed to control the cost and improve the quality of health care for insureds and subscribers, including:

(a) a provision setting a payment difference for reimbursement of a nonpreferred provider as compared to a preferred provider. If the health benefit plan contains a payment difference provision, the payment difference may not exceed 25% of the reimbursement level at which a preferred provider would be reimbursed. The commissioner shall review differences between copayments, deductibles, and other cost-sharing arrangements.

(b) conditions, not inconsistent with other provisions of [sections 1 through 6], designed to give policyholders or subscribers an incentive to choose a particular provider.

(2) All terms or conditions of an insurance policy or subscriber contract, except those already approved by the commissioner, are subject to the prior approval of the commissioner.

**Section 7. Rules.** The commissioner shall promulgate rules necessary to implement the provisions of [sections 1 through 7].

**Section 8. Codification instruction.** Sections 1 through 7 are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to sections 1 through 7.

**Section 9. Coordination instruction.** If Senate Bill No. 353, including the definition of "health maintenance organization", is not passed and approved, the bracketed language in section 3(3)(c) of this act is void.

**Section 10. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 11. Applicability — filing with commissioner.** On or before January 1, 1988, a health care insurer performing the functions enumerated in this act shall notify the commissioner of its existence and continue to operate subject to the provisions of this act.

**Section 12. Effective date.** Section 7 and this section are effective on passage and approval.

Approved May 11, 1987.

## CHAPTER NO. 639

[HB 102]

AN ACT ASSESSING A 50-CENT WEED CONTROL FEE UPON THE ANNUAL REGISTRATION OF ALL MOTOR VEHICLES SUBJECT TO REGISTRATION; ALLOCATING THE PROCEEDS TO BE USED FOR CHEMICAL AND NONCHEMICAL NOXIOUS WEED MANAGEMENT; REVISING THE PERMITTED USE OF NOXIOUS WEED MANAGEMENT FUNDS; AMENDING SECTION 80-7-814, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, noxious weeds infest 6.5 million acres of rangeland and are costing the State of Montana an estimated \$47 million annually; and

WHEREAS, vehicles have been shown to be one of the major contributors to the spread of noxious weeds in Montana, and county and state funds are inadequate for stopping the spread of these weeds from roadsides and trails into adjacent rangeland; and

WHEREAS, the amount of \$125,000 in annual revenue generated by the herbicide surcharge to fund weed control projects through the noxious weed management trust fund is inadequate to address the current weed problem; and interest income from the permanent account of the noxious weed management trust fund cannot be used to fund weed management projects in Montana until the fund reaches \$2.5 million; and

WHEREAS, during this period, the spread of noxious weeds will continue at the rate of about 27% annually; and

WHEREAS, current weed management projects prove the success of well-planned, organized, and cooperative programs.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Weed control fee.** (1) A special weed control fee of 50 cents must be assessed on the annual registration or reregistration of each motor vehicle subject to registration. The fee must be collected by the county treasurer.

(2) For purposes of this section, motor vehicle includes:

- (a) motor vehicle as defined in 61-1-102;
- (b) motorcycle as defined in 61-1-105;
- (c) motor-driven cycle as defined in 61-1-106; and
- (d) quadricycle as defined in 61-1-133.

(3) The following vehicles are exempt from the fee:

- (a) vehicles owned or controlled by the United States or a state, county, or city;
- (b) vehicles exempt from payment of registration fees by 61-3-321(7); and
- (c) vehicles or equipment which is not self-propelled or which requires towing when moved upon a highway of this state.

**Section 2. Disposition of proceeds.** Three percent of the proceeds from the fee imposed in [section 1] may be retained by the county treasurer for costs of collection. The remainder must be deposited in the special revenue fund and must be expended as provided in 80-7-814(2) and (3). Twenty-five percent of the money deposited in the special revenue fund under this section must be used for research and development of nonchemical methods of weed management.

**Section 3.** Section 80-7-814, MCA, is amended to read:

**"80-7-814. Administration and expenditure of funds.** (1) Money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches \$2,500,000, except as provided by 80-7-815 in case of a noxious weed emergency. Once this amount is accumulated, any interest or revenue generated by the trust fund and by other funding measures provided by this part must be deposited in the special revenue fund and may be expended for noxious weed management projects in accordance with this section, so long as the principal of the trust fund remains at least \$2,500,000.

(2) The department may expend funds under this section through grants or contracts to communities, weed control districts, or other entities it considers appropriate for noxious weed management projects. A project



is eligible to receive funds only if the county in which the project occurs has funded its own weed management program with a levy in an amount not less than 1.6 mills or an equivalent amount from another source, *or by an amount of not less than \$100,000 for first class counties, as defined in 7-1-2111.*

(3) The department may expend funds without the restrictions specified in subsection (2) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. Such expenditures must be on a cost-share basis with such organizations.

(b) cost-share noxious weed management programs with local weed control districts;

(c) special grants to local weed control districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) costs of collecting the surcharge imposed by 80-7-812, not to exceed 3% of the total surcharge proceeds;

(e) administrative expenses incurred by the noxious weed management advisory council; *and*

*(f) any project recommended by the noxious weed management advisory committee, if the department determines the project will significantly contribute to the management of noxious weeds within the state.*

(4) In making such expenditures, the department must give preference to weed control districts and community groups.

(5) If the noxious weed management trust fund is terminated by law, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose."

Section 4. **Extension of authority.** Any existing authority of the department of agriculture to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Effective date.** This act is effective July 1, 1987.

Approved May 11, 1987.

## CHAPTER NO. 640

[HB 206]

**AN ACT TO ALLOW A VIDEO DRAW POKER MACHINE TO ACCEPT CASH IN THE FORM OF BILLS NOT TO EXCEED \$5; AND AMENDING SECTION 23-5-606, MCA.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-5-606, MCA, is amended to read:

**"23-5-606. Description and specifications.** Each video draw poker machine must:

(1) be inspected in the state of Montana for certification and licensure by the department;

(2) be connected with a system consisting of player-operated terminals. The terminals must be intelligent devices operated by the players in the manner specified in this part.

(3) not have any switches, jumpers, wire posts, or any other means of manipulation that could affect the operation or outcome of a game; and

(4) offer only the game of draw poker and have the following method of operation:

(a) the cards must be shuffled after each hand of poker is dealt;

(b) the game must have one memory location for each card in the deck. The deck must be shuffled by use of a random number generator to exchange each card in the deck with another randomly selected card.

(c) after shuffling, five cards must be dealt from the top of the deck;

(d) any discarded cards must be replaced by remaining cards in the deck, starting with the sixth card and using the cards in the order of the deck;

(e) after the first five cards of a hand have been dealt, the player may be allowed to raise his wager up to the amount of his initial ante, not to exceed eight quarters;

(f) *each quarter must represent one credit;*

(g) the game must display the hands for which free games or credits will be awarded and the number of free games or credits for each hand;

(h) the machine must have doors to two locking areas, one area containing the logic board and software for the game draw poker and the other housing the cash compartment and mechanical meters. These areas must be locking and separated. Access to one from the other must not be allowed at any time.

(i) (i) the machine must have two mechanisms, hereinafter referred to as "mechanism 1" and "mechanism 2", that accept quarters;

(ii) *the machine may have a mechanism that accepts cash in the form of bills not to exceed \$5;*

(j) the machine must use a color display with images of cards that closely resemble standard poker playing cards;

(k) the machine must be capable of printing a ticket voucher for the player at the completion of each game. If credits are owed the player, the ticket must contain:

(i) the name of the licensed establishment;

(ii) the name of the city, town, or county in which the licensed establishment is located;

(iii) the value of the prize in numbers;

- (iv) the value of the prize in words;
- (v) the time of day, in hours and minutes in a 24-hour format;
- (vi) the date;
- (vii) the machine license number or serial number up to eight digits;
- (viii) the sequential number of the ticket voucher; and
- (ix) an encrypted validation number from which the validity of the prize can be determined;
- (l) an exact copy of each printed ticket voucher must be printed and retained within the machine;
- (m) the machine must have nonresettable mechanical meters housed in the cash compartment that keep a permanent record of:
  - (i) *total coins accepted by both coin acceptors;*
  - (ii) *total credits in the bill acceptor if the machine has a bill acceptor;*
  - (iii) credits played by player;
  - (iv) credits won by player; and
  - (v) credits printed out by the ticket voucher printer;
- (n) the machine must contain electronic metering, using meters that record the following and display them on the video screen:
  - (i) total coins in mechanism 1, total coins in mechanism 2, and total coins in mechanisms 1 and 2 combined;
  - (ii) *if the machine has a bill acceptor, it must contain electronic metering using meters that record total coins in mechanisms 1 and 2 combined and total credits in the bill acceptor;*
  - (iii) total credits, total credits played, and total credits won;
  - (iv) total hands of poker played and total hands of poker won;
  - (v) total winning hands, consisting of a pair, two pair, three of a kind, a straight, a flush, a full house, four of a kind, a straight flush, or five of a kind;
  - (vi) total errors from the logic board random access memory; and
  - (vii) total examination of electronic meters;
- (o) the machine may not have any functions or parameters adjustable by or through any separate video display or input codes, except for the adjustment of features that are wholly cosmetic;
- (p) the machine must issue, by activation of an external switch, an accounting ticket containing a performance synopsis of the machine. The ticket must contain:
  - (i) the name of the licensed establishment;

- (ii) the name of the city, town, or county in which the licensed establishment is located;
- (iii) the license number of the machine;
- (iv) the time of day, in hours and minutes in a 24-hour format;
- (v) the date; and
- (vi) the electronic meter readings required by subsection (4)(n)."

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved May 11, 1987.

## CHAPTER NO. 641

[HB 241]

AN ACT PROVIDING A PROCEDURE AND REMEDIES FOR WRONGFUL DISCHARGE; AUTHORIZING ARBITRATION AS AN ALTERNATIVE; ELIMINATING COMMON-LAW REMEDIES; REPEALING SECTIONS 39-2-504 AND 39-2-505, MCA; AND PROVIDING AN APPLICABILITY CLAUSE AND AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [Sections 1 through 9] may be cited as the "Wrongful Discharge From Employment Act".

Section 2. **Purpose.** [Sections 1 through 9] set forth certain rights and remedies with respect to wrongful discharge. Except as limited in [sections 1 through 9], employment having no specified term may be terminated at the will of either the employer or the employee on notice to the other for any reason considered sufficient by the terminating party. Except as provided in [section 7], [sections 1 through 9] provide the exclusive remedy for a wrongful discharge from employment.

Section 3. **Definitions.** In [sections 1 through 9], the following definitions apply:

(1) "Constructive discharge" means the voluntary termination of employment by an employee because of a situation created by an act or omission of the employer which an objective, reasonable person would find so intolerable that voluntary termination is the only reasonable alternative. Constructive discharge does not mean voluntary termination because of an employer's refusal to promote the employee or improve wages, responsibilities, or other terms and conditions of employment.

(2) "Discharge" includes a constructive discharge as defined in subsection (1) and any other termination of employment, including resignation,

elimination of the job, layoff for lack of work, failure to recall or rehire, and any other cutback in the number of employees for a legitimate business reason.

(3) "Employee" means a person who works for another for hire. The term does not include a person who is an independent contractor.

(4) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability insurance plan, life insurance plan, and pension benefit plan in force on the date of the termination.

(5) "Good cause" means reasonable, job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason.

(6) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service as gross income on Form W-2 and includes additional compensation deferred at the option of the employee.

(7) "Public policy" means a policy in effect at the time of the discharge concerning the public health, safety, or welfare established by constitutional provision, statute, or administrative rule.

**Section 4. Elements of wrongful discharge.** A discharge is wrongful only if:

(1) it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy;

(2) the discharge was not for good cause and the employee had completed the employer's probationary period of employment; or

(3) the employer violated the express provisions of its own written personnel policy.

**Section 5. Remedies.** (1) If an employer has committed a wrongful discharge, the employee may be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge, together with interest thereon. Interim earnings, including amounts the employee could have earned with reasonable diligence, must be deducted from the amount awarded for lost wages.

(2) The employee may recover punitive damages otherwise allowed by law if it is established by clear and convincing evidence that the employer engaged in actual fraud or actual malice in the discharge of the employee in violation of [section 4(1)].

(3) There is no right under any legal theory to damages for wrongful discharge under [sections 1 through 9] for pain and suffering, emotional distress, compensatory damages, punitive damages, or any other form of damages, except as provided for in subsections (1) and (2).

**Section 6. Limitation of actions.** (1) An action under [sections 1 through 9] must be filed within 1 year after the date of discharge.

(2) If an employer maintains written internal procedures, other than those specified in [section 7], under which an employee may appeal a discharge within the organization structure of the employer, the employee shall first exhaust those procedures prior to filing an action under [sections 1 through 9]. The employee's failure to initiate or exhaust available internal procedures is a defense to an action brought under [sections 1 through 9]. If the employer's internal procedures are not completed within 90 days from the date the employee initiates the internal procedures, the employee may file an action under [sections 1 through 9] and for purposes of this subsection the employer's internal procedures are considered exhausted. The limitation period in subsection (1) is tolled until the procedures are exhausted. In no case may the provisions of the employer's internal procedures extend the limitation period in subsection (1) more than 120 days.

(3) If the employer maintains written internal procedures under which an employee may appeal a discharge within the organizational structure of the employer, the employer shall within 7 days of the date of the discharge notify the discharged employee of the existence of such procedures and shall supply the discharged employee with a copy of them. If the employer fails to comply with this subsection, the discharged employee need not comply with subsection (2).

**Section 7. Exemptions.** [Sections 1 through 9] do not apply to a discharge:

(1) that is subject to any other state or federal statute that provides a procedure or remedy for contesting the dispute. Such statutes include those that prohibit discharge for filing complaints, charges, or claims with administrative bodies or that prohibit unlawful discrimination based on race, national origin, sex, age, handicap, creed, religion, political belief, color, marital status, and other similar grounds.

(2) of an employee covered by a written collective bargaining agreement or a written contract of employment for a specific term.

**Section 8. Preemption of common-law remedies.** Except as provided in [sections 1 through 9], no claim for discharge may arise from tort or express or implied contract.

**Section 9. Arbitration.** (1) Under a written agreement of the parties, a dispute that otherwise could be adjudicated under [sections 1 through 9] may be resolved by final and binding arbitration as provided in this section.

(2) An offer to arbitrate must be in writing and contain the following provisions:

(a) A neutral arbitrator must be selected by mutual agreement or, in the absence of agreement, as provided in 27-5-211.

(b) The arbitration must be governed by the Uniform Arbitration Act, Title 27, chapter 5. If there is a conflict between the Uniform Arbitration Act and [sections 1 through 9], [sections 1 through 9] apply.

(c) The arbitrator is bound by [sections 1 through 9].

(3) If a complaint is filed under [sections 1 through 9], the offer to arbitrate must be made within 60 days after service of the complaint and must be accepted in writing within 30 days after the date the offer is made.

(4) A party who makes a valid offer to arbitrate that is not accepted by the other party and who prevails in an action under [sections 1 through 9] is entitled as an element of costs to reasonable attorney fees incurred subsequent to the date of the offer.

(5) A discharged employee who makes a valid offer to arbitrate that is accepted by the employer and who prevails in such arbitration is entitled to have the arbitrator's fee and all costs of arbitration paid by the employer.

(6) If a valid offer to arbitrate is made and accepted, arbitration is the exclusive remedy for the wrongful discharge dispute and there is no right to bring or continue a lawsuit under [sections 1 through 8]. The arbitrator's award is final and binding, subject to review of the arbitrator's decision under the provisions of the Uniform Arbitration Act.

Section 10. **Repealer.** Sections 39-2-504 and 39-2-505, MCA, are repealed.

Section 11. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. **Applicability.** This act applies to claims arising after the effective date of this act.

Section 13. **Effective date.** This act is effective July 1, 1987.

Approved May 11, 1987.

## CHAPTER NO. 642

[HB 256]

AN ACT INCREASING CERTAIN FILING FEES IN CIVIL CASES; CREATING NEW FILING FEES; REQUIRING THE FEE INCREASES AND NEW FEES TO BE USED TO FUND DISTRICT COURT OPERATIONS; AMENDING SECTIONS 19-5-404 AND 25-1-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 25-1-201, MCA, is amended to read:

**"25-1-201. (Temporary) Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, from the plaintiff or petitioner, \$60; for filing a complaint in intervention, from the intervenor, \$60; and for filing a petition for dissolution of marriage, an additional fee of \$30;

- (b) from each defendant or respondent, on his appearance, \$40;
  - (c) on the entry of judgment, from the prevailing party, \$25;
  - (d) for preparing copies of papers on file in his office, 25 cents per page;
  - (e) for each certificate, with seal, 50 cents;
  - (f) for oath and jurat, with seal, 50 cents;
  - (g) for administering oath, 25 cents;
  - (h) for taking depositions, per folio, 20 cents;
  - (i) for filing and docketing a transcript of judgment or abstract of judgment from all other courts, \$5;
  - (j) for issuing an execution or order of sale on a foreclosure of a lien, \$2;
  - (k) for transmission of records or files or transfer of a case to another court, \$5;
  - (l) for filing and entering papers received by transfer from other courts, \$10;
  - (m) for issuing a marriage license, \$30;
  - (n) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$50, which includes the fee for filing a will for probate;
  - (o) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$35;
  - (p) for filing a declaration of marriage without solemnization, \$30.
- (2) Except as provided in subsections (3) through (5), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the general fund of the county. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.
- (3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be deposited as provided in 19-5-404.
- (4) Of the additional fee for filing a petition for dissolution of marriage, \$25 must be deposited in the state general fund and \$5 must be deposited in the children's trust fund account established by 41-3-702.
- (5) (a) *Before the percentages contained in subsection (2) are applied and the fees deposited in the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:*



(i) *at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), \$35;*

(ii) *from each defendant or respondent, on his appearance, as provided in subsection (1)(b), \$25;*

(iii) *on the entry of judgment as provided in subsection (1)(c), \$15; and*

(iv) *from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(n), \$15.*

(b) *The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.*

**25-1-201. (Effective January 1, 1990) Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) *at the commencement of each action or proceeding, from the plaintiff or petitioner, \$60; for filing a complaint in intervention, from the intervenor, \$60; and for filing a petition for dissolution of marriage, an additional fee of \$25;*

(b) *from each defendant or respondent, on his appearance, \$40;*

(c) *on the entry of judgment, from the prevailing party, \$25;*

(d) *for preparing copies of papers on file in his office, 25 cents per page;*

(e) *for each certificate, with seal, 50 cents;*

(f) *for oath and jurat, with seal, 50 cents;*

(g) *for administering oath, 25 cents;*

(h) *for taking depositions, per folio, 20 cents;*

(i) *for filing and docketing a transcript of judgment or abstract of judgment from all other courts, \$5;*

(j) *for issuing an execution or order of sale on a foreclosure of a lien, \$2;*

(k) *for transmission of records or files or transfer of a case to another court, \$5;*

(l) *for filing and entering papers received by transfer from other courts, \$10;*

(m) *for issuing a marriage license, \$30;*

(n) *on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$50, which includes the fee for filing a will for probate;*

(o) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$35;

(p) for filing a declaration of marriage without solemnization, \$30.

(2) Except as provided in *subsections (3) through (5)*, 32% of all fees collected by the clerk of the district court must be deposited in and credited to the general fund of the county. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) The additional fee for filing a petition for dissolution of marriage must be deposited in the state general fund.

(5) (a) *Before the percentages contained in subsection (2) are applied and the fees deposited in the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:*

(i) *at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), \$35;*

(ii) *from each defendant or respondent, on his appearance, as provided in subsection (1)(b), \$25;*

(iii) *on the entry of judgment as provided in subsection (1)(c), \$15; and*

(iv) *from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(n), \$15.*

(b) *The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund."*

Section 2. Section 19-5-404, MCA, is amended to read:

**"19-5-404. Contributions by the state.** The state of Montana shall contribute monthly to the fund a sum equal to 6% of the salary of each member. In addition, the clerk of each district court shall transmit 68% of certain filing fees as required under 25-1-201 to the state, which shall first deposit in the fund an amount equal to 31% of the salaries paid to district judges and supreme court justices who are covered by the judges' retirement system and then deposit the balance in the state general fund. The clerk of the supreme court shall pay one-fourth of the fees collected under 3-2-403 to the public employees' retirement division of the department of administration to be credited to the fund."

Section 3. **Effective date.** This act is effective July 1, 1987.

Approved May 11, 1987.

**CHAPTER NO. 643**

[HB 277]

AN ACT AUTHORIZING COUNTIES TO ESTABLISH DRINKING AND DRIVING PREVENTION PROGRAMS; PROVIDING FOR FUNDING WITH A DRIVER'S LICENSE REINSTATEMENT FEE; PROVIDING AN APPROPRIATION TO THIS PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. County drinking and driving prevention program.** (1) The governing body of a county may appoint a task force to study the problem of alcohol-related traffic accidents and recommend a program designed to:

- (a) prevent driving while under the influence of alcohol;
- (b) reduce alcohol-related traffic accidents; and
- (c) educate the public on the dangers of driving after consuming alcoholic beverages or other chemical substances that impair judgment or motor functions.

(2) A task force appointed under subsection (1) shall conduct its study and submit its recommendations within 6 months from the date it was appointed.

(3) The county governing body may by resolution adopt the recommendations of the task force appointed under subsection (1). The proposed program must be approved by the governor as provided in 61-2-105.

(4) The chairman of the task force shall submit to the county governing body:

- (a) a budget and a financial report for each fiscal year; and
- (b) an annual report containing but not limited to:
  - (i) an evaluation of the effectiveness of the program;
  - (ii) the number of arrests and convictions in the county for driving under the influence of alcohol and the sentences imposed for these convictions;
  - (iii) the number of alcohol-related traffic accidents in the county; and
  - (iv) any other information requested by the county governing body or the department or considered appropriate by the task force.
- (5) A copy of the annual report must be submitted to the department.

**Section 2. License reinstatement fee to fund county drinking and driving prevention programs.** (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 may not be restored until the driver has paid

to the department a fee of \$50 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) The department shall deposit the fees collected under subsection (1) in the general fund.

**Section 3. Funding allocation for programs to prevent or reduce drinking and driving.** If the county in which the violation or violations occurred has initiated and maintained a drinking and driving prevention program as provided in [section 1], the department shall transmit the proceeds of the license reinstatement fees collected in that county to the county treasurer at the end of each quarter.

**Section 4. Appropriation.** There is appropriated from the general fund to the highway traffic safety division of the department of justice, for the biennium ending June 30, 1989, all money collected under section 2 from counties with a drinking and driving prevention program as provided in section 1, to be distributed as provided in section 3.

**Section 5. Codification instruction.** Sections 1 through 3 are intended to be codified as an integral part of Title 61, chapter 2, and the provisions of Title 61, chapter 2, apply to sections 1 through 3.

**Section 6. Effective date.** This act is effective July 1, 1987.

Approved May 11, 1987.

## CHAPTER NO. 644

[HB 459]

AN ACT CHANGING THE DATE OF THE MONTANA PRESIDENTIAL PRIMARY AND SCHOOL ELECTIONS; AMENDING SECTIONS 13-1-104, 13-1-302, 13-10-201, 13-10-401 THROUGH 13-10-403, 13-10-405, AND 20-20-105, MCA; REPEALING SECTION 13-10-406, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-1-104, MCA, is amended to read:

**"13-1-104. Times for holding general elections.** (1) A general election shall be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November to vote on ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, unless an earlier date is provided in a law authorizing a special election on an initiative or referendum pursuant to Article III, section 6, and to elect federal officers, state or multicounty district officers, members of the legislature, judges of the district court, and county officers when the terms of such offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(2) A general election shall be held throughout the state in every odd-numbered year on the first Tuesday after the first Monday in November to elect municipal officers, officers of political subdivisions wholly within one county and not required to hold annual elections, and any other officers specified by law for election in odd-numbered years when the term for the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(3) The general election for any political subdivision required to hold elections annually shall be held on *regular* school election day and is subject to the election procedures provided for in 13-1-401."

Section 2. Section 13-1-302, MCA, is amended to read:

**"13-1-302. Election costs.** (1) Unless specifically provided otherwise, all costs of the regularly scheduled primary and general elections shall be paid by the counties and other political subdivisions for which the elections are held. Each political subdivision shall bear its proportionate share of the costs as determined by the county governing body.

(2) A political subdivision holding an annual election with a regularly scheduled school election shall bear its proportionate share of the costs as determined by the county election administrator and the school district election administrator.

(3) The political subdivision for which a special election is held shall bear all costs of the election, or its proportionate share as determined by the county governing body if held in conjunction with any other election.

(4) *The costs of a presidential preference primary provided for in 13-10-401 must be paid by the county; however, if the primary is held in conjunction with a regularly scheduled school election, the county and the school district each shall bear a proportionate share of the costs as determined by the county election administrator and the school district election administrator. If a county election administrator specifies polling places or hours that differ from those set for the school election, the county shall bear any additional costs incurred as a result of the different polling places or hours.*

(5) Costs of elections may not include the services of the election administrator or capital expenditures.

(6) The county governing body shall set a schedule of fees for services provided to school districts by the election administrator.

(7) Election costs shall be paid from county funds, and any shares paid by other political subdivisions shall be credited to the fund from which the costs were paid.

(8) The proportionate costs referred to in subsection (1) of this section shall be only those additional costs incurred as a result of the political subdivision holding its election in conjunction with the primary or general election."

Section 3. Section 13-10-201, MCA, is amended to read:

**"13-10-201. Declaration for nomination.** (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of chapter 14, shall send a declaration for nomination to the secretary of state or election administrator. Each candidate for governor shall send a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination shall be filed in the office of:

(a) the secretary of state for a congressional office, state or district office to be voted for in more than one county, member of the legislature, or judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. The declaration for nomination shall be acknowledged by an officer empowered to acknowledge signatures if sent by mail or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by his party.

(5) The declaration for nomination shall be in the form and contain the information prescribed by the secretary of state. The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) Declarations for nomination shall be filed no sooner than *135 days before the election in which the office first appears on the ballot* and no later than 5 p.m., 75 days before the date of the primary election."

Section 4. Section 13-10-401, MCA, is amended to read:

**"13-10-401. Date of presidential primary.** In the years in which a president of the United States is to be elected, a presidential preference primary election will be held on the same day as the *election* provided for in 20-20-105."

Section 5. Section 13-10-402, MCA, is amended to read:

**"13-10-402. Ballot.** *Separate ballots for each political party* shall be used for the presidential preference primary election."

Section 6. Section 13-10-403, MCA, is amended to read:

**"13-10-403. Form of ballot.** The presidential preference ballot *for each political party* shall list all candidates nominated in accordance with the provisions of this part and shall, in addition, include a presidential ballot position which shall be designated as "no preference" and a blank write-in space."

Section 7. Section 13-10-405, MCA, is amended to read:

**"13-10-405. Submission and verification of petition.** Petitions of nomination for the presidential preference primary election must be presented to the election administrator of the county in which the signatures

are gathered. The election administrator must verify the signatures in the manner prescribed in 13-27-303 through 13-27-308 and must forward the petitions to the secretary of state. The petitions must be submitted to the election administrator before the filing deadline established in 13-10-201(6). No filing fee is required."

Section 8. Section 20-20-105, MCA, is amended to read:

**"20-20-105. Regular school election day and special school elections.** The *fourth* Tuesday of *March* of each year shall be the regular school election day. Unless otherwise provided by law, special school elections may be conducted at such times as determined by the trustees."

Section 9. **Presidential preference primary election procedures.**

(1) The polls for a presidential preference primary election must open not later than noon. The county election administrator may order the polls to open earlier, but no earlier than 7 a.m.

(2) Procedures for the close of voter registration for a presidential preference primary election must follow 13-2-301.

(3) The county election administrator may designate polling places for a presidential preference primary that differ from those designated for other county elections. Notice of the location of polling places must be given as provided in 13-3-105.

(4) For a presidential preference primary election, the election administrator shall appoint, under the provisions of 13-4-102(3), at least three election judges for each polling place. The judges may also serve for school elections and special district elections. The provisions of 13-4-105, 13-4-106, and 13-4-107 apply to the election judges for the presidential preference primary.

(5) Election day polling place procedures, absentee balloting, challenged ballot procedures, canvassing, and recount procedures for the presidential preference primary election must comply with the requirements of Title 13, except that presidential preference primary returns may be canvassed and reported by precinct or by polling place.

Section 10. **Arrangement of names.** The provisions of 13-12-205 do not apply to the presidential preference primary ballot. An election administrator shall determine by lot the order of candidates' names on the ballot for that county.

Section 11. **Repealer.** Section 13-10-406, MCA, is repealed.

Section 12. **Extension of authority.** Any existing authority of the secretary of state to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 13. **Codification instruction.** Sections 9 and 10 are intended to be codified as an integral part of Title 13, chapter 10, part 4, and the provisions of Title 13, chapter 10, part 4, apply to sections 9 and 10.

Section 14. **Effective date.** (1) Sections 1, 2, 4 through 6, 8 through 10, 12, and 13 are effective on passage and approval of legislation or adoption of party rules establishing the fourth Tuesday of March as the presidential preference primary election date or presidential caucus date in any

two of the following states: Idaho, Oregon, or Washington prior to August 1, 1987.

(2) Section 3 is effective July 1, 1987.

(3) Sections 7, 11, and this section are effective on passage and approval.

Approved May 11, 1987.

## CHAPTER NO. 645

[HB 460]

AN ACT PERMANENTLY INCREASING THE FEE FOR DISSOLUTION OF MARRIAGE; PROVIDING FOR FEE DISPOSITION; AMENDING SECTION 25-1-201, MCA; REPEALING SECTION 13, CHAPTER 610, LAWS OF 1985; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 25-1-201, MCA, is amended to read:

**"25-1-201. (Temporary) Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, *except a petition for dissolution of marriage*, from the plaintiff or petitioner, \$25; for filing a complaint in intervention, from the intervenor, \$25; and for filing a petition for dissolution of marriage, a fee of \$100;

(b) from each defendant or respondent, on his appearance, \$15;

(c) on the entry of judgment, from the prevailing party, \$10;

(d) for preparing copies of papers on file in his office, 25 cents per page;

(e) for each certificate, with seal, 50 cents;

(f) for oath and jurat, with seal, 50 cents;

(g) for administering oath, 25 cents;

(h) for taking depositions, per folio, 20 cents;

(i) for filing and docketing a transcript of judgment or abstract of judgment from all other courts, \$5;

(j) for issuing an execution or order of sale on a foreclosure of a lien, \$2;

(k) for transmission of records or files or transfer of a case to another court, \$5;

(l) for filing and entering papers received by transfer from other courts, \$10;



(m) for issuing a marriage license, \$30;

(n) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$35, which includes the fee for filing a will for probate;

(o) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$35;

(p) for filing a declaration of marriage without solemnization, \$30.

(2) Except as provided in subsections (3) and (4), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the general fund of the county. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) Of the fee for filing a petition for dissolution of marriage, \$75 must be deposited in the state general fund, \$5 must be deposited in the children's trust fund account established by 41-3-702, and \$20 must be deposited in and credited to the general fund of the county.

**25-1-201. (Effective January 1, 1990) Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, *except a petition for dissolution of marriage*, from the plaintiff or petitioner, \$25; for filing a complaint in intervention, from the intervenor, \$25; and for filing a petition for dissolution of marriage, a fee of \$100;

(b) from each defendant or respondent, on his appearance, \$15;

(c) on the entry of judgment, from the prevailing party, \$10;

(d) for preparing copies of papers on file in his office, 25 cents per page;

(e) for each certificate, with seal, 50 cents;

(f) for oath and jurat, with seal, 50 cents;

(g) for administering oath, 25 cents;

(h) for taking depositions, per folio, 20 cents;

(i) for filing and docketing a transcript of judgment or abstract of judgment from all other courts, \$5;

(j) for issuing an execution or order of sale on a foreclosure of a lien, \$2;

(k) for transmission of records or files or transfer of a case to another court, \$5;

(l) for filing and entering papers received by transfer from other courts, \$10;

(m) for issuing a marriage license, \$30;

(n) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$35, which includes the fee for filing a will for probate;

(o) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$35;

(p) for filing a declaration of marriage without solemnization, \$30.

(2) Except as provided in *subsections (3) and (4)*, 32% of all fees collected by the clerk of the district court must be deposited in and credited to the general fund of the county. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) *Of the fee for filing a petition for dissolution of marriage, \$75 must be deposited in the state general fund, \$5 must be deposited in the children's trust fund account established by 41-3-702, and \$20 must be deposited in and credited to the general fund of the county."*

**Section 2. Repealer.** Section 13, Chapter 610, Laws of 1985, MCA, is repealed.

**Section 3. Effective date.** This act is effective July 1, 1987.

Approved May 11, 1987.

## CHAPTER NO. 646

[HB 570]

AN ACT PROVIDING THAT IF AN ALL-BEVERAGES LICENSE IS USED AT A GOLF COURSE OR A PUBLICLY OWNED GOLF COURSE BEER AND WINE LICENSE IS ISSUED, THE ALCOHOLIC BEVERAGES MAY BE SOLD BY THE LICENSEE FROM A PORTABLE DEVICE AS WELL AS AT THE GOLF COURSE CLUBHOUSE AND CONSUMED AT ANY PLACE WITHIN THE BOUNDARIES OF THE GOLF COURSE; AMENDING SECTION 16-3-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 16-3-302, MCA, is amended to read:

**"16-3-302. Sale by retailer for consumption on premises.** (1) It is lawful for a licensed retailer to sell and serve beer, either on draught or in containers, to the public to be consumed on the premises of *the* retailer.

(2) *It is lawful for a licensee who has an all-beverages license that he uses at a golf course to sell alcoholic beverages and for a licensee who has a golf course beer and wine license issued under 16-4-109 to sell beer and wine:*

*(a) in the building or other structural premises constituting the clubhouse or primary indoor recreational quarters of the golf course; and*

*(b) at any place within the boundaries of the golf course, from a portable satellite vehicle or other movable satellite device that is moved from place to place, whether inside or outside of a building or other structure.*

*(3) It is lawful to consume alcoholic beverages sold as provided in subsection (2) at any place within the boundaries of the golf course, whether inside or outside of a building or other structure."*

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved May 11, 1987.

## CHAPTER NO. 647

[HB 583]

AN ACT TO CONTINUE FUNDING OF THE DEPARTMENT OF PUBLIC SERVICE REGULATION BY FEES LEVIED ON REGULATED COMPANIES; TO EXCLUDE FROM TAX CERTAIN SALES FOR RESALE; TO PROVIDE FOR THE DISTRIBUTION OF THE FEES THROUGH THE GENERAL FUND; AMENDING SECTION 7, CHAPTER 32, LAWS OF 1986, AND SECTIONS 69-1-223, 69-1-224, 69-1-402, AND 69-1-403, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7, Chapter 32, Laws of 1986, is amended to read:

"Section 7. **Effective date.** This act is effective July 1, 1986."

Section 2. Section 69-1-223, MCA, is amended to read:

**"69-1-223. Funding of office of consumer counsel.** (1) There is an account in the state special revenue fund to which all fees collected hereunder shall be deposited and from which all appropriations to the office of the consumer counsel shall be paid. An appropriation to the office of the consumer counsel may consist of a base appropriation for regular operating expenses and a contingency appropriation for expenses due to an unanticipated caseload.

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall:

(a) within 90 days after the close of each calendar quarter, file with the department of public service regulation and the department of revenue a statement, in such form as the commission may determine, showing the gross operating revenue from all activities regulated by the commission within the state for that calendar quarter of operation or portion thereof, *separately stating gross revenues from sales to other regulated companies for resale*; and

(b) at that time pay to the department of revenue a fee based on a percentage of the gross operating revenue reported, as determined by the department of revenue under 69-1-224.

(3) The amount of money which may be raised by the fee on the regulated companies during a fiscal year may not be increased from the amount appropriated, including both base and contingency appropriations, by the legislature for that fiscal year. Any additional money required for operation of the office of the consumer counsel must be obtained from other sources in a manner authorized by the legislature."

Section 3. Section 69-1-224, MCA, is amended to read:

**"69-1-224. Determination of fee.** (1) Within 30 days following enactment of the legislative appropriation for the office of the consumer counsel, the department of revenue shall:

(a) determine the total gross operating revenue generated by all regulated activities within this state for all regulated companies for the previous fiscal year;

(b) compute the percentage, subject to revision as provided in subsection (3), of the amount determined in subsection (1)(a) which will produce an amount equal to the base appropriation to the office of the consumer counsel for the first year of the appropriation, except that no regulated company owned and operated by any municipal corporation within this state shall be required to pay a sum in excess of .06 of 1% of its gross operating revenue; and

(c) give notice by mail to each regulated company of the percentage determined in subsections (1)(a) and (b) to be applied to the gross operating revenue reported under 69-1-223(2) to determine the amount of the fee to be paid in the first year of the appropriation.

(2) On or before May 30 of the first year of the biennium, the department of revenue shall repeat the steps required by subsection (1) and compute the percentage multiplier for the second year, giving notice to the regulated companies.

(3) (a) The department of revenue *shall* adjust the percentage multiplier quarterly if the department considers a change necessary to meet or to not exceed the amount to be raised by the fee because of:

(i) fluctuations in the actual gross operating revenue subject to the fee;  
or

(ii) submission and approval of a budget amendment authorizing the spending of money from a contingency appropriation included in the appropriation measure for the office of the consumer counsel and authorized to be raised by means of the fee.

(b) Adjustments of the percentage multiplier are subject to the exception provided in subsection (1)(b) for municipally owned and operated regulated companies.

(c) Regulated companies must be given at least 30 days' notice of any change in the percentage multiplier.

(4) In the event the fee charged in one year is in excess of the amount actually expended in that year, the excess shall be deducted from the amount required to be raised by the fee for the next year before the determination required by subsection (1) is made. Money remaining unspent at the close of a fiscal year shall be used to reduce the percentage calculated in 69-1-224 in the subsequent fiscal year."

Section 4. Section 69-1-402, MCA, is amended to read:

**"69-1-402. (Temporary) Funding of the department of public service regulation.** (1) *All fees collected under this section must be deposited in the general fund. All appropriations to the department must be paid from the general fund. An appropriation to the department may consist of a base appropriation for regular operating expenses and a contingency appropriation for expenses due to an unanticipated caseload.*

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall, within 90 days after the close of each calendar quarter, pay to the department of revenue a fee based on a percentage of gross operating revenue reported pursuant to 69-1-223(2)(a), as determined by the department of revenue under 69-1-403.

(3) The amount of money that may be raised by the fee on the regulated companies during a fiscal year may not be increased from the amount appropriated to the department by the legislature for that fiscal year, including both base and contingency appropriations. Any additional money required for operation of the department must be obtained from other sources in a manner authorized by the legislature. (Effective July 1, 1986, and terminates July 1, 1987—sec. 7, Ch. 32, Sp. L. June 1986.)"

Section 5. Section 69-1-403, MCA, is amended to read:

**"69-1-403. (Temporary) Determination and collection of fee.** (1) The fee provided for in 69-1-402 to be paid by regulated companies must be determined in the manner set forth in 69-1-224 for determining the consumer counsel fee, *except that gross revenues from sales to other regulated companies for resale, as calculated by the public service commission, must be excluded from the determination of the total gross operating revenue pursuant to 69-1-224.*

(2) *The department of revenue shall give notice by mail to each regulated company of the percentage determined pursuant to 69-1-224 and this section to be applied to gross operating revenues reported under 69-1-223,*

*excluding gross revenues from sales to other regulated companies for resale, to determine the amount of the fee to be paid in the first year of the appropriation.*

(3) The fee provided for in 69-1-402 may be computed and collected in the manner provided in 69-1-225 through 69-1-227.

(4) All fees paid by a regulated company pursuant to this section are immediately recoverable by the regulated company in its rates and charges. Within 30 days after the issuance by the department of revenue of notices required by 69-1-224(1) and (2), the public service commission shall by separate order authorize each regulated company to fully recover in its rates and charges, on an annual basis, the fees levied by this part. (Effective July 1, 1986, and terminates July 1, 1987—sec. 7, Ch. 32, Sp. L. June 1986.)”

Section 6. **Effective date.** This act is effective July 1, 1987.

Approved May 11, 1987.

## CHAPTER NO. 648

[HB 623]

AN ACT GENERALLY REVISING THE LAW GOVERNING STATE LIQUOR STORES; SPECIFYING THE CONDITIONS FOR THE CLOSURE, CONVERSION, OR SALE OF LIQUOR STORES OPERATED BY THE DEPARTMENT OF REVENUE; REQUIRING SUFFICIENT WAREHOUSE INVENTORY TO SERVICE LIQUOR STORES; AMENDING SECTION 16-2-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 16-2-101, MCA, is amended to read:

**“16-2-101. Establishment and closure of state liquor stores — kinds and prices of liquor.** (1) (a) The department shall establish and maintain one or more stores, to be known as “state liquor stores”, as the department finds feasible for the sale of liquor in accordance with the provisions of this code and the rules made thereunder.

(b) The department shall enter into an agency agreement or employ the necessary help to operate said stores and shall designate the duties to be performed by the agent or employees.

(c) *Once established, a store shall not be closed, converted to an agency store, or sold by the department unless:*

- (i) *the store is returning less than a 10% profit to the state; or*
- (ii) *the closure or sale is approved by the legislature.*

(2) The department may from time to time fix the prices at which the various classes, varieties, and brands of liquor may be sold, and prices shall be the same at all state stores.

(3) (a) *State liquor stores must be considered for closure, conversion, or sale only when a store lease expires. Prior to the expiration of a lease, the department may conduct a financial profitability analysis using the criteria in subsection (1)(c)(i). In computing profit levels of state-operated stores, the costs of the licensing bureau and the legal and enforcement division, other than inspection costs directly attributable to liquor stores, may not be included as expenses. The revenue oversight committee must be informed of all plans for conversion, sale, or closure of state liquor stores.*

(b) *No agency stores shall be located in or adjacent to grocery stores in communities with populations over 3,000. This provision is applicable only to agency agreements entered into after [the effective date of this act].*

(4) *Agency stores must receive commissions based on adjusted gross sales as follows:*

(a) *a 10% commission for agencies in communities with less than 3,000 in population;*

(b) *a commission established by competitive bidding for agencies in communities with 3,000 or more in population.*

(5) *The department shall maintain sufficient inventory in the state warehouse in order to meet a monthly service level of at least 97%."*

Section 2. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved May 11, 1987.

## CHAPTER NO. 649

[HB 658]

AN ACT TO PROVIDE A FEE IN LIEU OF PROPERTY TAX FOR MOTORBOATS 10 FEET IN LENGTH OR LONGER AND SAILBOATS 12 FEET IN LENGTH OR LONGER; EXEMPTING MOTORBOATS LESS THAN 10 FEET IN LENGTH FROM PROPERTY TAXES; AMENDING SECTIONS 15-6-146, 15-6-201, 15-8-201, 15-8-301, 15-8-404, 23-2-512, AND 23-2-515, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-6-146, MCA, is amended to read:

**"15-6-146. Class sixteen property — description — taxable percentage.** (1) Class sixteen property includes:

- (a) all-terrain vehicles [not registered under 61-3-301];
  - (b) harness, saddlery, and other tack equipment;
  - (c) all other property used for noncommercial purposes which is not real property or an improvement to real property and which is not included in another class or exempt from taxation under Title 15, chapter 6, part 2.
- (2) Class sixteen property is taxed at 11% of its market value."

Section 2. Section 15-6-201, MCA, is amended to read:

**"15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

- (a) the property of:
  - (i) the United States, the state, counties, cities, towns, school districts, except, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, the property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);
  - (ii) irrigation districts organized under the laws of Montana and not operating for profit;
  - (iii) municipal corporations; and
  - (iv) public libraries;
- (b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings;
- (c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for hospitals;
- (d) property that meets the following conditions:
  - (i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;
  - (ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and
  - (iii) is not maintained and operated for private or corporate profit;
- (e) institutions of purely public charity;
- (f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;
- (g) public art galleries and public observatories not used or held for private or corporate profit;



(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. Such property is also exempt from the fee in lieu of tax.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(l) motorcycles and quadricycles;

(m) *all watercraft*;

(n) fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(o) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(p) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit; and

(q) all farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100.

(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) \$20,000 in the case of a single-family residential dwelling;

(b) \$100,000 in the case of a multifamily residential dwelling or a non-residential structure. (Subsection (1)(p) [now (1)(q)] applicable to taxable years beginning after December 31, 1985—sec. 4, Ch. 463, L. 1985.)"

Section 3. Section 15-8-201, MCA, is amended to read:

**"15-8-201. General assessment day.** (1) The department of revenue or its agent must, between January 1 and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county. The department or its agent must assess property to the person by whom it was owned or claimed or in whose possession or control it was at midnight of January 1 next preceding. It must also ascertain and assess all mobile homes arriving in the county after midnight of January 1 next preceding. No mistake in the name of the owner or supposed owner of real property, however, renders the assessment invalid.

(2) The procedure provided by this section may not apply to:

(a) motor vehicles that are required by 15-8-202 to be assessed on January 1 or upon their anniversary registration date;

(b) automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(c) motor homes and travel trailers subject to a fee in lieu of property tax;

(d) motorcycles and quadricycles;

(e) *watercraft*;

(f) livestock;

(g) property defined in 61-1-104 as "special mobile equipment" that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate; and

(h) mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade.

(3) Credits must be assessed as provided in 15-1-101(d).

Section 4. Section 15-8-301, MCA, is amended to read:

**"15-8-301. Statement — what to contain.** (1) The department of revenue or its agent must require from each person a statement under oath setting forth specifically all the real and personal property owned by such person or in his possession or under his control at midnight on January 1. Such statement must be in writing, showing separately:

(a) all property belonging to, claimed by, or in the possession or under the control or management of such person;

(b) all property belonging to, claimed by, or in the possession or under the control or management of any firm of which such person is a member;

(c) all property belonging to, claimed by, or in the possession or under the control or management of any corporation of which such person is president, secretary, cashier, or managing agent;

(d) the county in which such property is situated or in which it is liable to taxation and (if liable to taxation in the county in which the statement

is made) also the city, town, school district, road district, or other revenue districts in which it is situated;

(e) an exact description of all lands in parcels or subdivisions not exceeding 640 acres each and the sections and fractional sections of all tracts of land containing more than 640 acres which have been sectionized by the United States government; improvements and personal property; all taxable state, county, city, or other municipal or public bonds and the taxable bonds of any person, firm, or corporation and deposits of money, gold dust, or other valuables and the names of the persons with whom such deposits are made and the places in which they may be found; all mortgages, deeds of trust, contracts, and other obligations by which a debt is secured and the property in the county affected thereby;

(f) all solvent credits, secured or unsecured, due or owing to such person or any firm of which he is a member or due or owing to any corporation of which he is president, secretary, cashier, or managing agent;

(g) all depots, shops, stations, buildings, and other structures erected on the space covered by the right-of-way and all other property owned by any person owning or operating any railroad within the county.

(2) Whenever one member of a firm or one of the proper officers of a corporation has made a statement showing the property of the firm or corporation, another member of the firm or another officer need not include such property in the statement made by him but this statement must show the name of the person or officer who made the statement in which such property is included.

(3) The fact that such statement is not required or that a person has not made such statement, under oath or otherwise, does not relieve his property from taxation."

Section 5. Section 15-8-404, MCA, is amended to read:

**"15-8-404. Property of particular types of firms.** (1) The personal property belonging to the business of a merchant or of a manufacturer must be listed in the town or district where his business is carried on.

(2) The personal property of express, transportation, and stage companies must be listed and assessed in the county, town, or district where such property is usually kept.

(3) The personal property and franchises of gas and water companies must be listed and assessed in the county, town, or district where the principal works are located. Gas and water mains and pipes laid in roads, streets, or alleys are personal property."

Section 6. Section 23-2-512, MCA, is amended to read:

**"23-2-512. Identification number.** (1) The owner of each motorboat or sailboat requiring numbering by this state shall file an application for number in the office of the county treasurer where the motorboat or sailboat is owned on forms prepared and furnished by the department of justice. The application must be signed by the owner of the motorboat or

*sailboat* and be accompanied by a fee of \$2. Any alteration, change, or false statement contained in the application will render the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the department of justice, stating the number assigned to the motorboat *or sailboat* and the name and address of the owner.

(2) The applicant, upon the filing of the application, shall pay to the county treasurer the *fee in lieu of tax required for a motorboat 10 feet in length or longer or a sailboat 12 feet in length or longer* for the current year of certification before the application for certification or recertification may be accepted by the county treasurer.

(3) Should the ownership of a motorboat *or sailboat* change, a new application form with *the certification fee* must be filed within a reasonable time with the county treasurer and a new certificate of number assigned in the same manner as provided for in an original assignment of number.

(4) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this part by the department of justice must be in conformity.

(5) Every certificate of number and the license decals assigned under this part continues in effect for a period not to exceed 1 year unless terminated or discontinued in accordance with the provisions of this part. Certificates of number and license decals must show the date of expiration and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

(6) Certificates of number expire on December 31 of each year and may not be in effect unless renewed under this part.

(7) In event of transfer of ownership, the purchaser shall furnish the county treasurer notice within a reasonable time of the acquisition of all or any part of his interest, other than the creation of a security interest, in a motorboat *or sailboat* numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat *or sailboat*. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat *or sailboat*. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat *or sailboat* does not terminate the certificate of number.

(8) A holder of a certificate of number shall notify the county treasurer within reasonable time if his address no longer conforms to the address appearing on the certificate and furnish the county treasurer with his new address. The department of justice may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(9) (a) The number assigned must be painted on or attached to each outboard side of the forward half of the motorboat *or sailboat* or, if there are no such sides, at a corresponding location on both outboard sides of the foredeck of the motorboat *or sailboat*. The number assigned must read

from left to right in Arabic numerals and block characters of good proportion at least 3 inches tall excluding border or trim of a color that contrasts with the color of the background and be so maintained as to be clearly visible and legible. The number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. No numerals, letters, or devices other than those used in connection with the identifying number issued may be placed in the proximity of the identifying number. No numerals, letters, or devices that might interfere with the ready identification of the motorboat *or sailboat* by its identifying number may be carried as to interfere with the motorboat's *or sailboat's* identification. No number other than the number and license decal assigned to a motorboat *or sailboat* or granted reciprocity under this part may be painted, attached, or otherwise displayed on either side of the forward half of the motorboat *or sailboat*.

(b) The certificate of number shall be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat *or sailboat* whenever the motorboat *or sailboat* is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat *or sailboat*, but a rental agreement must be carried on board livery motorboats *or sailboats* in place of the certificate of number.

(10) Fees, *other than the fee in lieu of tax*, collected under this section shall be transmitted to the state treasurer, who shall deposit the fees in the motorboat *or sailboat* certificate identification account of the state special revenue fund. These fees shall be used only for the administration and enforcement of this part, as amended.

(11) An owner of a motorboat *or sailboat* must within a reasonable time notify the department of justice, giving the motorboat's *or sailboat's* identifying number and the owner's name when *the* motorboat *or sailboat* is transferred, lost, destroyed, abandoned, or frauded or within 60 days after change of state of principal use *or if a motorboat becomes documented as a vessel of the United States.*"

Section 7. Section 23-2-515, MCA, is amended to read:

**"23-2-515. License decals to be displayed.** (1) Every Montana motorboat *or sailboat* numbered in accordance with the provisions of 23-2-512 and 23-2-513 shall be required to display license decals. For this purpose the county treasurer, upon receipt of *the fee in lieu of tax for motorboats 10 feet in length or longer and sailboats 12 feet in length or longer* for the current year, shall issue a pair of decals prepared and furnished by the department of justice with all new certificates of number and renewals thereof.

(2) The decals shall be of a style and design prescribed by the department of justice and shall be a color differing from the preceding year. The license decal will be serially numbered and have the expiration date of December 31 of the appropriate year printed thereon.

(3) License decals shall be displayed only in the following manner: one valid license decal on each side of the forward half, 3 inches aft of the identifying numbers."

**Section 8. Fee in lieu of tax for motorboats 10 feet in length or longer and sailboats 12 feet in length or longer.** (1) There is a fee in lieu of property tax as prescribed in [section 9] imposed on motorboats 10 feet in length or longer and sailboats 12 feet in length or longer. The fee is in addition to the annual fee required by 23-2-512 for filing of the application for a certificate of number.

(2) The fee imposed by subsection (1) need not be paid by a dealer for motorboats or sailboats that constitute inventory of the dealership.

**Section 9. Fees for motorboats and sailboats.** (1) The owner of a motorboat 10 feet in length or longer or a sailboat 12 feet in length or longer shall pay a fee based on the length of the motorboat or sailboat.

(2) The fee for a motorboat at least 10 feet in length but less than 14 feet in length or sailboat at least 12 feet in length but less than 14 feet in length is \$7.50.

(3) The fee for a motorboat or sailboat at least 14 feet in length but less than 16 feet in length is \$15.

(4) The fee for a motorboat or sailboat at least 16 feet in length but less than 17 feet in length is \$32.

(5) The fee for a motorboat or sailboat at least 17 feet in length but less than 19 feet in length is \$3 a foot or fraction of a foot.

(6) The fee for a motorboat or sailboat 19 feet in length or longer is \$4 a foot or fraction of a foot.

**Section 10. Disposition of fees in lieu of tax.** The county treasurer shall distribute all fees in lieu of tax collected on motorboats 10 feet in length or longer and sailboats 12 feet in length or longer pursuant to [sections 8 and 9] in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

**Section 11. Penalty — disposition.** (1) Failure to pay the fee in lieu of tax as provided for in [section 9] is a misdemeanor, punishable by a fine equal to five times the fee in lieu of tax that is due on the motorboat or sailboat for the current year of registration.

(2) All fines collected pursuant to subsection (1) must be distributed in the following ratio:

(a) 50% to the general fund of the county in which the motorboat or sailboat is issued a certification number; and

(b) 50% to the motorboat account of the state special revenue fund for use by the department in the enforcement of this part.

**Section 12. Codification instruction.** Sections 8 through 11 are intended to be codified as an integral part of Title 23, chapter 2, part 5,

and the provisions of Title 23, chapter 2, part 5, apply to sections 8 through 11.

**Section 13. Code commissioner instruction.** The code commissioner shall change any reference to taxes on boats contained in new material enacted this session to reflect the fee in lieu of tax on boats contained in this bill.

**Section 14. Extension of authority.** Any existing authority of the department of revenue or the department of justice to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 15. Effective date — applicability.** This act is effective on passage and approval and applies to motorboats and sailboats registered on or after January 1, 1988.

Approved May 11, 1987.

## CHAPTER NO. 650

[HB 727]

AN ACT TO EXEMPT FROM MINIMUM WAGE AND OVERTIME LAWS RESIDENT MANAGERS OF LODGING ESTABLISHMENTS OR PERSONAL CARE FACILITIES WHO, UNDER THE TERMS OF THEIR EMPLOYMENT, LIVE IN THE ESTABLISHMENT OR FACILITY; AND AMENDING SECTION 39-3-406, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-3-406, MCA, is amended to read:

**“39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 shall not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores such as babysitting, mowing lawns, cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees thereof who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work which is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that such exclusion shall not exceed a period of 180 days from their initial date of employment and further provided that during this exclusion period wages paid such learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner;

(k) any individual employed by the United States of America;

(l) *resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility.*

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesman, partsman, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers;

(e) a salesman primarily engaged in selling trailers, boats, or aircraft if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) an employee employed as a driver or driver's helper making local deliveries who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the commissioner finds that such plan has the general purpose and effect of reducing hours worked by such employees to or below the maximum workweek applicable to them under 39-3-405;

(g) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and which are used exclusively for supply and storing of water for agricultural purposes;

(h) an employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection



with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee is:

(i) primarily employed during his workweek in agriculture by such farmer; and

(ii) paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(i) an employee of an establishment commonly recognized as a country elevator, including an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(j) a driver employed by an employer engaged in the business of operating taxicabs;

(k) an employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in such institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as such employee and his spouse reside in such facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than \$10,000;

(l) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight;

(m) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(n) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee where no bargaining unit is recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 ½ times the hourly wage rate for the employee.

(o) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee where no bargaining unit is recognized. Employment in excess of 8 hours per day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 ½ times the hourly wage rate for the employee.

(p) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(q) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(r) an employee of a department of public safety working under a work period established pursuant to 7-32-115."

Section 2. **Extension of authority.** Any existing authority of the commissioner of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Approved May 11, 1987.

## CHAPTER NO. 651

[HB 754]

AN ACT CHANGING THE CHIEF WATER JUDGE APPOINTMENT PROCESS TO EXPAND THE POPULATION OF ELIGIBLE CANDIDATES AND TO INCLUDE A JUDICIAL NOMINATION COMMISSION PROCESS; PROVIDING FOR ADJUDICATION BY PRIORITY BASINS; APPROPRIATING MONEY FOR JUDICIAL NOMINATION COMMISSION EXPENSES RELATING TO WATER COURT APPOINTMENTS; CLARIFYING PAYMENT OF EXPENDITURES FOR DEPARTMENT ASSISTANCE TO WATER JUDGES; AMENDING SECTIONS 3-1-1001, 3-1-1006, 3-1-1008, 3-1-1010, 3-1-1011, 3-7-213, 3-7-221, 85-2-243, AND 85-2-701, MCA; REPEALING SECTION 85-2-242, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 3-1-1001, MCA, is amended to read:

**"3-1-1001. Creation, composition, and function of commission.**

(1) A judicial nomination commission for the state is created. Its function is to provide the governor with a list of candidates for appointment to fill any vacancy on the supreme court or any district court *and to provide the chief justice of the supreme court with a list of candidates for appointment to fill any term or vacancy for the chief water judge pursuant to 3-7-221.* The commission shall be composed of seven members as follows:

(a) four lay members who are neither judges nor attorneys, active or retired, who reside in different geographical areas of the state, and each of whom is representative of a different industry, business, or profession, whether actively so engaged or retired, who shall be appointed by the governor;

(b) two attorneys actively engaged in the practice of law, one from each congressional district, who shall be appointed by the supreme court;

(c) one district judge elected by the district judges under an elective procedure initiated and conducted by the supreme court and certified to

such election by the chief justice of the supreme court. The election shall be considered an appointment for the purposes of this part.

(2) Appointments provided for in this section shall be made within 30 days of the completion of the preceding terms."

Section 2. Section 3-1-1006, MCA, is amended to read:

**"3-1-1006. Secretary — election and duties.** (1) The commission shall elect one of its members to serve as the secretary and upon such election shall notify the governor of the name and mailing address of such person.

(2) The secretary shall keep a record of all proceedings by the commission and act as corresponding secretary with the governor's office *and with the office of the chief justice of the supreme court.*"

Section 3. Section 3-1-1008, MCA, is amended to read:

**"3-1-1008. Quorum.** Four members of the commission shall constitute a quorum for the transaction of business. To submit a name to the governor *or to the chief justice of the supreme court*, there must be a concurrence of at least four members."

Section 4. Section 3-1-1010, MCA, is amended to read:

**"3-1-1010. Lists submitted to governor and chief justice — report on proceedings.** (1) The commission shall meet forthwith after a vacancy occurs on the supreme court or district court and submit to the governor within 30 days from the date of the vacancy a list of not less than three or more than five nominees for appointment.

(2) *The commission shall meet to prepare and submit to the chief justice of the supreme court a list of not less than three or more than five nominees for appointment to fill any term or vacancy for the chief water judge. The list must be submitted at least 30 days prior to a new term or within 30 days from the date of a vacancy.*

(3) Any list must be accompanied by a written report indicating the vote on each nominee, the content of the application submitted by each nominee, and the commission's reasons for recommending each nominee for appointment."

Section 5. Section 3-1-1011, MCA, is amended to read:

**"3-1-1011. Governor or chief justice of the supreme court to appoint from list.** The governor, *or the chief justice of the supreme court for the office described in 3-7-221*, must make an appointment from the list of nominees submitted by the commission."

Section 6. Section 3-7-213, MCA, is amended to read:

**"3-7-213. Designation of alternate judge.** The water judge may designate a district judge, retired district judge, *or another water judge* to preside in his absence on his behalf as water judge for the immediate enforcement of an existing decree or the immediate granting of extraordinary relief as may be provided for by law upon an allegation of irreparable harm."

Section 7. Section 3-7-221, MCA, is amended to read:

**"3-7-221. Appointment of chief water judge — term of office.**

(1) The chief justice of the Montana supreme court shall appoint a chief water judge as provided in Title 3, chapter 1, part 10.

(2) *To be eligible for the office of chief water judge, a person shall have the qualifications for district court or supreme court judges found in Article VII, section 9, of the Montana constitution.*

(3) The term of office of the chief water judge is from the date of initial appointment until June 30, 1985. After June 30, 1985, the term of office is 4 years, subject to continuation of the water divisions by the legislature."

Section 8. Section 85-2-243, MCA, is amended to read:

**"85-2-243. Department assistance to water judges.** (1) The department, subject to the direction of the water judge, shall:

(a) provide such information and assistance as may be required by the water judge to adjudicate claims of existing rights;

(b) establish information and assistance programs to aid claimants in the filing of claims for existing rights required by 85-2-221;

(c) conduct field investigations of claims that the water judge in consultation with the department determines warrant investigation; and

(d) provide the water judge with all information in its possession bearing upon existing rights, including all declarations filed with and all information gathered by the department with respect to existing rights in the Powder River Basin.

(2) *Department assistance to a water judge must be without cost to the judicial districts wholly or partly within the affected water division. Expenses incurred by the department under subsection (1) must be paid from the money appropriated to it for the adjudication program by the legislature to carry out its function under subsection (1) and when that appropriation is expended then the department is no longer required to provide further assistance."*

Section 9. Section 85-2-701, MCA, is amended to read:

**"85-2-701. Legislative intent.** (1) Because the water and water rights within each water division are interrelated, it is the intent of the legislature to conduct unified proceedings for the general adjudication of existing water rights under the Montana Water Use Act. Therefore, it is the intent of the legislature that the attorney general's petition required in 85-2-211 include all claimants of reserved Indian water rights as necessary and indispensable parties under authority granted the state by 43 U.S.C. 666. However, it is further intended that the state of Montana proceed under the provisions of this part in an effort to conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state.

(2) *To the maximum extent possible, the reserved water rights compact commission established under 2-15-212 should make the negotiation of*

*water rights claimed by the federal government or Indian tribes in or affecting the basins identified by [section 10] its highest priority."*

**Section 10. Process and criteria for designating priority basins or subbasins.** (1) The water judges and the department, in performing their functions in the adjudication process, shall give priority to basins or subbasins designated each biennium by the legislature. Basins or subbasins must be designated according to the following criteria:

(a) recurring water shortages within the basin or subbasin have resulted in urgent water rights controversies that require adjudication to determine relative rights;

(b) federal or Indian reserved rights are nearing determination, either by compact or adjudication, thus making adjudication of other rights in the basin or subbasin important for timely issuance of preliminary or final decrees;

(c) the basin or subbasin's location would help ensure efficient use of department and water court resources; and

(d) the adjudication process in the basin or subbasin is nearing the issuance of a decree.

(2) The water judge may designate a basin for priority adjudication upon petition of 100 or more persons who have filed claims within the basin, or he may designate a subbasin for priority adjudication upon petition of a majority of persons who have filed claims within the subbasin. The basin or subbasin shall receive priority, however, only if it meets one or more of the criteria in subsection (1).

(3) If adjudication work in one or more of the priority basins or subbasins has been completed or has been suspended for good cause, the water judge may select other basins or subbasins for priority adjudication, based on the criteria in subsection (1).

**Section 11. Appropriation.** There is appropriated \$1,200 to the Montana supreme court for expenses of the judicial nomination commission in performing functions relating to water court appointments.

**Section 12. Repealer.** Section 85-2-242, MCA, is repealed.

**Section 13. Extension of authority.** Any existing authority of the judicial nomination commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 14. Codification instruction.** Section 10 is intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions of Title 85, chapter 2, part 2, apply to section 10.

**Section 15. Effective date.** This act is effective July 1, 1987.

Approved May 11, 1987.

**CHAPTER NO. 652**

[HB 796]

AN ACT LIMITING THE NUMBER OF BINGO OR KENO MACHINES IN AN ESTABLISHMENT; PROVIDING FOR HOURS OF PLAY OF BINGO OR KENO AND VIDEO DRAW POKER MACHINES; AMENDING SECTIONS 23-5-402, 23-5-414, AND 23-5-603, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-5-402, MCA, is amended to read:

**"23-5-402. Definitions.** As used in this part, unless the context requires otherwise, the following terms or phrases shall have the following meanings:

(1) *"Bingo or keno machine" means an electronic video game machine that, upon insertion of cash, is available to play or simulate the play of the game of bingo or keno, utilizing a video display and microprocessors, in which by the skill of the player or by chance, or both, the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins, cash, tokens, or anything else of value.*

(2) *"Game of chance" means the specific kind of game of chance commonly known as:*

(a) *"bingo" or "keno", in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random;*

(b) *"raffles", which are conducted by drawing for prizes.*

(3) *"Equipment" means:*

(a) *with respect to bingo or keno, the receptacle and numbered objects drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the boards or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address system, and all other articles essential to the operation, conduct, and playing of bingo or keno; or*

(b) *with respect to raffles, the implements, devices, and machines designed, intended, or used for the conduct of raffles and the identification of the winning number or unit and the ticket or other evidence of right to participate in raffles."*

Section 2. Section 23-5-414, MCA, is amended to read:

**"23-5-414. Restrictions on bingo, keno, and raffles — bingo or keno machines in establishment limit — exception — hours of**

**operation.** (1) In the playing of bingo or keno, no person who is not physically present on the premises where the game is actually conducted shall be allowed to participate as a player in the game.

(2) Raffles authorized by this part shall be restricted to events and participants within the geographic confines of the state of Montana.

(3) *No establishment may receive licenses for, under 23-5-421, or make available for play more than 40 bingo or keno machines."*

Section 3. Section 23-5-414, MCA, is amended to read:

**"23-5-414. Restrictions on bingo, keno, and raffles — bingo or keno machines in establishment limit — hours of operation.** (1) In the playing of bingo or keno, no person who is not physically present on the premises where the game is actually conducted shall be allowed to participate as a player in the game.

(2) Raffles authorized by this part shall be restricted to events and participants within the geographic confines of the state of Montana.

(3) *No establishment may receive licenses for, under 23-5-421, or make available for play more than 15 bingo or keno machines. A local governing body, however, may restrict the number of licensed machines available for play in an establishment to less than 15, but must allow at least 5.*

(4) (a) *Except as provided in subsection (4)(b), an establishment that receives a license to make a bingo or keno machine available for play must have the machines shut off each day during the hours provided in 16-3-304 for closure of licensed retail alcoholic beverage establishments.*

(b) *A local governing body may establish any hours of play for bingo or keno machines that it determines proper."*

Section 4. Section 23-5-603, MCA, is amended to read:

**"23-5-603. Video draw poker machines — possession — play — hours of play — restriction.** (1) No person may place an electronic video game machine that simulates or offers a game of poker in his licensed establishment unless he is licensed under 23-5-612. Machines licensed under 23-5-612 are legal, and it is legal to play such machines, except that a person under the age of 18 years may not play a video draw poker machine.

(2) *Except as provided in subsection (3), an establishment that receives a license to make a video draw poker machine available for play must have the machines shut off each day during the hours provided in 16-3-304 for closure of licensed retail alcoholic beverage establishments.*

(3) *A local governing body may establish any hours of play for video draw poker machines that it determines proper.*

(4) The provisions of part 3 of this chapter do not apply to or prohibit video draw poker machines or the playing of such machines."

Section 5. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 6. Effective dates — termination date.** (1) Except as provided in subsection (2), this act is effective July 1, 1988.

(2) Section 2 is effective July 1, 1987, and terminates July 1, 1988.

Approved May 11, 1987.

## CHAPTER NO. 653

[HB 861]

AN ACT PROVIDING FOR THE DISCLOSURE TO THE ATTORNEY GENERAL AND PUBLIC SERVICE COMMISSION OF CERTAIN INFORMATION FROM THE BUYER AND SELLER OF A LINE OF RAILROAD; APPROPRIATING MONEY FROM THE GENERAL FUND FOR ADMINISTRATION OF THE ACT; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** As used in [sections 2 through 4], the following definitions apply:

(1) "Buyer" means a person, corporation, association, business entity, labor organization, the state of Montana or any of its political subdivisions, or any other entity that acquires a line of railroad, by purchase, lease, or other agreement, to continue the commercial transportation of goods or passengers.

(2) "Labor organization" means any organization or association of any kind in which employees participate and that exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(3) "Seller" means a person, corporation, association, or business entity that transfers a line of railroad by sale, lease, or other agreement.

(4) "Transaction" means the limited purchase, sale, or transfer of part of a line of railroad that will be operated by a common rail carrier.

**Section 2. Conditions for transfer of line of railroad.** Thirty days prior to filing with the interstate commerce commission of an application to purchase, sell, or transfer any section of a line of railroad, the seller and buyer shall:

(1) file a notice of intent and other information, as described in [section 3], with the attorney general and the commission; and

(2) require representatives to attend meetings, upon reasonable notice, with the attorney general and the commission to respond to questions and requests for information on the proposed transaction directly related to the requirements of [section 3].



**Section 3. Notice of intent — confidentiality.** (1) 'The notice of intent filed in accordance with [section 2] must contain:

(a) a complete and accurate description of the identities of the buyer and seller; and

(b) a thorough description of the railroad line to be transferred.

(2) A general description of the terms of the proposed transaction and any labor agreements must be attached to the notice of intent.

**Section 4. Appropriation.** There is appropriated from the general fund \$500 to the attorney general and public service commission for administration of this act.

**Section 5. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 6. Codification instruction.** Sections 1 through 3 are intended to be codified as an integral part of Title 69, chapter 14, and the provisions of Title 69, chapter 14, apply to sections 1 through 3.

**Section 7. Effective date.** This act is effective on passage and approval.

Approved May 11, 1987.

## CHAPTER NO. 654

[SB 71]

AN ACT PROVIDING FOR A FREEZE AT 1986 LEVELS IN THE AMOUNT OF PROPERTY TAX PAYABLE ON PROPERTY DESCRIBED IN SECTIONS 15-6-131, 15-6-132, 15-6-135, 15-6-137, 15-6-138, 15-6-140, 15-6-141, 15-6-143, AND 15-6-145 THROUGH 15-6-149, MCA; CLARIFYING PROVISIONS OF INITIATIVE NO. 105 APPROVED BY THE ELECTORS OF MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

WHEREAS, the electors of Montana approved Initiative No. 105, limiting certain property taxes to 1986 levels unless the Legislature reduces property taxes prior to July 1, 1987, and establishes alternative revenue sources; and

WHEREAS, Initiative No. 105 was not intended by its drafters and proponents to encompass the numerous interconnecting statutory provisions that would require amendment to facilitate implementation of the measure; and

WHEREAS, it is the intent of the Legislature to enact provisions compatible with the will of the electors in limiting certain property taxes to 1986 levels while providing procedures to enable the Department of Revenue and local government units to function smoothly under such limits.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Declaration of policy — clarification — extension to all property classes.** [Section 1 of Initiative No. 105] is interpreted, clarified, and extended as follows:

(1) In order to avoid constitutional challenges based on discriminatory treatment of taxpayers in tax classes not enumerated in [Initiative No. 105], the limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The policy declaration in [subsection (5) of section 1 of Initiative No. 105] that no further property tax increases be imposed is interpreted to mean no further increase may be made in the tax rate applied to property in each class in 1986.

(3) No new class of property may be created solely to circumvent the policy underlying [Initiative No. 105]. If a new class of property is created in order to afford preferential treatment to a category of property, the taxable rate that applies may not exceed the rate at which such property was taxed in 1986.

**Section 2. Property tax limited to 1986 levels — clarification — extension to all property classes.** [Section 2 of Initiative No. 105] is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit.

(3) The limitation on the amount of taxes levied does not mean that no further increase may be made in the total taxable valuation of a taxing unit as a result of:

- (a) annexation of real property and improvements into a taxing unit;
- (b) construction, expansion, or remodeling of improvements;
- (c) transfer of property into a taxing unit;
- (d) subdivision of real property;
- (e) reclassification of property;
- (f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

- (g) transfer of property from tax-exempt to taxable status; or
- (h) revaluations caused by:
- (i) cyclical reappraisal; or
- (ii) expansion, addition, replacement, or remodeling of improvements.

(4) The limitation on the amount of taxes levied does not mean that no further increase may be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

- (a) construction, expansion, replacement, or remodeling of improvements that adds value to the property;
- (b) transfer of property into a taxing unit;
- (c) reclassification of property;
- (d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;
- (e) annexation of the individual property into a new taxing unit; or
- (f) conversion of the individual property from tax-exempt to taxable status.

(5) Property in classes four, twelve, and fourteen is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

- (a) new construction;
- (b) expanded, deleted, replaced, or remodeled improvements;
- (c) annexed property; or
- (d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four, class twelve, or class fourteen property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by [Initiative No. 105] except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in [Initiative No. 105], while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless the taxing unit's taxable valuation decreases by 5% or more from the previous tax year. If a taxing unit's taxable valuation decreases by 5% or more from the previous tax year, it may

levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of [Initiative No. 105]:

- (a) rural improvement districts;
- (b) special improvement districts;
- (c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;
- (d) city street maintenance districts;
- (e) tax increment financing districts;
- (f) satisfaction of judgments against a taxing unit;
- (g) electric company street lighting assessments; and
- (h) revolving funds to support any categories specified in this subsection (8).

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

- (a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of Initiative No. 105;
- (b) an explanation of the nature of the financial emergency;
- (c) an estimate of the amount of funding shortfall expected by the taxing unit;
- (d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;
- (e) a finding that there are no alternative sources of revenue;
- (f) a summary of the alternatives that the governing body of the taxing unit has considered; and
- (g) a statement of the need for the increased revenue and how it will be used.

(10) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

**Section 3. Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 15, chapter 10, and the provisions of Title 15, chapter 10, apply to sections 1 and 2.

Section 4. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Effective date — applicability.** (1) This act is effective on passage and approval.

(2) This act applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1986.

Section 6. **Termination.** This act terminates December 31, 1989.

Approved May 13, 1987.

## CHAPTER NO. 655

[SB 383]

AN ACT DEFINING "INTERIM PRODUCTION" OF PETROLEUM, OIL, AND NATURAL GAS; REVISING THE DEFINITION OF "NEW PRODUCTION" OF PETROLEUM, OIL, AND NATURAL GAS; EXTENDING THE UNIFORM RATE OF NET PROCEEDS TAXATION TO INTERIM PRODUCTION AND REDEFINED NEW PRODUCTION; PROVIDING FOR THE EXEMPTION FROM NET PROCEEDS TAXES FOR 12 MONTHS FOR NEW PRODUCTION FROM NATURAL GAS, PETROLEUM, AND OIL WELLS; PROVIDING FOR PRORATING OF DEDUCTIONS TO DETERMINE NET PROCEEDS; PROVIDING FOR QUARTERLY PAYMENT OF INTERIM PRODUCTION AND NEW PRODUCTION NET PROCEEDS TAXES; REVISING THE DEFINITION OF "TAXABLE VALUATION" AS IT APPLIES TO COUNTY CLASSIFICATION; AMENDING SECTIONS 7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, 7-16-2327, 15-6-208, 15-16-102, 15-16-121, 15-23-601 THROUGH 15-23-605, 15-23-607, 15-23-612, 15-23-613, 20-9-141, 20-9-331, 20-9-333, 20-9-352, 20-9-501, AND 20-10-144, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-1-2111, MCA, is amended to read:

**"7-1-2111. Classification of counties.** (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the several counties of this state shall be classified according to that percentage of the true and full valuation of the property therein upon which the tax levy is made, as follows:

(a) first class—all counties having such a taxable valuation of \$50 million or over;

(b) second class—all counties having such a taxable valuation of more than \$30 million and less than \$50 million;

(c) third class—all counties having such a taxable valuation of more than \$20 million and less than \$30 million;

(d) fourth class—all counties having such a taxable valuation of more than \$15 million and less than \$20 million;

(e) fifth class—all counties having such a taxable valuation of more than \$10 million and less than \$15 million;

(f) sixth class—all counties having such a taxable valuation of more than \$5 million and less than \$10 million;

(g) seventh class—all counties having such a taxable valuation of less than \$5 million.

(2) As used in this section, taxable valuation means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) the amount of *interim production* and new production taxes levied, as provided in 15-23-607, divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%; and

(c) *the amount of value represented by new production exempted from tax as provided in 15-23-612.*"

Section 2. Section 7-7-2101, MCA, is amended to read:

**"7-7-2101. Limitation on amount of county indebtedness.** (1) No county may become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding 23% of the total of the taxable value of the property therein subject to taxation, plus the amount of *interim production* and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, *plus the amount of value represented by new production exempted from tax as provided in 15-23-612*, as ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness.

(2) No county may incur indebtedness or liability for any single purpose to an amount exceeding \$500,000 without the approval of a majority of the electors thereof voting at an election to be provided by law, except as provided in 7-21-3413 and 7-21-3414.

(3) Nothing in this section shall apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

Section 3. Section 7-7-2203, MCA, is amended to read:

**"7-7-2203. Limitation on amount of bonded indebtedness.** (1) Except as provided in subsections (2) through (4), no county may issue general obligation bonds for any purpose which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the total of the taxable value of the property therein, plus

the amount of *interim production* and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, *plus the amount of value represented by new production exempted from tax as provided in 15-23-612*, to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds.

(2) In addition to the bonds allowed by subsection (1), a county may issue bonds which, with all outstanding bonds and warrants, will not exceed 27.75% of the total of the taxable value of the property in the county subject to taxation, plus the amount of *interim production* and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, *plus the amount of value represented by new production exempted from tax as provided in 15-23-612*, when necessary to do so, for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes.

(3) In addition to the bonds allowed by subsections (1) and (2), a county may issue bonds for the construction or improvement of a jail which will not exceed 12.5% of the taxable value of the property in the county subject to taxation.

(4) The limitation in subsection (1) shall not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932."

Section 4. Section 7-14-2524, MCA, is amended to read:

**"7-14-2524. Limitation on amount of bonds issued — excess void.** (1) Except as otherwise provided hereafter and in 7-7-2203 and 7-7-2204, no county shall issue bonds which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the total of the taxable value of the property therein, plus the amount of *interim production* and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, *plus the amount of value represented by new production exempted from tax as provided in 15-23-612*. The taxable property and the amount of *interim production* and new production taxes levied shall be ascertained by the last assessment for state and county taxes prior to the issuance of such bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants except county high school bonds, will exceed 11.25% but will not exceed 22.5% of the total of the taxable value of such property, plus the amount of *interim production* and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, *plus the amount of value represented by new production exempted from tax as provided in 15-23-612*, when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county, except county high school bonds, shall not exceed 22.5% of the total of the taxable value of the property within the county, plus the amount of *interim production and new production taxes* levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, *plus the amount of value represented by new production exempted from tax as provided in 15-23-612*, as ascertained by the last preceding general assessment."

Section 5. Section 7-14-2525, MCA, is amended to read:

**"7-14-2525. Refunding agreements and refunding bonds authorized.** (1) Whenever the total indebtedness of a county exceeds 22.5% of the total of the taxable value of the property therein, plus the amount of *interim production and new production taxes* levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, *plus the amount of value represented by new production exempted from tax as provided in 15-23-612*, and the board determines that the county is unable to pay such indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest thereon in satisfaction thereof;

(b) enter into such agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

(3) The plan agreed upon between the board and the bondholders shall be embodied in full in the resolution providing for the issue of the bonds."

Section 6. Section 7-16-2327, MCA, is amended to read:

**"7-16-2327. Indebtedness for park purposes.** (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties now given under law, shall have the power and duty to contract an indebtedness in behalf of a county, upon the credit thereof, for the purposes of 7-16-2321(1) and (2).

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, must not at any time exceed 13% of the total of the taxable value of the taxable property in the county, plus the amount of *interim production and new production taxes* levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, *plus the amount of value represented by new production exempted from tax as provided in 15-23-612*, ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness.

(b) No money may be borrowed on bonds issued for the purchase of lands and improving same for any such purpose until the proposition has been submitted to the vote of those qualified under the provisions of the



state constitution to vote at such election in the county affected thereby and a majority vote is cast in favor thereof."

Section 7. Section 15-6-208, MCA, is amended to read:

**"15-6-208. Mineral exemptions.** (1) One-half of the contract sales price of coal sold by a coal producer who extracts less than 50,000 tons of coal in a calendar year is exempt from taxation.

(2) Metal mines producing less than 20,000 tons of ore in a taxable year shall be exempt from property taxation on one-half of the merchantable value.

(3) *New production, as defined in 15-23-601, is exempt from taxation for the first 12 months of production as provided in 15-23-612.*"

Section 8. Section 15-16-102, MCA, is amended to read:

**"15-16-102. Time for payment — penalty for delinquency.** All taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103 and assessments made on *interim production* and new production as provided in Title 15, chapter 23, part 6, and payable under 15-16-121, shall be payable as follows:

(1) One-half of the amount of such taxes shall be payable on or before 5 p.m. on November 30 of each year and one-half on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of such taxes are paid on or before 5 p.m. on November 30 of each year, then such amount so payable shall become delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year shall be delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty."

Section 9. Section 15-16-121, MCA, is amended to read:

**"15-16-121. Payment of interim production and new production taxes.** (1) Taxes levied and assessed on *interim production* or new production under the provisions of Title 15, chapter 23, part 6, must be paid to the county treasurer in quarterly installments. The payments must be made on or before 5 p.m. on the last day of the months of November, February, May, and August.

(2) Unless one-quarter of such taxes are paid on or before 5 p.m. on the last day of the months of November, February, May, and August of each year, any amount so payable is delinquent.

(3) All such delinquent taxes must draw interest at the rate payable on delinquencies under 15-23-115.

(4) There must also be added to the delinquent taxes a penalty at the same rate as provided for delinquencies under 15-23-104."

Section 10. Section 15-23-601, MCA, is amended to read:

**"15-23-601. Definitions.** As used in this part, the following definitions apply:

(1) "Excise tax" means the windfall profit tax on domestic crude oil imposed by Title I of the federal Crude Oil Windfall Profit Tax Act of 1980, as enacted or as amended.

(2) "*Interim production*" means the production of natural gas, petroleum, or other crude or mineral oil from any well that:

(a) *had not produced natural gas, petroleum, or other crude or mineral oil during the 5 years immediately preceding the first month of interim production; and*

(b) *began interim production after June 30, 1985, and before April 1, 1987.*

(3) The term "new production" means the production of natural gas, petroleum, or other crude or mineral oil from any well:

(a) *that has not produced natural gas, petroleum, or other crude or mineral oil during the 5 years immediately preceding the first month of qualified new production; and*

(b) *on which the notification required in 15-36-121(2) was given.*

(4) The terms "operator" and "producer" mean any person who engages in the business of drilling for, extracting, or producing any natural gas, petroleum, or other crude or mineral oil.

(5) The term "well" includes each single well or group of wells, including dry wells, in one field or production unit and under the control of one operator or producer."

Section 11. Section 15-23-602, MCA, is amended to read:

**"15-23-602. Statement of sales proceeds.** (1) Except as provided in subsection (2), each operator or producer of natural gas, petroleum, or other crude or mineral oil must on or before April 15 in each year make out and deliver to the department of revenue a statement of the gross sales proceeds of such natural gas, petroleum, or other crude or mineral oil from each well owned or worked by such person during the next preceding calendar year. The gross sales proceeds shall be determined by multiplying the units of production sold from the well times the royalty unit value of that production at the well. Such statement shall be in the form prescribed by the department and must be verified by the oath of the operator or producer or the manager, superintendent, agent, president, or vice-president of such corporation, association, or partnership. Such statement shall show the following:

(a) the name and address of the operator, together with a list in duplicate of the names and addresses of any and all persons owning or claiming any royalty interest in the production from the well or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons during the period covered by the statement;

- (b) the description and location of the well;
- (c) the number of cubic feet of natural gas, barrels of petroleum or other crude or mineral oil sold from the well during the period covered by the statement;
- (d) the gross sales proceeds in dollars and cents or, in the case of sales between parties not acting at arm's length, the greater of the gross sales proceeds from or the fair market value of the products sold;
- (e) except for *interim production* and new production as defined in 15-23-601:

- (i) actual cost of extracting product from well;
- (ii) cost of construction, repairs, and betterments;
- (iii) actual cost of fire insurance and workers' compensation insurance;
- (iv) the amount paid or withheld in satisfaction of liability for excise taxes imposed by the U.S. government on the production, sale, or removal of the natural gas, petroleum, or other crude or mineral oil reported pursuant to subsection (1)(c), including a separate statement of the amount of such taxes paid or withheld from each royalty owner.

(2) Each operator having *interim production* or new production as defined in 15-23-601 shall, on or before the last day of the months of October, January, April, and July, make out and deliver to the department of revenue a statement of the gross sales proceeds of such *interim production* or new production from each well owned or worked by such person during the preceding calendar quarter. The statement must be in the form prescribed by the department and verified as provided in subsection (1). The statement shall show the information required in subsections (1)(a) through (1)(d)."

Section 12. Section 15-23-603, MCA, is amended to read:

**"15-23-603. Net proceeds — how computed.** (1) Except as provided in subsection (3), the department of revenue shall calculate and compute from the returns the gross sales proceeds of the product yielded from such well for the year covered by the statement and shall calculate the net proceeds of the well yielded to the producer, which net proceeds shall be determined by subtracting from the gross sales proceeds thereof the following:

(a) all royalty paid in cash by the operator or producer and the gross value of all royalty apportioned in kind by the operator or producer that shall be determined by using as the value of a barrel of oil or a cubic foot of gas the average selling price for the calendar year of a barrel of oil or a cubic foot of gas from the well out of which the royalty was paid;

(b) all money expended for necessary labor and machinery needed and used in the operation and development;

(c) except as provided in subsection (5), all money expended for necessary supplies needed and used in the operation and development;

(d) all money expended for improvements, repairs, and betterments necessary in and about the working of the well;

(e) that portion of all money, including costs of insurance, expended for the acquisition and operation of any vehicle used in the operation and development of the well which bears the same ratio to all money expended for the acquisition and use of the vehicle during the year covered by the statement as the number of miles the vehicle is used in operation and development of the well during the year covered by the statement bears to the total miles the vehicle is used during the year covered by the statement;

(f) all money expended for fire insurance, workers' compensation insurance, liability insurance, and casualty insurance directly attributable to the operation and development of the well and for payments by operators to welfare and retirement funds when provided for in wage contracts between operators and employees;

(g) all money expended for any performance or indemnity bonds required by the laws of this state or the rules of any state agency, with respect to the well for which the net proceeds are being calculated;

(h) 70% of the amount paid or withheld in satisfaction of liability for excise taxes imposed by the U.S. government on the production, sale, or removal of the natural gas, petroleum, or other crude or mineral oil yielded from such well, other than the amount of such taxes paid by or withheld from each royalty owner; and

(i) *net proceeds determined under subsection (3).*

(2) No money invested in the well and improvements during any year except the year for which such statement is made may be included in such expenditures, except as provided in 15-23-604, and such expenditures may not include the salaries or any portion thereof of any person or officer not actually engaged in the working of the well or superintending the management thereof.

(3) For *interim production* or new production, net proceeds are the equivalent of the gross sales proceeds, without deduction for excise taxes, of the product yielded from such well for the year covered by the statement, except that in computing the total number of barrels of petroleum and other mineral or crude oil or cubic feet of natural gas produced, there shall be deducted therefrom so much thereof as is used in the operation of the well from which the petroleum or other mineral or crude oil or natural gas is produced for pumping the petroleum or other mineral or crude oil or natural gas from the well to a tank or pipeline.

(4) *To determine net proceeds under subsection (1) for lease or unitized areas from which interim or new production and other production have been sold, the deductions allowed in subsections (1)(b) through (1)(h) must be prorated on the basis of the number of barrels of interim and new production of oil or cubic feet of interim or new production of gas to the number of barrels of other production of oil or cubic feet of other production of gas.*

(5) In calculating the deduction for money expended for necessary chemical supplies needed and used in a tertiary recovery project approved

by the department of revenue, as provided in 15-36-101, the department shall require that the necessary chemical supplies, which include but are not limited to carbon dioxide supplies, be amortized over a 10-year period beginning with the year in which the money was expended."

Section 13. Section 15-23-604, MCA, is amended to read:

**"15-23-604. Deduction of drilling costs and capital expenditures.** (1) Unless an operator or producer proceeds under subsection (2), the department of revenue in computing the deductions allowable for cost of drilling wells completed during the period and for other capital expenditures shall allow 10% of such cost each year for a period of 10 years beginning:

(a) with the year natural gas from a natural gas well is first placed into a natural gas distribution system; or

(b) with the year the pumping unit is installed on a crude oil well or the well flows.

(2) The operator or producer may elect to amortize the cost over a period of 2 years if the well is less than 3,000 feet deep.

(3) *The deduction of the costs in subsection (1) is not allowed on wells that are producing interim production or new production, as defined in 15-23-601, and may not be prorated on wells that are not producing interim production or new production when a lease or unitized area has both interim or new production and other production."*

Section 14. Section 15-23-605, MCA, is amended to read:

**"15-23-605. Assessment of royalties.** (1) The amount of royalty received, valued as provided in 15-23-603(1)(a), less 70% of the amount of excise taxes paid by or withheld from the royalty owner as reported pursuant to 15-23-602(8), shall be considered net proceeds to the recipient and shall be assessed as follows: upon receipt of the lists or schedules setting forth the names and addresses of any and all persons owning or claiming royalty and the amount paid or yielded as royalty to such royalty owners or claimants during the year for which such return is made, the department of revenue shall proceed to assess and tax the same as net proceeds of mines.

(2) Net proceeds for *interim production and new production*, as defined in 15-23-601, includes royalties received without deduction for excise taxes."

Section 15. Section 15-23-607, MCA, is amended to read:

**"15-23-607. County assessors to compute taxes.** (1) Immediately after the board of county commissioners has fixed tax levies on the second Monday in August, the county assessor shall compute the taxes on such net proceeds, except as provided in 15-23-612 and in subsection (2), and royalty assessments and shall deliver the book to the county treasurer on or before September 15. The county treasurer shall proceed to give full notice thereof to such operator and to collect the same in manner provided by law.

(2) For *interim production* or new production, as defined in 15-23-601, the county assessor may not levy or assess any mills against the value of such *interim production* or new production, but shall instead levy a tax as follows:

(a) for *interim production* or new production of petroleum or other mineral or crude oil, 7% of net proceeds, as described in 15-23-603(3); or

(b) for *interim production* or new production of natural gas, 12% of net proceeds, as described in 15-23-603(3).

(3) The amount of tax levied in subsections (2)(a) and (2)(b), divided by the appropriate tax rate and multiplied by 60%, shall be treated as taxable value for county bonding purposes.

(4) The operator or producer shall be liable for the payment of said taxes and same shall, except as provided in 15-16-121, be payable by and shall be collected from such operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines; provided, however, that the operator may at his option withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by him upon such royalty or royalty interest. After such withholding any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests."

Section 16. Section 15-23-612, MCA, is amended to read:

**"15-23-612. Certain natural gas, petroleum, or other crude or mineral oil exempt.** (1) *New production, as defined in 15-23-601, is exempt from the net proceeds tax imposed by this part for the first 12 months following the last day of the calendar month immediately preceding the month in which:*

(a) *natural gas is placed into a natural gas distribution system; or*

(b) *production for sale from a crude oil or mineral oil well is pumped or flows.*

(2) *After the expiration of the 12-month exemption period provided in subsection (1), new production of natural gas, petroleum, or other crude or mineral oil is subject to net proceeds tax imposed by this part.*

(3) *Notwithstanding the provisions of subsections (1) and (2), all reporting requirements under the net proceeds tax remain in effect."*

Section 17. Section 15-23-613, MCA, is amended to read:

**"15-23-613. Disposition of interim production and new production taxes.** The county treasurer shall credit all taxes on *interim production* and new production, as provided for in 15-23-607, in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as property taxes were distributed in the year preceding the budget year."

Section 18. **Allocation of new production.** (1) If a lease has production that does not qualify for new or interim production and a producing

well is completed on the lease after December 31, 1986, the allocation of the new production must be based on the average daily production per well. The average daily production per well must be determined by dividing the total production for the quarter by the number of well production days for the quarter.

(2) The number of well production days for the quarter is the sum of the number of completed wells on the first day of the quarter times the number of days in the quarter plus the number of days from the date of completion of any wells during the quarter to the end of the quarter. New production for the quarter must then be calculated by multiplying the average daily production per well times the number of wells completed after December 31, 1986, times the number of production days attributed to those wells for the quarter. The value of the production must be based on the average price received for the production for the quarter.

(3) Average daily production, well production days, and average price must be calculated each quarter.

Section 19. Section 20-9-141, MCA, is amended to read:

**"20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the total of the funding required for the district's final general fund budget less the amount established by the schedules in 20-9-316 through 20-9-321 by totaling:

(i) the district's nonisolated school foundation program requirement to be met by a district levy as provided in 20-9-303;

(ii) the district's permissive levy amount as provided in 20-9-352; and

(iii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-353, including any additional levies authorized by the electors of the district.

(b) Determine the total of the moneys available for the reduction of the property tax on the district for the general fund by totaling:

(i) anticipated federal moneys received under the provisions of Title I of Public Law 81-874 or other anticipated federal moneys received in lieu of such federal act;

(ii) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

(iii) general fund cash reappropriated, as established under the provisions of 20-9-104;

(iv) anticipated or reappropriated state impact aid received under the provisions of 20-9-304;

(v) anticipated or reappropriated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536;

(vi) anticipated net proceeds taxes for *interim production and new production*, as defined in 15-23-601;

(vii) anticipated interest to be earned or reappropriated interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(viii) any other revenue anticipated by the trustees to be received during the ensuing school fiscal year which may be used to finance the general fund.

(c) Subtract the total of the moneys available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from the total requirement determined in subsection (1)(a).

(2) The net general fund levy requirement determined in subsection (1)(c) shall be reported to the county commissioners on the second Monday of August by the county superintendent as the general fund levy requirement for the district, and a levy shall be made by the county commissioners in accordance with 20-9-142."

Section 20. Section 20-9-331, MCA, is amended to read:

**"20-9-331. Basic county tax and other revenues for county equalization of the elementary district foundation program.** (1) It shall be the duty of the county commissioners of each county to levy an annual basic tax of 28 mills on the dollars of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of the elementary school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenues identified in subsection (2) below shall be subtracted from the sum of the county elementary transportation obligation and the total of the foundation programs of all elementary districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined above, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed by this section and the revenues from the following sources shall be used for the equalization of the elementary district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of such proceeds and revenues by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;



(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for the various sources of revenue established or referred to in this section;

(e) any federal or state money, including anticipated or reappropriated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536, distributed to the county as payment in lieu of the property taxation established by the county levy required by this section; and

(f) net proceeds taxes for *interim production* and new production, as defined in 15-23-601."

Section 21. Section 20-9-333, MCA, is amended to read:

**"20-9-333. Basic special levy and other revenues for county equalization of high school district foundation program.** (1) It shall be the duty of the county commissioners of each county to levy an annual basic special tax for high schools of 17 mills on the dollar of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of high school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the estimated revenues identified in subsections (2)(a) and (2)(b) below shall be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined above, the county treasurer shall remit the surplus to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed in this section and the revenues from the following sources shall be used for the equalization of the high school district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of these proceeds by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state moneys, including anticipated or reappropriated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536, distributed to the county as a payment in lieu of the property taxation established by the county levy required by this section; and

(c) net proceeds taxes for *interim production* and new production, as defined in 15-23-601."

Section 22. Section 20-9-352, MCA, is amended to read:

**"20-9-352. Permissive amount and permissive levy.** (1) Whenever the trustees of any district shall deem it necessary to adopt a general fund budget in excess of the foundation program amount but not in excess of the maximum general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. Such excess above the foundation program amount shall be known as the "permissive amount", and it shall be financed by a levy on the taxable value of all taxable property within the district as prescribed in 20-9-141, supplemented with any biennial appropriation by the legislature for this purpose. The proceeds of such an appropriation shall be deposited to the state special revenue fund, permissive account.

(2) The district levies to be set for the purpose of funding the permissive amount are determined as follows:

(a) For each elementary school district, the county commissioners shall annually set a levy not exceeding 6 mills on all the taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive amount to the maximum permissive amount by 6 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy, plus anticipated or reappropriated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536, is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the state special revenue fund according to the provisions of subsections (3) and (4) of this section.

(b) For each high school district, the county commissioners shall annually set a levy not exceeding 4 mills on all taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive levy to the maximum permissive amount by 4 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy, plus anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536, and plus net proceeds taxes for *interim production* and new production, as defined in 15-23-601, is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the state special revenue fund according to the provisions of subsections (3) and (4) of this section.

(3) The superintendent of public instruction shall, if the appropriation by the legislature for the permissive account for the biennium is insufficient, request the budget director to submit a request for a supplemental appropriation in the second year of the biennium. The supplemental appropriation shall provide enough revenue to fund the permissive deficiency of the elementary and high school districts of the state. The proceeds of this appropriation shall be deposited to the state special revenue fund, permissive account, and shall be distributed to the elementary and high school districts in accordance with their entitlements as determined by the superintendent of public instruction according to the provisions of subsections (1) and (2) of this section.

(4) Distribution under this section from the state special revenue fund shall be made in two payments. The first payment shall be made at the same time as the first distribution of state equalization aid is made after January 1 of the fiscal year. The second payment shall be made at the same time as the last payment of state equalization aid is made for the fiscal year. If the appropriation is not sufficient to finance the deficiencies of the districts as determined according to subsection (2), each district will receive the same percentage of its deficiency. Surplus revenue in the second year of the biennium may be used to reduce the appropriation required for the next succeeding biennium or may be transferred to the state equalization aid state special revenue fund if revenues in that fund are insufficient to meet foundation program requirements."

Section 23. Section 20-9-501, MCA, is amended to read:

**"20-9-501. Retirement fund.** (1) The trustees of any district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to such systems. The district's contribution for each employee who is a member of the teachers' retirement system shall be calculated in accordance with Title 19, chapter 4, part 6. The district's contribution for each employee who is a member of the public employees' retirement system shall be calculated in accordance with 19-3-801. The district may levy a special tax to pay its contribution to the public employees' retirement system under the conditions prescribed in 19-3-204. The district's contributions for each employee covered by any federal social security system shall be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance shall be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of any district required to make a contribution to any such system shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution and such additional moneys, within legal limitations, as they may wish to provide for the retirement fund cash reserve. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to such systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the moneys available to reduce the retirement fund levy requirement by adding:

(i) any anticipated moneys that may be realized in the retirement fund during the ensuing school fiscal year, including anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536;

(ii) net proceeds taxes for *interim production and* new production, as defined in 15-23-601; and

(iii) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the retirement fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the retirement fund. The retirement fund cash reserve shall not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and shall be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(b) subtracting the total of the moneys available for reduction of the levy requirement as determined in subsection (3)(a) from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements, and shall report each such levy requirement to the county commissioners on the second Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds. The county commissioners shall fix and set such county levy in accordance with 20-9-142.

(5) The net retirement fund levy requirement for a joint elementary district or a joint high school district shall be prorated to each county in which a part of such district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each such county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(6) The net retirement fund levy requirement for districts that are members of special education cooperative agreements shall be prorated to each county in which such district is located in the same proportion as the budget for the special education cooperative agreement of the district bears to the total budget of the cooperative. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151 and fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152."

Section 24. Section 20-10-144, MCA, is amended to read:

**"20-10-144. Computation of revenues and net tax levy requirements for the transportation fund budget.** Before the fourth Monday of July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 shall be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by such district); plus

(b) the total of all individual transportation per diem reimbursement rates for such district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if such amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or \$100, whichever is larger, the contingency amount on the preliminary budget shall be reduced to such limitation amount and used in this determination of the schedule amount.

(2) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, shall be divided by 3 and the resulting one-third amount shall be used to determine the available state and county revenue to be budgeted on the following basis:

(a) the resulting one-third amount shall be the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 shall be two-thirds of the schedule amount attributed to the transportation of special education pupils;

(b) the resulting one-third amount, except as provided for joint elementary districts in subsection (2)(e), shall be the budgeted county transportation reimbursement for elementary districts and shall be financed by the basic county tax under the provisions of 20-9-334;

(c) the resulting one-third amount multiplied by 2 shall be the budgeted county transportation reimbursement amount for high school districts financed under the provisions of subsection (5) of this section, except as provided for joint high school districts in subsection (2)(e), and except that the county transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 shall be one-third of the schedule amount attributed to the transportation of special education pupils;

(d) when the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of such district revenue and cash reappropriated shall be used to reduce the county financing obligation in subsections (2)(b) or (2)(c) and, if such county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a); and

(e) the county revenue requirement for a joint district, after the application of any district moneys under subsection (2)(d) above, shall be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each such county.

(3) The total of the moneys available for the reduction of property tax on the district for the transportation fund shall be determined by totaling:

(a) anticipated federal moneys received under the provisions of Title I of Public Law 81-874 or other anticipated federal moneys received in lieu of such federal act; plus

(b) anticipated payments from other districts for providing school bus transportation services for such district; plus

(c) anticipated payments from a parent or guardian for providing school bus transportation services for his child; plus

(d) anticipated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4); plus

(e) anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536; plus

(f) net proceeds taxes for *interim production and new production*, as defined in 15-23-601; plus

(g) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year which may be used to finance the transportation fund; plus

(h) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the transportation fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the transportation fund. Such cash reserve shall not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and shall be for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund shall be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount and, for an elementary district, adding such difference to the district obligation to finance one-third of the schedule amount as determined in subsection (2); and

(b) subtracting the amount of moneys available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a) above.

(5) The county levy requirement for the financing of the county transportation reimbursement to high school districts shall be computed by adding all such requirements for all the high school districts of the county, including the county's obligation for reimbursements in joint high school districts.

(6) The transportation fund levy requirements determined in subsection (4) for each district and in subsection (5) for the county shall be reported to the county commissioners on the second Monday of August by the county superintendent as the transportation fund levy requirements for the district and for the county, and such levies shall be made by the county commissioners in accordance with 20-9-142."

**Section 25. Extension of authority.** Any existing authority of the department of revenue or the board of oil and gas conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 26. Codification instruction.** Section 18 is intended to be codified as an integral part of Title 15, chapter 23, part 6, and the provisions of Title 15, chapter 23, part 6, apply to section 18.

**Section 27. Coordination instructions.** (1) If either Senate Bill No. 262 or Senate Bill No. 66 and this act are passed and approved, Senate Bill No. 262 or Senate Bill No. 66 are void.

(2) If House Bill No. 776 is not passed and approved, section 10(3)(b) is void.

**Section 28. Effective date — applicability.** This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable quarters beginning on or after April 1, 1987. The tax rate and filing method applicable to a well that qualifies as interim production under section 10 but which did not qualify as new production under 15-23-601 prior to the applicability date of this act does not change for tax periods prior to the applicability date.

Approved May 13, 1987.

## CHAPTER NO. 656

[HB 776]

AN ACT TO EXEMPT CERTAIN STRIPPER WELLS AND, FOR THE FIRST 2 YEARS OF PRODUCTION, ALL OTHER WELLS PRODUCING PETROLEUM, NATURAL GAS, OR OTHER MINERAL OR CRUDE OIL FROM SEVERANCE TAXES; TO LOWER THE SEVERANCE TAX RATE TO 3 PERCENT FOR CERTAIN STRIPPER WELLS; AMENDING SECTIONS 15-23-607, 15-23-612, 15-36-101, AND 15-36-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-23-607, MCA, is amended to read:

**"15-23-607. County assessors to compute taxes.** (1) Immediately after the board of county commissioners has fixed tax levies on the second

Monday in August, the county assessor shall compute the taxes on such net proceeds, except as provided in 15-23-612 and in subsection (2), and royalty assessments and shall deliver the book to the county treasurer on or before September 15. The county treasurer shall proceed to give full notice thereof to such operator and to collect the same in manner provided by law.

(2) For new production, as defined in 15-23-601, the county assessor may not levy or assess any mills against the value of such new production, but shall instead levy a tax as follows:

(a) for new production of petroleum or other mineral or crude oil, 7% of net proceeds, as described in 15-23-603(3); or

(b) for new production of natural gas, 12% of net proceeds, as described in 15-23-603(3).

(3) The amount of tax levied in subsections (2)(a) and (2)(b), divided by the appropriate tax rate and multiplied by 60%, shall be treated as taxable value for county bonding purposes.

(4) The operator or producer shall be liable for the payment of said taxes and same shall, except as provided in 15-16-121, be payable by and shall be collected from such operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines; provided, however, that the operator may at his option withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by him upon such royalty or royalty interest. After such withholding any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests."

Section 2. Section 15-23-612, MCA, is amended to read:

**"15-23-612. Certain natural gas exempt.** (1) Natural gas produced from a well 5,000 feet deep or deeper, drilling for which was completed after December 31, 1976, but before April 1, 1987, is exempt from one-half of the net proceeds tax imposed by this part for 3 years if the gas produced from the well is:

(a) placed into a natural gas distribution system for delivery to consumers after diligent completion of the well; and

(b) distributed by a natural gas distribution system serving only natural gas consumers a majority of which are within Montana or at least 10,000 natural gas consumers within Montana.

(2) The 3-year exemption provided by this section shall begin when natural gas from a qualifying well is first placed into a natural gas distribution system.

(3) Notwithstanding the provisions of subsections (1) and (2), all reporting requirements under the net proceeds tax remain in effect."

Section 3. Section 15-36-101, MCA, is amended to read:

**"15-36-101. Definitions and rate of tax.** (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or



crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced sufficient in quantity to justify the marketing of the same must, except as provided in 15-36-121, each year when engaged in or carrying on any such business in this state pay to the department of revenue for the exclusive use and benefit of the state of Montana a severance tax computed at the following rates:

(a) except as provided in subsections (1)(b), (1)(c), and (1)(d), 5% of the total gross value of all the petroleum and other mineral or crude oil produced by such person from each lease or unit on or after April 1, 1981, and on or before March 31, 1983; 6% of the total gross value of all the petroleum and other mineral or crude oil produced by such person from each lease or unit on or after April 1, 1983, and on or before March 31, 1985; and 5% of the total gross value of all the petroleum and other mineral or crude oil produced by such person from each lease or unit thereafter; but in determining the amount of such tax there shall be excluded from consideration all petroleum or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing, and producing such petroleum or crude or mineral oil;

(b) 2.65% of the total gross value of natural gas produced from each lease or unit; but in determining the amount of such tax there shall be excluded from consideration all gas produced and used by such person during such year in connection with his operations in prospecting for, developing, and producing such gas or petroleum or crude or mineral oil; and there shall also be excluded from consideration all gas, including carbon dioxide gas, recycled or reinjected into the ground;

(c) 2.5% of the total gross value of the incremental petroleum and other mineral or crude oil produced from each lease or unit in a tertiary recovery project after July 1, 1985. For purposes of this section, a tertiary recovery project must meet the following requirements:

(i) the project must be approved as a tertiary recovery project by the department of revenue. Such approval may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) the property to be affected by the project must be adequately delineated according to the specifications required by the department; and

(iii) the project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the department to be significant in light of all the facts and circumstances, in the amount of crude oil which may potentially be recovered. For the purpose of this section, tertiary recovery methods include but are not limited to:

- (A) miscible fluid displacement;
- (B) steam drive injection;
- (C) micellar/emulsion flooding;

- (D) in situ combustion;
- (E) polymer augmented water flooding;
- (F) cyclic steam injection;
- (G) alkaline or caustic flooding;
- (H) carbon dioxide water flooding;
- (I) immiscible carbon dioxide displacement;
- (J) any other method approved by the department as a tertiary recovery method;

*(d) 3% of the total gross value of all the petroleum and other mineral or crude oil, after the first 5 barrels, produced by a stripper well, as defined in 15-36-121, that produces more than 5 barrels a day during the period beginning April 1, 1987, and ending March 31, 1989.*

(2) For purposes of this section, the term "incremental petroleum and other mineral or crude oil" means the amount of oil, as determined by the department of revenue, to be in excess of what would have been produced by primary and secondary methods. The determination arrived at by the department must be made only after notice and hearing and shall specify through the life of a tertiary project, calendar year by calendar year, the combined amount of primary and secondary production that must be used to establish the incremental production from each lease or unit in a tertiary recovery project.

(3) Nothing in this part may be construed as requiring laborers or employees hired or employed by any person to drill any oil well or to work in or about any oil well or prospect or explore for or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such severance tax, nor may any work done or the drilling of any well or wells for the purpose of prospecting or exploring for petroleum or other mineral or crude oils or for the purpose of developing same be considered to be the engaging in or carrying on of any such business. If, in the doing of any such work, in the drilling of any oil well, or in such prospecting, exploring, or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation is produced sufficient in quantity to justify the marketing of the same, such work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of such business within this state within the meaning of this section.

(4) Every person required to pay such tax hereunder shall pay the same in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of such extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the aforesaid interests that are owned by the federal, state,

county, or municipal governments shall be exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under said lease or leases or division of proceeds orders or other contracts."

Section 4. Section 15-36-121, MCA, is amended to read:

**"15-36-121. Exemption from severance tax.** (1) It is the public policy of this state to promote a sufficient supply of natural gas to provide for the residents of this state, to lessen Montana's dependence on imported natural gas, and to encourage the exploration for and development and production of natural gas, petroleum, and other mineral and crude oil within the state.

(2) All new production from a well during the 24 months immediately following the date of notification to the department of revenue that an oil well is flowing or being pumped or that a gas well has been connected to a gathering or distribution system is exempt from all of the severance tax imposed by 15-36-101, provided the notification was made after March 31, 1987, and before July 1, 1991.

(3) All the natural gas produced from any well that has produced 60,000 cubic feet or less of natural gas a day for the calendar year prior to the current year shall be taxed as provided in this section. Production must be determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365. The first 30,000 cubic feet of average daily production per well is exempt from all of the severance tax imposed by 15-36-101. Everything over 30,000 cubic feet of gas produced is taxed at 1.59%.

(4) The first 5 barrels of average daily production from a stripper well are exempt from all of the severance tax imposed by 15-36-101.

(5) For the purposes of this section, the following definitions apply:

(a) "New production" means the production of natural gas, petroleum, or other crude or mineral oil from any well:

(i) that has not produced natural gas, petroleum, or other crude or mineral oil during the 5 years immediately preceding the first month of qualified new production; and

(ii) on which the notification provided for in subsection (2) was made after March 31, 1987.

(b) "Stripper well" means a well that produces less than 10 barrels per day, determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area, and by dividing the resulting quotient by 365.

(6) Notwithstanding the provisions of subsections (2) through (4), all reporting requirements under the severance tax remain in effect."

Section 5. **Extension of authority.** Any existing authority of the department of revenue or the board of oil and gas conservation to make

rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 6. Coordination instructions.** (1) If this bill and Senate Bill No. 383, including the section of that bill defining "new production" and "interim production" in 15-23-601, are passed and approved, sections 1 and 2 and subsection (5)(a) of section 4 of this bill are void, and the following amendment is made to this bill:

Following: "new production" in 15-36-121(2), insert "as defined in 15-23-601".

(2) If this bill and Senate Bill No. 66 are passed and approved, Senate Bill No. 66 is void.

**Section 7. Effective date — applicability — contingent termination.** (1) This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to April 1, 1987.

(2) Subsection (2) of 15-36-121, concerning new production, terminates on the date the governor by executive order certifies that the price of West Texas intermediate crude oil has reached \$25 a barrel as reported in the Wall Street Journal.

(3) Section 15-36-101(1)(d) and subsection (4) of 15-36-121, concerning stripper well production, terminate on the date the governor by executive order certifies that the price of West Texas intermediate crude oil has reached \$30 a barrel as reported in the Wall Street Journal.

Approved May 13, 1987.

## CHAPTER NO. 657

[SB 74]

AN ACT TO EXEMPT FROM TAXATION UP TO \$3,600 OF PUBLIC RETIREMENT BENEFITS PAID BY ANOTHER STATE AND TO INCREASE THE EXEMPTION FOR PRIVATE AND CORPORATE RETIREMENT BENEFITS FROM \$360 TO \$3,600; AMENDING SECTIONS 15-30-111 AND 15-30-136, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-30-111, MCA, is amended to read:

**"15-30-111. Adjusted gross income.** (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability; and

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954 as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) all benefits, *not in excess of \$3,600*, received:

(i) under the Federal Employees' Retirement Act;

(ii) *under the public employee retirement laws of a state other than Montana; or*

(iii) as an annuity, pension, or endowment under any private or corporate retirement plan or system;

(d) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;

(e) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

(f) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;

(g) all Montana income tax refunds or credits thereof;

(h) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans;

(i) all benefits paid under the municipal police officers' retirement system that are specified as exempt from taxation by 19-9-1005;

(j) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(k) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(l) all benefits received under the workers' compensation laws; and

(m) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect.

(4) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(i) shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(5) A taxpayer who, in determining federal adjusted gross income, has reduced his business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of such wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(6) Married taxpayers filing a joint federal return who must include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(7) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(8) *A person receiving benefits described in subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not exclude benefits described in subsection (2)(c)*

*from adjusted gross income unless the benefits received under subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are less than \$3,600, in which case the person may combine benefits to exclude up to a total of \$3,600 from adjusted gross income. (Subsection (2)(l) (now (2)(k)) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"*

Section 2. Section 15-30-136, MCA, is amended to read:

**"15-30-136. Computation of income of estates or trusts — exemption.** (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the taxable year, including but not limited to the following items:

- (a) dividends;
  - (b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision thereof, but excluding interest income from obligations of:
    - (i) the United States government or the state of Montana;
    - (ii) a school district; or
    - (iii) a county, municipality, district, or other political subdivision of the state;
  - (c) income from partnerships and other fiduciaries;
  - (d) gross rents and royalties;
  - (e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954, as amended;
  - (f) gross profit from trade or business; and
  - (g) refunds recovered on federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.
- (2) In computing net income, there are allowed as deductions:
- (a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code of 1954, as amended;
  - (b) taxes paid or accrued within the taxable year, including but not limited to federal income tax, but excluding Montana income tax;
  - (c) that fiduciary's portion of depreciation or depletion which is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code of 1954, as amended;
  - (d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code of 1954, as amended;
  - (e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code of 1954,

as amended, if such expenses were not claimed as a deduction in the determination of Montana inheritance tax;

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code of 1954, as amended;

(g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code of 1954, as amended, except estates may not claim losses that are deductible on the decedent's final return;

(h) all benefits, *not in excess of \$3,600*, received:

(i) as federal employees' retirement;

(ii) as retirement from public employment in a state other than Montana; or

(iii) as an annuity, pension, or endowment under private or corporate retirement plans or systems;

(i) all benefits paid under the Montana teachers' retirement system that are specified as exempt from taxation by 19-4-706;

(j) all benefits paid under the Montana Public Employees' Retirement System Act that are specified as exempt from taxation by 19-3-105;

(k) all benefits paid under the Montana highway patrolmen's retirement system that are specified as exempt from taxation by 19-6-705;

(l) Montana income tax refunds or credits thereof;

(m) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firemen or their surviving spouses or children;

(n) all benefits paid under the municipal police officers' retirement system that are specified as exempt from taxation by 19-9-1005.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202 is not in effect, net income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax net income by reason of the election under subchapter S. However, the shareholder's net income shall include actual distribution from the corporation to the extent it would be treated as taxable dividends if the subchapter S. election were not in effect.

(4) The following additional deductions shall be allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the taxable year currently required to be distributed to beneficiaries for such year;

(b) any other amounts properly paid or credited or required to be distributed for the taxable year;



(c) the amount of 60% of the excess of the net long-term capital gain over the net short-term capital loss for the taxable year.

(5) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and 15-30-112(8).

(6) *A trust or estate excluding benefits under subsections (2)(i) through (2)(k), (2)(m), or (2)(n) may not exclude benefits described in subsection (2)(h) from net income unless the benefits received under subsections (2)(i) through (2)(k), (2)(m), or (2)(n) are less than \$3,600, in which case the trust or estate may combine benefits to exclude up to a total of \$3,600 from net income.*"

**Section 3. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 4. Applicability.** This act applies to taxable years beginning after December 31, 1986.

**Section 5. Effective date.** This act is effective on passage and approval.

Approved May 15, 1987.

## CHAPTER NO. 658

[HB 39]

AN ACT TRANSFERRING GOVERNANCE OF THE POSTSECONDARY VOCATIONAL-TECHNICAL CENTERS TO THE BOARD OF REGENTS OF HIGHER EDUCATION; RENAMING POSTSECONDARY VOCATIONAL-TECHNICAL CENTERS AS VOCATIONAL-TECHNICAL CENTERS; ALLOWING FOR A VOTE FOR AN ADDITIONAL LEVY TO SUPPORT A CENTER; REQUESTING THE BOARD OF REGENTS TO REPORT TO THE 51ST LEGISLATURE ON POSSIBLE REORGANIZATION OF POSTSECONDARY VOCATIONAL-TECHNICAL EDUCATION; APPROPRIATING MONEY FROM THE LOCAL IMPACT AND EDUCATION TRUST FUND ACCOUNT TO THE BOARD OF REGENTS TO HELP FUND THE VOCATIONAL-TECHNICAL CENTERS; AMENDING SECTIONS 19-4-302, 20-1-101, 20-3-103, 20-3-106, 20-6-501, 20-7-301, 20-7-302.1, 20-7-303, 20-7-311, 20-7-312, 20-7-314, 20-7-322, 20-7-324, 20-7-325, 20-7-327, 20-7-332, 20-7-333, 20-9-403, 20-9-513, 39-71-118, AND 90-6-211, MCA; REPEALING SECTIONS 20-7-304, 20-7-313, 20-7-323, 20-7-326, AND 20-7-331, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Powers and duties of board of regents.** The board of regents has general administrative and supervisory control over vocational-technical center education and shall:

(1) establish and when necessary amend a plan for the orderly development of vocational-technical center education that is consistent with federal and state law, controlled to prevent unnecessary duplication, and funded to ensure necessary growth and quality education;

(2) adopt standards for courses and programs;

(3) implement a review process for establishing and deleting programs and courses that recognizes the present and future needs of employers and provides qualified graduates for positions for which there is or may in the near future be a demand;

(4) establish student entrance and graduation requirements;

(5) appoint a director, to serve at the pleasure of the board, for each vocational-technical center and establish minimum qualifications for faculty, directors, administrative staff, and other personnel;

(6) appoint a deputy commissioner of vocational-technical center education, to serve at the pleasure of the board;

(7) establish student tuition and prescribe the bases and limitations for charging of fees, taking into account funding available from all other sources and the provisions of 20-7-332(3);

(8) determine the amount to be paid for the lease of buildings;

(9) adopt budget requests for the vocational-technical center education system;

(10) establish a procedure by which students can receive part of their education and training through programs, courses, and on-the-job training offered by the private sector and not available at the centers;

(11) establish a procedure by which qualified persons in the private sector can participate in the training and teaching of students in the centers' classrooms when such persons have training, knowledge, and skills not available through the centers' faculty;

(12) provide means by which the centers' faculty can obtain advanced education and training in new areas and either be reimbursed for their expenses or raised to a higher salary level, or both;

(13) establish for the various centers uniform policies for recordkeeping; financial transactions; accounting; maintenance; recruiting, guidance, and placement of students; examinations; personnel relations; and other matters as determined by the board;

(14) negotiate with the bargaining representative for personnel of each center or the personnel of the center system in a manner consistent with state and federal law;

(15) work with other institutions of higher education to implement the transfer of course credits between those institutions and the vocational-technical centers; and

(16) adopt rules and procedures to implement this section and to carry out any other powers and duties of the board.

**Section 2. Sole state agency for federal vocational education requirements.** (1) The board of regents is the sole state agency for purposes of the 1984 federal Carl D. Perkins Vocational Education Act, as may be amended, which requires a state participating in programs under that act to designate a state board or agency as the sole state agency responsible for administration or supervision of the administration of those programs.

(2) The board of regents shall contract with the superintendent of public instruction for the administration and supervision of K-12 vocational education programs, services, and activities allowed by the 1984 federal Carl D. Perkins Vocational Education Act, as may be amended, and in concert with the state plan for vocational education required by the federal act. The board of regents may contract with other agencies for the administration and supervision of other vocational education programs, services, and activities that receive funding allowed by the 1984 federal Carl D. Perkins Vocational Education Act, as may be amended.

**Section 3. Local advisory boards.** The board of trustees of a school district in which a vocational-technical center is located shall appoint a local advisory board, composed of at least five residents of the county where the center is located, to act in an advisory capacity to the center and the board of regents.

**Section 4. Duties of the deputy commissioner of vocational-technical center education.** The deputy commissioner of vocational-technical center education shall, under the rules and policies of the board of regents:

(1) be the chief administrative officer for the board of regents for the administration of its vocational-technical center rules and policies;

(2) employ, within the limits of any legislative appropriation and with the confirmation of the board of regents, the staff necessary for the state supervision and administration of the board's vocational-technical center rules and policies;

(3) provide supervisory and consultative assistance to centers;

(4) report the status of vocational-technical center education in Montana when requested by the board of regents; and

(5) perform any other duties assigned by the board of regents.

**Section 5. Existing center employees.** (1) The rights of persons employed by a vocational-technical center under a collective bargaining agreement in effect during the period from July 1, 1987, to July 1, 1989, may not be impaired, and they may, at any time prior to July 1, 1989, exercise any right they have under a collective bargaining agreement to transfer to another position within the school district.

(2) A person employed by a center under a school district on June 30, 1989, becomes an employee of the board of regents on July 1, 1989.

(3) Following [the effective date of this section], the employees of any center or the board of regents may apply to the board of personnel appeals for determination of the appropriate bargaining unit or units for the purposes of collective bargaining for a contract or contracts to be negotiated with the board of regents prior to July 1, 1989.

(4) If a person is employed by a center in any capacity on July 1, 1989, and has accumulated sick, vacation, or other leave and years of service with a school district, such leave and years of service shall be transferred fully regardless of the length of employment with the district in which the center is located.

Section 6. Section 19-4-302, MCA, is amended to read:

**"19-4-302. Active membership.** (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system, with the exception that those persons who became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members:

(a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) any person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system or a vocational-technical center;

(c) any person employed in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) any person who has elected not to become a member of the retirement system and is reentering service in a capacity prescribed by (a), (b), or (c) of this subsection (1);

(e) any person who has elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by (a), (b), or (c) of this subsection (1) since the time of such election, and who may thereafter elect to become a member of the retirement system.

(2) In order to be eligible for active membership, any person described in subsection (1) must:

(a) be employed in the capacity prescribed for his eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for his creditable service totally paid by an employer as defined herein.

(3) At any time a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine his eligibility for membership. All persons in similar circumstances shall be treated alike."

Section 7. Section 20-1-101, MCA, is amended to read:

**"20-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Agricultural experiment station" means the agricultural experiment station established at Montana state university.

(2) "Average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending the public schools of a district.

(3) "The board of public education" is the board created by Article X, section 9, subsection (3), of the 1972 Montana constitution and 2-15-1507.

(4) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2), of the 1972 Montana constitution and 2-15-1505.

(5) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2), of the 1972 Montana constitution and 2-15-1506.

(6) "County superintendent" means the county government official who is the school officer of the county.

(7) "District superintendent" means any person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(8) "*K-12 vocational education*" means vocational education in public school kindergarten through grade 12.

(9) "Principal" means any person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher shall be construed as including a principal, as herein defined.

(10) "Pupil" means any child who is 6 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3) but has not yet reached his 19th birthday and who is enrolled in a school established and maintained under the laws of the state of Montana at public expense.

(11) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

(12) "Regents" means the board of regents of higher education.

(13) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and shall include any food service financially assisted through funds or commodities provided by the United States government.

(14) "The state board of education" is the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the 1972 Montana constitution.

(15) "State university" means the Montana state university, located at Bozeman.

(16) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the constitution of Montana.

(17) "System" means the Montana university system.

(18) "Teacher" means any person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher shall also include any person for whom an emergency authorization of employment of such person has been issued under the provisions of 20-4-111.

(19) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

(20) "Textbook dealer" means any party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state of Montana.

(21) "Trustees" means the governing board of a district.

(22) "University" means the university of Montana, located at Missoula.

(23) "Vocational education" means the instruction to prepare or improve the pupil for gainful employment that does not require a baccalaureate or higher degree. This definition of vocational education shall include guidance and prevocational, related, or technical instruction necessary to prepare the pupil for further vocational education or for entry into employment.

(24) "*Vocational-technical center*" means an institution used principally for the provision of vocational-technical education to persons who qualify as vocational-technical students. These centers are designated by the board of regents upon direction by the legislature. All other public or private institutions or schools are hereby prohibited from using this title.

(25) "*Vocational-technical education*" means vocational-technical education of vocational-technical students that is conducted by a vocational-technical center, a unit of the Montana university system, or a community college as designated by the board of regents."

Section 8. Section 20-3-103, MCA, is amended to read:

**"20-3-103. Deputy superintendent — staff.** (1) The state superintendent of public instruction shall appoint a deputy who, in the absence of the principal or in the case of vacancy in his office, shall perform all the duties of office until such disability be removed or vacancy be filled. Such deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of his duties.

(2) The superintendent of public instruction shall have the power to employ, organize, and administer a staff of personnel to assist him in the administration of the duties and services of the office. In organizing his staff, the superintendent of public instruction shall employ:

- (a) a supervisor of physical education who is a graduate of an accredited institution of higher education with a master's degree in physical education;
- (b) a professional staff for the state supervision and administration of K-12 vocational education; and
- (c) a special education supervisor who is a graduate of an accredited institution of higher education with a master's degree in a field of special education for the mentally retarded or physically handicapped and who has not less than 2 years' experience in special education."

Section 9. Section 20-3-106, MCA, is amended to read:

**"20-3-106. Supervision of schools — powers and duties.** The superintendent of public instruction has the general supervision of the public schools and districts of the state, and he shall perform the following duties or acts in implementing and enforcing the provisions of this title:

- (1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;
- (2) issue, renew, or deny teacher certification and emergency authorizations of employment;
- (3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;
- (4) serve on the teachers' retirement board in accordance with the provisions of 2-15-1010;
- (5) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 20-6-311;
- (6) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;
- (7) approve or disapprove school isolation within the limitations prescribed by 20-9-302;
- (8) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;
- (9) establish a system of communication for calculating joint district revenues in accordance with the provisions of 20-9-151;
- (10) approve or disapprove the adoption of a district's emergency budget resolution under the conditions prescribed in 20-9-163 and publish rules for an application for additional state aid for an emergency budget in accordance with the approval and disbursement provisions of 20-9-166;
- (11) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);
- (12) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions

of 20-9-213(5) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(13) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(14) distribute state equalization aid in support of the foundation program in accordance with the provisions of 20-9-342, 20-9-346, and 20-9-347;

(15) distribute state impact aid in accordance with the provisions of 20-9-304;

(16) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(17) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 20-7-705;

(18) request, accept, deposit, and expend federal moneys in accordance with the provisions of 20-9-603;

(19) authorize the use of federal moneys for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(20) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(21) approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of 20-1-303 and 20-1-304;

(22) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with such standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(23) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(24) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(25) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(26) as the governing agent and executive officer of the state of Montana for K-12 vocational education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(27) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(28) administer the traffic education program in accordance with the provisions of 20-7-502;



(29) administer the school food services program in accordance with the provisions of 20-10-201, 20-10-202, and 20-10-203;

(30) review school building plans and specifications in accordance with the provisions of 20-6-622;

(31) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408; and

(32) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

Section 10. Section 20-6-501, MCA, is amended to read:

**"20-6-501. Definition of various schools.** As used in this title, unless the context clearly indicates otherwise, the term "school" means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at public expense. The trustees of any district shall designate the grade assignments for the schools of the district, but for the purposes of this title each school shall be known as:

(1) an elementary school when it comprises the work of any combination of kindergarten, other preschool programs, or the first eight grades or their equivalents. A middle school is a school comprising the work of grades 4 through 8 or any combination thereof that has been accredited as a middle school under the provisions of 20-7-102. When an accredited junior high school or an accredited 6-year high school is operated by the district, grades 7 and 8 or their equivalents shall not be considered as elementary grades.

(2) a high school when it comprises the work of one or more grades of schoolwork or their equivalents intermediate between the elementary schools and the institutions of higher education of the state of Montana. Types of high schools shall be designated as follows:

(a) a junior high school is a school comprising the work of grades 7 through 9 or their equivalents that has been accredited as a junior high school under the provisions of 20-7-102;

(b) a senior high school is a school which comprises the work of grades 10 through 12 or their equivalents and which is operated in conjunction with a junior high school;

(c) a 6-year high school is a school comprising the work of grades 7 through 12 or their equivalents that has been accredited as a 6-year high school under the provisions of 20-7-102;

(d) a 4-year high school is a school comprising the work of grades 9 through 12 or their equivalents;

(e) a county high school is a 4-year high school operated as an agency of county government and established under the provisions of the acts of March 3, 1899, March 14, 1901, and any subsequent amendments thereto."

Section 11. Section 20-7-301, MCA, is amended to read:

**"20-7-301. Duties of the superintendent of public instruction.** The superintendent of public instruction shall be the governing agent and executive officer of the state of Montana for *K-12* vocational education. The superintendent of public instruction shall adopt and administer policies to effect the orderly development of a system of *K-12* vocational education that is adaptable to changing needs, controlled to prevent unnecessary duplication, coordinated with federal guidelines and requirements for vocational education, and funded to ensure growth and quality programming. In order to accomplish the orderly development of a system of *K-12* vocational education, the superintendent of public instruction policies shall include:

- (1) a state plan for such development;
- (2) standards for *K-12* vocational education courses and programs;
- (3) a review process for the establishment and deletion of programs;
- (4) instructor qualifications for *K-12* vocational education courses and programs;
- (5) criteria for approval of *K-12* vocational education courses and programs;
- (6) a basis for apportionment of all moneys appropriated by the legislature for *K-12* vocational education in accordance with the intent of the legislature as reflected in the terms of the appropriation;
- (7) a basis for apportionment of all moneys received by the state of Montana for *K-12* vocational education from the federal government in accordance with the acts of congress;
- (8) a system of evaluation of *K-12* vocational education which allows for consideration of the current and projected manpower needs and job opportunities; *and*
- (9) any other policy not inconsistent with public law and which is necessary for the proper operation of a system of *K-12* vocational education."

Section 12. Section 20-7-302.1, MCA, is amended to read:

**"20-7-302.1. State director of K-12 vocational education — duties.** There is a state director of *K-12* vocational education appointed by the superintendent of public instruction. He must:

- (1) administer the *K-12* vocational education policies adopted by the superintendent of public instruction;
- (2) prepare curriculum guides for superintendent of public instruction adoption;
- (3) employ, with the confirmation of the superintendent of public instruction, the professional staff necessary for the state supervision and administration of *K-12* vocational education;
- (4) report the status of *K-12* vocational education in the state of Montana when requested by the superintendent of public instruction;

- (5) keep all *K-12* vocational education records in his office;
- (6) provide *K-12* vocational education supervisory and consultative assistance to districts;
- (7) prepare any necessary reports for the superintendent of public instruction or the legislature; *and*
- (8) perform any other duty assigned by the superintendent of public instruction."

Section 13. Section 20-7-303, MCA, is amended to read:

**"20-7-303. Authorization to establish and maintain vocational education courses and programs.** The trustees of an *elementary or high school* district may establish and maintain a vocational education course or program that complies with the *K-12* vocational education standards adopted by the superintendent of public instruction. In order for a course or program to be eligible for state or federal financing, it shall be approved by the superintendent of public instruction *for compliance with K-12 vocational education standards.*"

Section 14. Section 20-7-311, MCA, is amended to read:

**"20-7-311. Vocational-technical center designation.** (1) *Vocational-technical* centers shall be designated by the *board of regents* upon direction of the legislature.

(2) The *board of regents* shall recognize the postsecondary vocational-technical centers *designated prior to [the effective date of this act]* in school district number 1 of Silver Bow County, high school district number 1 of Lewis and Clark County, high school district "A" of Cascade County, Missoula County high school, and high school district number 2 of Yellowstone County."

Section 15. Section 20-7-312, MCA, is amended to read:

**"20-7-312. Local administration of vocational-technical center.** (1) Subject to the requirements of the laws of the state of Montana and the policies and *rules* of the *board of regents*, the *director of a vocational-technical center has administrative and supervisory control of the center and shall:*

(a) employ personnel for the vocational-technical center according to the policies and *rules* of the *board of regents*;

(b) develop and submit a *recommended budget* for the vocational-technical center;

(c) collect student tuition and fees;

(d) recommend to the *board of regents*:

(i) proposals regarding vocational-technical center programs, budgets, student services, and public service activities; and

(ii) campus development and program plans for individual vocational-technical center buildings;

- (e) manage buildings at the vocational-technical center;
- (f) receive and administer gifts and bequests to the vocational-technical center according to a written plan submitted to the *board of regents*; and
- (g) perform any other duties not inconsistent with law and required by the *board of regents*.

(2) The *director* of a vocational-technical center may not enter into any contract that in any way creates a debt or obligation upon the state for the improvement or construction of vocational-technical center buildings."

Section 16. Section 20-7-314, MCA, is amended to read:

**"20-7-314. Lease or purchase of property for vocational-technical center purposes.** (1) The state of Montana, acting through the *board of regents*, may lease, for a term not to exceed 40 years, any building or lands for a vocational-technical center.

(2) *The state of Montana, acting through the board of regents and on demand of a school district, shall lease or purchase the equity or interest of the school district in any building, land, or other property at a vocational-technical center on terms agreed to between the board of regents and the school district. A purchase may be by lump-sum payment, time payments, the assumption of bonded indebtedness, or any other mutually agreeable method. Money received by a school district from the lease or sale under this subsection (2) of the school district's equity or interest in a building, land, or other property must be credited to the debt service fund, building fund, general fund, or any combination of these funds, at the discretion of the trustees of the school district.*"

Section 17. Section 20-7-322, MCA, is amended to read:

**"20-7-322. State treasurer custodian of vocational education money.** (1) The treasurer of the state of Montana is hereby designated as the custodian of all federal and state money designated, appropriated, or apportioned for vocational education. All money received from any federal or state source for the establishment, operation, or furtherance of vocational education in the state shall be deposited with the state treasurer. At the direction of the superintendent of public instruction, he shall disburse all money received for K-12 vocational education. At the direction of the *board of regents*, he shall disburse all money received for vocational-technical education and for vocational education other than K-12 vocational education.

(2) The state treasurer is the treasurer for all vocational-technical centers, and all money received by vocational-technical centers from any source shall be deposited in the state treasury pursuant to 17-6-105, unless the source of the money specifies deposit somewhere other than in the state treasury."

Section 18. Section 20-7-324, MCA, is amended to read:

**"20-7-324. Sources of financing for vocational-technical center budgets — distribution of funds.** (1) The total of the budgets approved

by the *board of regents* shall constitute the total maximum approved state-wide vocational-technical center system budget which shall be financed as follows:

(a) The primary source of financing is to be those funds specifically designated by legislative enactment or referendum by the people for financing vocational-technical education in Montana.

(b) The board of county commissioners of each county in which a designated vocational-technical center is located shall levy a tax in each calendar year of 1 ½ mills on the dollar of all taxable property, real and personal, within the county *to raise the amount appropriated by the legislature for the support and maintenance of the vocational-technical center system. The tax is to be effective for property tax years beginning on or after January 1, 1987. It is the intent of this subsection (1)(b) that the county commissioners shall levy this tax for fiscal year 1988 operation of the vocational-technical system and thereafter.*

(c) Designated vocational-technical centers shall be eligible to receive such funds from the federal government as the *board of regents* may provide pursuant to applicable acts of congress.

(2) The *board of regents* shall direct the distribution of the funds specified in *subsection (1)* on the basis of the budgets approved by the *board of regents*. The funds earned by the mill levy specified in subsection (1)(b) shall be credited to the vocational-technical center account in the unrestricted subfund of the current fund in the state treasury."

Section 19. Section 20-7-325, MCA, is amended to read:

**"20-7-325. Vocational-technical center funding — nongeneral fund money expended first — reversion of general fund money.** (1) *The board of regents* shall request the establishment of the appropriate accounts *for the vocational-technical center system* in the state treasury. These accounts shall be established in the appropriate state treasury funds as determined by the department of administration. All money prescribed and received under the provisions of 20-7-324 shall be credited to these accounts. The expenditure of the money deposited in the state treasury shall be made in accordance with procedures established by the department of administration. Such expenditures shall be made under the budget and for the programs approved by the *board of regents* under the financial administration provisions of this title.

(2) A vocational-technical center shall apply expenditures against nongeneral fund money wherever possible before using state general fund appropriations. All state general fund money appropriated or disbursed to a vocational-technical center which are unexpended at fiscal year end shall revert to the state general fund."

Section 20. Section 20-7-327, MCA, is amended to read:

**"20-7-327. Source of financing for vocational-technical center facility maintenance.** The source of funds for maintenance, remodeling, and renovation of vocational-technical center facilities may be either *federal funds* or state funds specifically appropriated by the legislature and approved by the *board of regents*, or any combination of these funds."

Section 21. Section 20-7-332, MCA, is amended to read:

**"20-7-332. Tuition rates.** (1) Tuition may be charged to any resident or nonresident of the state of Montana by the *director* of any vocational-technical center at rates to be determined by the *board of regents* and the provisions of subsection (3). The *board of regents* shall prescribe permissible uses for any tuition authorized.

(2) For the purposes of this section the eligibility of a student for resident status shall be determined in the same manner as that prescribed for use by the Montana university system, except that those provisions referring to "high school graduates" or "graduation from high school" shall be considered to refer to a person who has attended school or who was in attendance at a school.

(3) *If an additional levy for a center is approved under [section 27], the board of regents may charge an additional tuition amount not to exceed \$40 a quarter to a student at the center who is a resident of Montana but who is not a property taxpayer of the county or an owner of a vehicle registered within the county where the center is located."*

Section 22. Section 20-7-333, MCA, is amended to read:

**"20-7-333. Student fees and disposition of collected fees.** (1) Fees for the use of equipment and material used in instruction may be charged by the *director* of the vocational-technical center. The *board of regents* shall prescribe the *bases* and limitations for the charging of such fees.

(2) Fees collected by the vocational-technical center shall be deposited with the state treasurer in the fund designated by the *board of regents* for the receipt of such fees. The expenditure of the fees shall not be subject to budget limitations and shall be in addition to the program budgets approved by the *board of regents*."

Section 23. Section 20-9-403, MCA, is amended to read:

**"20-9-403. Bond issues for certain purposes.** (1) The trustees of a school district may issue and negotiate bonds on the credit of the school district for the purpose of:

(a) building, altering, repairing, buying, furnishing, equipping, purchasing lands for, and/or obtaining a water supply for a school, teacherage, dormitory, gymnasium, other building, or combination of said buildings for school purposes;

(b) buying a school bus or buses;

(c) providing the necessary money to redeem matured bonds, maturing bonds, or coupons appurtenant to bonds when there is not sufficient money to redeem them;

(d) providing the necessary money to redeem optional or redeemable bonds when it is for the best interest of the school district to issue refunding bonds; or

(e) funding a judgment against the district.

(2) Any money realized from the sale of any bonds issued on the credit of a high school district shall not be used for any of the above purposes in an elementary school district, and such money may be used for any of the above purposes for a junior high school but only to the extent that the 9th grade of the high school is served thereby."

Section 24. Section 20-9-513, MCA, is amended to read:

**"20-9-513. Vocational-technical center and adult basic education programs account established.** There is within the state special revenue fund a vocational-technical center and adult basic education account. Money is paid into the account under 90-6-211. The state treasurer shall draw warrants payable from this account upon order of the superintendent of public instruction *or the board of regents up to the amount provided for each under 90-6-211 by the biennium budget passed by the legislature.*"

Section 25. Section 39-71-118, MCA, is amended to read:

**"39-71-118. Employee, worker, and workman defined.** (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116(3) are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers; or

(e) an airman or other person employed as a volunteer under 67-2-105.

(2) If the employer is a partnership or sole proprietorship, such employer may elect to include as an employee within the provisions of this

chapter any member of such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business. In the event of such election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered, and no partner or sole proprietor shall be deemed an employee within this chapter until such notice has been given. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the insurance carrier shall assume a salary or wage of such electing employee to be not less than \$900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter."

Section 26. Section 90-6-211, MCA, is amended to read:

**"90-6-211. Disposition of interest from unexpended balance.** The unexpended balance in the local impact and education trust fund account shall be invested as provided by statute by the board of investments. Of the income from such investments each year 10% shall be paid into the state special revenue fund for use by the superintendent of public instruction for purposes of adult basic education programs in the state and *for use by the board of regents for vocational-technical center education programs in the state, as provided in the biennium budget passed by the legislature.* Within the account under 20-9-513, the revenue is shared between the vocational-technical centers and the adult basic education programs *as provided in the biennium budget passed by the legislature.* Of the remaining 90% of the income from such investments, three-fourths shall be annually paid into the state special revenue fund for state equalization aid to public schools of the state and one-fourth each year shall be paid to the board of regents of higher education for use by the institutions of higher learning in the state, subject to the budgeting authority of the legislature. Except as provided in 90-6-205(5), the principal of the local impact and education trust fund shall be dedicated to education and forever remain inviolate and sacred to this purpose as provided in sections 3 and 10 of Article X of the Montana constitution."

Section 27. **Additional levy by school district — procedure.** (1) For school fiscal years 1988 and 1989, the trustees of a school district that operated a vocational-technical center prior to July 1, 1987, may propose to the board of regents that a budget for salaries, benefits, operations, and equipment be adopted for the center in excess of the amount appropriated by the legislature.

(2) If the board of regents approves of a budget for a center in excess of the appropriated amount, the trustees of the district that operated the center shall submit to the qualified electors of the district, pursuant to 20-20-301 and in the manner prescribed by 20-9-353, a proposition for an additional levy for the additional funding. When the proposition is presented to the electorate, the proposition must be presented as a separate issue on the ballot.

(3) If a proposition for an additional levy for a vocational-technical center is approved by the electorate, the board of regents shall request the establishment of an individual account for the center in the state treasury as determined by the department of administration. The funds in each center account are appropriated for approved expenditures for the center.



After July 1, 1989, any unexpended funding in a center account must be returned to the school district that requested the additional funding.

(4) For school fiscal year 1988, if the trustees of a school district that operated a vocational-technical center prior to July 1, 1987, have adopted a budget in excess of that appropriated by the legislature and have submitted the proposition for an additional levy to the qualified electors of the district and if the electors have approved the proposition as provided for in former 20-7-326, the trustees need not submit the proposition to the electors at an additional election following approval of the budget by the board of regents as provided for in subsection (2).

**Section 28. Vocational-technical center equipment.** The equipment of a vocational-technical center designated prior to [the effective date of this act] may not be transferred from the center for 2 years without consent of the school district board of trustees that operated the center prior to [the effective date of this act].

**Section 29. Report by board of regents.** The board of regents shall report to the 51st legislature on the following concerns:

(1) a plan for reorganization of the delivery system for all postsecondary vocational-technical education in Montana;

(2) a long-term plan for achieving high quality vocational-technical programs at the vocational-technical centers through the possibility of program specialization at each center;

(3) the feasibility and appropriateness of closure of one or more of the vocational-technical facilities;

(4) a plan for elimination of programs that serve few students;

(5) a plan for consolidation of administrative functions of the individual centers which could result in cost savings and more efficient operations; and

(6) the feasibility of consolidating postsecondary vocational-technical facilities and staff with nearby units of the university system.

**Section 30. Appropriation.** There is appropriated \$1,454,690 from the local impact and education trust fund account funded by 15-35-108(3)(b) to the board of regents for the fiscal biennium ending June 30, 1989, to be used to operate the vocational-technical centers.

**Section 31. Repealer.** Sections 20-7-304, 20-7-313, 20-7-323, 20-7-326, and 20-7-331, MCA, are repealed.

**Section 32. Extension of authority.** Any existing authority of the superintendent of public instruction to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 33. Codification instructions.** (1) Sections 1 through 5 and 27 are intended to be codified as an integral part of Title 20, and the provisions of Title 20 apply to sections 1 through 5 and 27.

(2) Sections 20-7-311, 20-7-312, 20-7-314, 20-7-322, 20-7-324, 20-7-325, 20-7-327, 20-7-332, and 20-7-333 are intended to be renumbered and codified as an integral part of a new chapter in Title 20 on the governance of vocational-technical centers.

**Section 34. Code commissioner name change.** In all sections of the Montana Code Annotated not contained in this act and in all provisions passed by the 50th legislature wherein reference is made to a postsecondary vocational-technical center, the code commissioner shall change the reference to vocational-technical center.

**Section 35. Effective date.** This act is effective July 1, 1987.

Approved May 15, 1987.

## CHAPTER NO. 659

[SB 64]

AN ACT PROVIDING FOR A 5-YEAR CORPORATION LICENSE TAX EXEMPTION FOR RESEARCH AND DEVELOPMENT FIRMS; CLASSIFYING ALL PROPERTY OWNED AND USED BY A RESEARCH AND DEVELOPMENT FIRM AS CLASS FIVE PROPERTY; AMENDING SECTIONS 15-1-101, 15-6-135, 15-31-101, 15-31-401, AND 15-31-403, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Research and development firms exempt from taxation — application.** (1) A research and development firm organized to engage in business in the state of Montana for the first time is not subject to any of the taxes imposed by this chapter on net income earned from research and development activities during its first 5 taxable years of activity in Montana. For purposes of [this act], "taxable year" means a research and development firm's taxable year for federal income tax purposes.

(2) (a) To be considered a research and development firm, the chief executive officer of the firm or his agent shall file with the department of revenue an application for treatment as a research and development firm.

(b) The application must be made on a form to be provided by the department. The form must include, at a minimum:

(i) the name and address of each officer of the research and development firm;

(ii) the name of the research and development firm as required for the purpose of incorporation in 35-1-202;

(iii) the address of its initial registered office required for the purpose of incorporation as required in 35-1-202;

(iv) the date the articles of incorporation were filed with the secretary of state as required in 35-1-203; and

(v) other information the department requires to effectively administer the provisions of this section.

(c) The application must be filed with the department before the end of the first calendar quarter during which the research and development firm engages in business in Montana.

(3) On receipt of the information required in subsection (2)(b), provided that it was filed in the time allowed under subsection (2)(c), the department shall designate the applicant as a research and development firm for the purposes of this section.

(4) Failure by an applicant to provide information required by the department under subsection (2)(b) or, except as provided in subsection (5), failure to file within the time allowed under subsection (2)(c) automatically disqualifies the applicant from being designated and treated as a research and development firm for the purposes of this section.

(5) The director of the department may grant an extension of time for an applicant to file an application for treatment as a research and development firm, provided the extension is given in writing and the extension does not extend beyond 30 days from the date the application was required to be filed under subsection (2)(c).

(6) For the purpose of calculating or otherwise determining the period for which a deduction, exclusion, exemption, or credit may be taken under the provisions of this chapter, the department shall disregard a research and development firm's first 5 taxable years of activity in Montana and administer the deduction, exclusion, exemption, or credit as if the corporation did not exist during those taxable years. This treatment of a research and development firm extends to net operating loss carryback and net operating loss carryforward provisions allowed under this chapter.

Section 2. Section 15-1-101, MCA, is amended to read:

**"15-1-101. Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to the raising of livestock, poultry, bees, and other species of domestic animals and wildlife in domestication or a captive environment, and the raising of field crops, fruit, and other animal and vegetable matter for food or fiber.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and profit margin shown in national appraisal guides and manuals or the valuation schedules of the department of revenue.

(d) (i) The term "commercial", when used to describe property, means any property used or owned by a business, a trade, or a nonprofit corporation as defined in 35-2-102 or used for the production of income, except that property described in subsection (ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes used exclusively as a residence except when held by a distributor or dealer of trailers or mobile homes as his stock in trade;

(E) all property described in 15-6-135;

(F) all property described in 15-6-136; and

(G) all property described in 15-6-146.

(e) The term "comparable property" means property that has similar use, function, and utility; that is influenced by the same set of economic trends and physical, governmental, and social factors; and that has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed.

(h) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on such leasehold improvements are a lien only on such leasehold improvements.

(i) The term "livestock" means cattle, sheep, swine, goats, horses, mules, and asses.

(j) The term "mobile home" means forms of housing known as "trailers", "housetrainers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

(k) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(l) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(m) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(n) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

*(o) "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.*

(p) The term "taxable value" means the percentage of market or assessed value as provided for in 15-6-131 through 15-6-140.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board."

Section 3. Section 15-6-135, MCA, is amended to read:

**"15-6-135. Class five property — description — taxable percentage.** (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in subsection (1)(c) of 15-6-137;

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

*(e) all land and improvements and all personal property owned by a research and development firm, provided that the property is actively devoted to research and development.*

(2) (a) "Air and water pollution equipment" means facilities, machinery, or equipment used to reduce or control water or atmospheric pollution or contamination by removing, reducing, altering, disposing, or storing pollutants, contaminants, wastes, or heat. The department of health and environmental sciences shall determine if such utilization is being made.

(b) The department of health and environmental sciences' determination as to air and water pollution equipment may be appealed to the board of health and environmental sciences and may not be appealed to either a county tax appeal board or the state tax appeal board. However, the appraised value of the equipment as determined by the department of revenue may be appealed to the county tax appeal board and the state tax appeal board.

(3) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials; or

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget.

(5) New industrial property does not include:

(a) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions;

(b) a plant that will create adverse impact on existing state, county, or municipal services; or

(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

(6) Class five property is taxed at 3% of its market value."

Section 4. Section 15-31-101, MCA, is amended to read:

**"15-31-101. Organizations subject to tax.** (1) The term "corporation" includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity, and all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States.

(2) The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) *Except as provided in [section 1] or 33-2-705(6) or as may be otherwise specifically provided, every corporation* engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state such percentage or percentages of its total net income for the preceding taxable year at the rate hereinafter set forth. In the case of corporations having income from business activity which is taxable both within and without this state, the license fee shall be measured by the net income derived from or attributable to Montana sources as determined under part 3. This tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation; however, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

(4) Every bank organized under the laws of the state of Montana, of any other state, or of the United States and every savings and loan association organized under the laws of this state or of the United States is subject to the Montana corporation license tax provided for under this chapter. For taxable years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."

Section 5. Section 15-31-401, MCA, is amended to read:

**"15-31-401. Application of license and income taxes.** (1) It is the intent of the legislature that the corporation license tax shall be applied to all corporations subject to taxation under part 1 of this chapter. *Except as provided in subsection (2), the income tax provided by this part shall be applied to corporations that are not taxable under part 1 of this chapter but are taxable under an income tax.*

*(2) During its first 5 taxable years of activity in Montana, the net income earned from research and development activities by a research and development firm as described in [section 1] is not subject to either the corporation license tax provided in part 1 of this chapter or to the corporation income tax provided in this part."*

Section 6. Section 15-31-403, MCA, is amended to read:

**"15-31-403. Rate of tax imposed — income from sources within state defined — alternative tax.** (1) *Except as provided in 15-31-401, there is hereby imposed upon every corporation for each taxable year an income tax at the rate specified in 15-31-121 and 15-31-122 upon its net income derived from sources within this state for taxable years beginning after December 31, 1970, other than income for any period for which the corporation is subject to taxation under part 1 of this chapter, according to or measured by its net income.*

(2) Income from sources within this state includes income from tangible or intangible property located in or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce, but does not include interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located within the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

(3) Pursuant to Article III, section 2, of the Multistate Tax Compact, any corporation required to file a return under this part and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana does not exceed \$100,000 may elect to pay a tax of  $\frac{1}{2}$  of 1% of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under this section. The gross volume of sales made in Montana during the taxable year shall be determined according to Article IV, sections 16 and 17, of the Multistate Tax Compact."

Section 7. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 8. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15 apply to section 1.

Section 9. **Effective date.** This act is effective July 1, 1987.

Approved May 19, 1987.



**CHAPTER NO. 660**

[SB 340]

AN ACT EXEMPTING FROM PROPERTY TAXATION PRODUCER-HELD GRAIN IN STORAGE, BEES, POULTRY, LIVESTOCK LESS THAN 24 MONTHS OF AGE, AND SWINE LESS THAN 6 MONTHS OF AGE; CHANGING THE ADDITIONAL TAXES LEVIED ON LIVESTOCK TO A PER CAPITA TAX ON LIVESTOCK, POULTRY, AND BEES TO PAY THE EXPENSE OF ENFORCING THE LIVESTOCK, POULTRY, AND BEE LAWS; AMENDING SECTIONS 15-6-136, 15-6-207, 15-24-921, 15-24-922, 15-24-925, 81-6-101, 81-6-104, 81-6-204, 81-6-209, 81-7-103, AND 81-7-104, MCA; REPEALING SECTIONS 15-24-923 AND 15-24-924, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-6-136, MCA, is amended to read:

**"15-6-136. Class six property — description — taxable percentage.** (1) Class six property includes:

(a) livestock and other species of domestic animals and wildlife raised in domestication or a captive environment, except for cats, dogs, and other household pets not raised for profit, and the unprocessed products of such animals and wildlife;

(b) all unprocessed agricultural products on the farm or in storage except:

(i) all perishable fruits and vegetables in farm storage and owned by the producer; *and*

(ii) *all producer-held grain in storage;*

(c) items of personal property intended for lease in the ordinary course of business, provided each item of personal property satisfies all of the following:

(i) the full and true value of the personal property is less than \$5,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals wherein no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis.

(2) Class six property is taxed at 4% of its market value."

Section 2. Section 15-6-207, MCA, is amended to read:

**"15-6-207. Agricultural exemptions.** (1) The following agricultural products are exempt from taxation:

(a) all unprocessed, perishable fruits and vegetables in farm storage and owned by the producer;

(b) *all producer-held grain in storage;*

(c) all nonperishable, unprocessed agricultural products, except livestock, held in possession of the original producer for less than 7 months following harvest;

(d) except as provided in subsection (1)(e), livestock which have not attained the age of 24 months as of the last day of any month if assessed on the average inventory basis or on March 1 if assessed as provided in 15-24-911(1)(a);

(e) swine which have not attained the age of 6 months as of January 1;

(f) *poultry and the unprocessed products of poultry; and*

(g) *bees and the unprocessed product of bees.*

(2) Any beet digger, beet topper, beet defoliator, beet thinner, beet cultivator, beet planter, or beet top saver designed exclusively to plant, cultivate, and harvest sugar beets is exempt from taxation if such implement has not been used to plant, cultivate, or harvest sugar beets for the 2 years immediately preceding the current assessment date and there are no available sugar beet contracts in the sugar beet grower's marketing area."

Section 3. Section 15-24-921, MCA, is amended to read:

**"15-24-921. Per capita tax levy to pay expenses of enforcing livestock laws.** (1) In addition to appropriations made for such purposes, a *per capita* tax is hereby authorized and directed to be levied by the county assessor on all *poultry and bees, all swine 3 months of age or older, and all other livestock 9 months of age or older in each county of this state* for the purpose of aiding in the payment of the salaries and all expenses connected with the enforcement of the *livestock* laws of the state and for the payment of bounties on wild animals as hereinafter specified.

(2) *As used in this section, "livestock" means cattle, sheep, swine, poultry, bees, goats, horses, mules, and asses."*

Section 4. Section 15-24-922, MCA, is amended to read:

**"15-24-922. Board of livestock to prescribe per capita levy.** (1) The *board of livestock* shall annually prescribe the amount of the *per capita* levy to be made against livestock of all classes for the purpose indicated in 15-24-921.

(2) *The per capita tax levy must be calculated each year to provide not more than 110% of the average annual revenue that was generated in the 3 previous years, beginning with revenue generated by 81-7-104 and this section in the taxable years 1985, 1986, and 1987. The calculation shall apply a reasonable factor for nonpayment and late payment of taxes and for reimbursement to the counties pursuant to 15-24-925 for collection of the levy."*

Section 5. Section 15-24-925, MCA, is amended to read:

**"15-24-925. Reimbursement to county — transmission of taxes from county to state treasurer.** (1) *The county treasurer may withhold 2% of the money received under 15-24-921 as reimbursement to the county for the collection of the levy on livestock.*

(2) *Except for the amount withheld under subsection (1), the taxes levied and the money collected pursuant to the provisions of 15-24-922 shall be transmitted to the state treasury by the county treasurer of each county, as provided in 15-1-504, but not later than July 1 following assessment. The county treasurer shall designate the amount received from the tax levied on sheep, and the amount received from the tax levied on all other livestock and shall specify the separate amounts in his report to the state treasurer. The money, when received by the state treasurer, shall be deposited to the credit of the department of livestock."*

Section 6. Section 81-6-101, MCA, is amended to read:

**"81-6-101. Petition for county livestock protective committee — members — term.** (1) *The board of county commissioners must, upon receipt of a petition or petitions to do so, set up a county livestock protective committee of three members. The petition or petitions must be signed by at least 51% of the owners of cattle in the county and such petitioners must own at least 55% of the cattle in the county.*

(2) *Members appointed to serve on such committee shall be residents of the county engaged in the business of raising cattle. If there be in the county any organization of cattle growers, the county commissioners shall give preference to names submitted by any such group for appointment to such committee. The term for which said committee members shall be appointed shall be 2 years with two members of the first committee named to serve for 2 years, one member to serve for 1 year. Members of such committee shall receive no remuneration or reimbursement for expenses for serving on said committee.*

(3) *By "organization of cattle growers", as used in this section, is meant any group or organization holding regular meetings at least annually, having officers, and composed predominantly of cattle growers resident in the county, with its membership open to cattle growers willing to abide by its governing rules or bylaws, and its general purpose being the promotion of the interests of its members in matters pertaining to the cattle or livestock industry.*

(4) *If owners of sheep in the county desire to come under the provisions of this part in cooperation with owners of cattle, they shall file a like petition to that set out herein for owners of cattle, and in such case at least one member of said livestock protective committee shall be a sheep grower and where the word "cattle" appears in this part, it shall be deemed to comprehend also the word "sheep".*

(5) *Owners of sheep alone may form a county livestock protective committee, in which case the word "cattle" as in this part contained shall be considered as if it were the word "sheep"; and provided further that the*

levy as provided in 81-6-104 hereof shall, in the case of sheep, not exceed 5 cents per head."

Section 7. Section 81-6-104, MCA, is amended to read:

**"81-6-104. Tax levy — special fund.** *The county livestock protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed 50 cents per head on all cattle 9 months of age or older in the county on January 1, and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property and when collected to be deposited by the county treasurer in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part.*"

Section 8. Section 81-6-204, MCA, is amended to read:

**"81-6-204. Tax levy — deposit of proceeds.** *The district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed 50 cents per head on all cattle 9 months of age or older in the district on January 1, and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property and when collected to be deposited in the county treasury of one of the counties in the district, to be selected by the district cattle protective committee, in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part.*"

Section 9. Section 81-6-209, MCA, is amended to read:

**"81-6-209. Tax levy — deposit of proceeds.** *The district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed 50 cents per head on all cattle 9 months of age or older in the district on January 1, and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property and when collected to be deposited in the county treasury in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part.*"

Section 10. Section 81-7-103, MCA, is amended to read:

**"81-7-103. Administration of funds by the department.** *The department shall administer and expend for predatory animal extermination and control all money which is made available to it, including the money allocated for this purpose under 81-7-104 and all money which is made available to the department by appropriations made by the legislature for predatory animal control by the department. The department shall expend the funds for predatory animal control by all effective means responsive to the necessities of control in various areas of the state, including employment of hunters, trappers, and other personnel, procurement of traps, poisons, equipment, and supplies, and payment of bounties in the*

discretion of the department at those times of the year it considers advisable."

Section 11. Section 81-7-104, MCA, is amended to read:

**"81-7-104. Predator control moneys — use of proceeds.** (1) The department of livestock shall allocate a portion of the money from the levy under 15-24-921 for the purpose of protecting livestock in the state against destruction, depredation, and injury by wild animals, whether the livestock is on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. This protection may be by any means of effective predatory animal destruction, extermination, and control, including systematic hunting and trapping and payment of bounties.

(2) Money shall be paid out only on claims duly and regularly presented to the department of livestock and approved by the department in accordance with the law applicable either to claims for bounties or for other expenditures necessary and proper for predatory animal control by means and methods other than payment of bounties, as determined by the department. Money designated for predator control shall be available for the payment of bounty claims and for expenditures for planned, seasonal, or other campaigns directed or operated by the department in cooperation with other agencies for the systematic destruction, extermination, and control of predatory wild animals, as determined by the department and its advisory committee. No claims may be approved in excess of moneys available for such purposes, and no warrants may be registered against the moneys."

Section 12. **Repealer.** Sections 15-24-923 and 15-24-924, MCA, are repealed.

Section 13. **Extension of authority.** Any existing authority of the department of revenue, the department of livestock, and the board of livestock to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 14. **Effective date.** This act is effective January 1, 1988.

Approved May 19, 1987.

## CHAPTER NO. 661

[HB 233]

AN ACT ESTABLISHING STATE EMPLOYEE COMPENSATION PLANS AND BENEFIT LEVELS; PROVIDING PAY SCHEDULES FOR FISCAL YEARS 1988 AND 1989; AMENDING SECTIONS 2-18-104, 2-18-301, 2-18-303 THROUGH 2-18-305, 2-18-312 THROUGH 2-18-315, AND 2-18-703, MCA; REPEALING SECTION 2-18-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-18-104, MCA, is amended to read:

**"2-18-104. Exemption for personal staff — limit.** (1) Subject to the limitations in subsections (2) and (3), members of a personal staff are

exempt from the application of 2-18-204, 2-18-205, 2-18-207, and 2-18-1011 through 2-18-1013.

(2) The personal staff who are exempted by subsection (1) may not exceed 10 unless otherwise approved by the department according to criteria developed by the department. Under no circumstances may the total exemptions of each elected official exceed 15.

(3) The number of members of the personal staff of the public service commission who are exempted by subsection (1) may not exceed 10.

*(4) A person occupying an exempt position under 2-18-103 or this section may not receive an increase in compensation unless the person changes positions or successfully completes a probationary period in fiscal year 1988 or 1989."*

Section 2. Section 2-18-301, MCA, is amended to read:

**"2-18-301. Purpose and intent of part — rules.** (1) The purpose of this part is to provide the compensation necessary to attract and retain competent and qualified employees in order to perform the services the state is required to provide to its citizens.

(2) It is the intent of the legislature that, for the biennium ending June 30, 1989, the:

(a) pay schedules provided for in 2-18-312 through 2-18-315 supersede any other plan or systems established through collective bargaining after the adjournment of the 50th legislature;

(b) pay levels provided for in 2-18-312 through 2-18-315 may not be increased through collective bargaining after adjournment of the 50th legislature; and

(c) total funds required to implement the pay schedules provided for in 2-18-312 through 2-18-315 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the 50th legislature.

(3) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(4) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part."

Section 3. Section 2-18-303, MCA, is amended to read:

**"2-18-303. Procedures for utilizing pay schedule.** (1) The pay schedule provided in 2-18-312 shall be implemented as follows:

(a) The pay schedule provided in 2-18-312 indicates the annual compensation for the fiscal years ending June 30, 1988, and June 30, 1989, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(b) Each new employee shall advance from step 1 to step 2 of a grade after successfully completing 6 months of probationary service. The anniversary date of an employee shall be established at the end of the probationary period in accordance with rules promulgated by the department.

(c) (i) The compensation of each employee on the first day of the first pay period in fiscal year 1988 shall be that amount which corresponds to the grade and step occupied on the last day of the preceding fiscal year of 1987.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1989 shall be that amount which corresponds to the grade and step occupied on the last day of the fiscal year 1988.

(2) The pay *schedule* provided in 2-18-312 and the provisions of subsection (1) of this section do not apply to those institutional teachers, liquor store occupations, or blue-collar occupations compensated under the pay schedules provided in 2-18-313, 2-18-314, or 2-18-315.

(3) The pay schedules provided in 2-18-313, 2-18-314, or 2-18-315 shall be implemented as follows:

(a) (i) The pay schedules provided in 2-18-313 indicate the annual compensation for the contracted school term for teachers employed by institutions under the authority of the department of institutions for fiscal years 1988 and 1989.

(ii) The compensation of each teacher on the first day of the first pay period in July, 1987, shall be that amount which corresponds to his level of academic achievement and the step occupied on June 30, 1987.

(iii) The compensation of each teacher on the first day of the first pay period in July, 1988, shall be that amount which corresponds to his level of achievement and the step occupied on June 30, 1987.

(b) (i) The pay *schedule* provided in 2-18-314 *indicates* the maximum hourly compensation for fiscal years ending June 30, 1988, and June 30, 1989, for those employees in liquor store occupations who have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1988 or 1989, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(c) (i) The pay *schedule* provided in 2-18-315 *indicates* the maximum hourly compensation for fiscal years ending June 30, 1988, and June 30, 1989, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1988 or 1989, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) No member of a bargaining unit may receive the amounts indicated in the respective pay schedules provided in 2-18-312 through 2-18-315 until the bargaining unit of which he is a member ratifies a completely integrated collective bargaining agreement covering the biennium ending June 30, 1989.

(ii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, 1987, retroactivity to that date may be negotiated.

(iii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, 1987, members of the bargaining unit involved will continue to receive the compensation they were receiving as of June 30, 1987.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules provided in 2-18-312 through 2-18-315 may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee shall not be reduced by the implementation of the pay schedules provided for in 2-18-312 through 2-18-315.

(6) The department may authorize a separate pay schedule for medical doctors if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified physicians at the state institutions.

(7) The department may develop programs which will enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. Insofar as the program may apply to employees within a collective bargaining unit, it shall be a negotiable subject under 39-31-305."

Section 4. Section 2-18-304, MCA, is amended to read:

**"2-18-304. Longevity allowance.** (1) In addition to the compensation provided for in 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed 5 years of uninterrupted state service shall receive the larger of \$10 a month or 10% of the difference between the base compensation for his grade and step (where applicable) and the base compensation for the next highest grade and corresponding step (where applicable) multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service. Service to the state is not interrupted by authorized leaves of absence.

(2) (a) For the purpose of determining years of service under this section, an employee must be credited with 1 year of service for each period of:

(i) 2,080 hours of service following his date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which he is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 uninterrupted calendar months following his date of employment in which he was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any one month. An employee of a school at a state institution or the university system must be credited with 1 year of service if he is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, shall use the method provided in subsection (2)(a)(i) to calculate years of service under this section."



Section 5. Section 2-18-305, MCA, is amended to read:

**"2-18-305. Allocation between wages and group benefits.** (1) The dollar amounts shown in the respective pay schedules provided in 2-18-312, 2-18-313, 2-18-314, or 2-18-315, as the case may be, represent the maximum amount allocated by the state for wages and group benefits, exclusive of longevity as defined in 2-18-304. Except as provided in subsection (2) of this section, that amount specifically allocated for group benefits shall be determined by 2-18-703. An employee who elects not to be covered by a state employee group benefit plan will receive as wages the amount shown in the appropriate pay schedule less the state contribution for group benefits as determined by 2-18-703.

(2) Employees may, through collective bargaining, determine the allocation of the amounts shown in the pay schedules provided in 2-18-312, 2-18-313, 2-18-314, or 2-18-315, as the case may be, between wages and group benefits, except that in no case may the group benefits allocation be less than the amounts provided in 2-18-703."

Section 6. Section 2-18-312, MCA, is amended to read:

**"2-18-312. Statewide pay schedule for fiscal years 1988 and 1989.** The statewide classification pay schedule for fiscal years 1988 and 1989 is as follows:

| Annual Hours — 2080<br>Pay Matrix — State |        |        |        |        |        |        | Note: Includes Insurance<br>Matrix Type — Annual |        |        |        |        |        |         |
|-------------------------------------------|--------|--------|--------|--------|--------|--------|--------------------------------------------------|--------|--------|--------|--------|--------|---------|
| STEP                                      |        |        |        |        |        |        |                                                  |        |        |        |        |        |         |
| GRADE                                     | 1      | 2      | 3      | 4      | 5      | 6      | 7                                                | 8      | 9      | 10     | 11     | 12     | 13      |
| 1                                         | 9,392  | 10,099 | 10,301 | 10,507 | 10,717 | 10,931 | 11,150                                           | 11,373 | 11,600 | 11,832 | 12,069 | 12,310 | 12,802  |
| 2                                         | 9,874  | 10,617 | 10,829 | 11,046 | 11,267 | 11,492 | 11,722                                           | 11,956 | 12,195 | 12,439 | 12,688 | 12,942 | 13,460  |
| 3                                         | 10,398 | 11,181 | 11,405 | 11,633 | 11,866 | 12,103 | 12,345                                           | 12,592 | 12,844 | 13,101 | 13,363 | 13,630 | 14,175  |
| 4                                         | 10,971 | 11,797 | 12,033 | 12,274 | 12,519 | 12,769 | 13,024                                           | 13,284 | 13,550 | 13,821 | 14,097 | 14,379 | 14,954  |
| 5                                         | 11,603 | 12,476 | 12,726 | 12,981 | 13,241 | 13,506 | 13,776                                           | 14,052 | 14,333 | 14,620 | 14,912 | 15,210 | 15,818  |
| 6                                         | 12,295 | 13,220 | 13,484 | 13,754 | 14,029 | 14,310 | 14,596                                           | 14,888 | 15,186 | 15,490 | 15,800 | 16,116 | 16,761  |
| 7                                         | 13,062 | 14,045 | 14,326 | 14,613 | 14,905 | 15,203 | 15,507                                           | 15,817 | 16,133 | 16,456 | 16,785 | 17,121 | 17,806  |
| 8                                         | 13,889 | 14,934 | 15,233 | 15,538 | 15,849 | 16,166 | 16,489                                           | 16,819 | 17,155 | 17,498 | 17,848 | 18,205 | 18,933  |
| 9                                         | 14,807 | 15,922 | 16,240 | 16,565 | 16,896 | 17,234 | 17,579                                           | 17,931 | 18,290 | 18,656 | 19,029 | 19,410 | 20,186  |
| 10                                        | 15,813 | 17,003 | 17,343 | 17,690 | 18,044 | 18,405 | 18,773                                           | 19,148 | 19,531 | 19,922 | 20,320 | 20,726 | 21,555  |
| 11                                        | 16,912 | 18,185 | 18,549 | 18,920 | 19,298 | 19,684 | 20,078                                           | 20,480 | 20,890 | 21,308 | 21,734 | 22,169 | 23,056  |
| 12                                        | 18,128 | 19,493 | 19,883 | 20,281 | 20,687 | 21,101 | 21,523                                           | 21,953 | 22,392 | 22,840 | 23,297 | 23,763 | 24,714  |
| 13                                        | 19,464 | 20,929 | 21,348 | 21,775 | 22,211 | 22,655 | 23,108                                           | 23,570 | 24,041 | 24,522 | 25,012 | 25,512 | 26,532  |
| 14                                        | 21,140 | 22,731 | 23,186 | 23,650 | 24,123 | 24,605 | 25,097                                           | 25,599 | 26,111 | 26,633 | 27,166 | 27,709 | 28,817  |
| 15                                        | 22,885 | 24,608 | 25,100 | 25,602 | 26,114 | 26,636 | 27,169                                           | 27,712 | 28,266 | 28,831 | 29,408 | 29,996 | 31,196  |
| 16                                        | 24,846 | 26,716 | 27,250 | 27,795 | 28,351 | 28,918 | 29,496                                           | 30,086 | 30,688 | 31,302 | 31,928 | 32,567 | 33,870  |
| 17                                        | 26,967 | 28,997 | 29,577 | 30,169 | 30,772 | 31,387 | 32,015                                           | 32,655 | 33,308 | 33,974 | 34,653 | 35,346 | 36,760  |
| 18                                        | 29,312 | 31,518 | 32,148 | 32,791 | 33,447 | 34,116 | 34,798                                           | 35,494 | 36,204 | 36,928 | 37,667 | 38,420 | 39,957  |
| 19                                        | 31,888 | 34,288 | 34,974 | 35,673 | 36,386 | 37,114 | 37,856                                           | 38,613 | 39,385 | 40,173 | 40,976 | 41,796 | 41,796  |
| 20                                        | 34,701 | 37,313 | 38,059 | 38,820 | 39,596 | 40,388 | 41,196                                           | 42,020 | 42,860 | 43,717 | 44,591 | 44,591 | 44,591  |
| 21                                        | 37,795 | 40,640 | 41,453 | 42,282 | 43,128 | 43,991 | 44,871                                           | 45,768 | 46,683 | 47,617 | 47,617 | 47,617 | 47,617  |
| 22                                        | 41,191 | 44,291 | 45,177 | 46,081 | 47,003 | 47,943 | 48,902                                           | 49,880 | 50,878 | 50,878 | 50,878 | 50,878 | 50,878  |
| 23                                        | 44,906 | 48,286 | 49,252 | 50,237 | 51,242 | 52,267 | 53,312                                           | 54,378 | 54,378 | 54,378 | 54,378 | 54,378 | 54,378  |
| 24                                        | 48,988 | 52,675 | 53,729 | 54,804 | 55,900 | 57,018 | 58,158                                           | 58,158 | 58,158 | 58,158 | 58,158 | 58,158 | 58,158  |
| 25                                        | 53,471 | 57,496 | 58,646 | 59,819 | 61,015 | 62,235 | 62,235                                           | 62,235 | 62,235 | 62,235 | 62,235 | 62,235 | 62,235" |

Section 7. Section 2-18-313, MCA, is amended to read:

**"2-18-313. Institutional teachers' pay schedules. (1)** The 12-month pay schedule for institutional teachers for fiscal years 1988 and 1989 is as follows:

Annual Hours — 2080  
Pay Matrix — Teachers  
Term — Twelve Months

Note: Includes Insurance  
Matrix Type — Annual

| Education Level        |           |           |           |           |           |           |
|------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| YEARS OF<br>EXPERIENCE | BA        | BA+1      | BA+2      | BA+3      | MA        | MA+1      |
| (Step)                 | (Grade 1) | (Grade 2) | (Grade 3) | (Grade 4) | (Grade 5) | (Grade 6) |
| 0                      | 18,976    | 19,568    | 20,176    | 20,473    | 20,769    | 21,377    |
| 1                      | 19,673    | 20,333    | 20,995    | 21,325    | 21,656    | 22,316    |
| 2                      | 20,368    | 21,098    | 21,811    | 22,179    | 22,543    | 23,257    |
| 3                      | 21,065    | 21,865    | 22,629    | 23,030    | 23,431    | 24,196    |
| 4                      | 21,760    | 22,629    | 23,447    | 23,881    | 24,318    | 25,137    |
| 5                      | 22,457    | 23,396    | 24,266    | 24,736    | 25,206    | 26,077    |
| 6                      | 23,151    | 24,160    | 25,082    | 25,588    | 26,092    | 27,014    |
| 7                      | 23,848    | 24,927    | 25,902    | 26,442    | 26,981    | 27,955    |
| 8                      | 24,543    | 25,691    | 26,720    | 27,293    | 27,869    | 28,894    |
| 9                      | 25,240    | 26,458    | 27,538    | 28,145    | 28,754    | 29,834    |
| 10                     | 25,937    | 27,223    | 28,355    | 28,999    | 29,643    | 30,773    |

(2) The 9-month pay schedule for institutional teachers for fiscal years 1988 and 1989 is as follows:

Annual Hours — 1480  
Pay Matrix — Teachers  
Term — Nine Months

Note: Includes Insurance  
Matrix Type — Annual

| Education Level        |           |           |           |           |           |           |
|------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| YEARS OF<br>EXPERIENCE | BA        | BA+1      | BA+2      | BA+3      | MA        | MA+1      |
| (Step)                 | (Grade 1) | (Grade 2) | (Grade 3) | (Grade 4) | (Grade 5) | (Grade 6) |
| 0                      | 14,592    | 15,036    | 15,492    | 15,715    | 15,937    | 16,393    |
| 1                      | 15,115    | 15,610    | 16,106    | 16,354    | 16,602    | 17,097    |
| 2                      | 15,636    | 16,184    | 16,718    | 16,994    | 17,267    | 17,803    |
| 3                      | 16,159    | 16,759    | 17,332    | 17,633    | 17,933    | 18,507    |
| 4                      | 16,680    | 17,332    | 17,945    | 18,271    | 18,599    | 19,213    |
| 5                      | 17,203    | 17,907    | 18,560    | 18,912    | 19,265    | 19,918    |
| 6                      | 17,723    | 18,480    | 19,172    | 19,551    | 19,929    | 20,621    |
| 7                      | 18,246    | 19,055    | 19,787    | 20,192    | 20,596    | 21,326    |
| 8                      | 18,767    | 19,628    | 20,400    | 20,830    | 21,262    | 22,031    |
| 9                      | 19,290    | 20,204    | 21,014    | 21,469    | 21,926    | 22,736    |
| 10                     | 19,813    | 20,777    | 21,626    | 22,109    | 22,592    | 23,440"   |

Section 8. Section 2-18-314, MCA, is amended to read:

**"2-18-314. Liquor store occupations pay schedule.** The pay schedule for liquor store occupations for fiscal years 1988 and 1989 is as follows:

Annual Hours — 2080  
Pay Matrix — Retail Clerk

Note: With Insurance  
Matrix Type — Hourly

| Grade | \$/Hour<br>W/Ins. |
|-------|-------------------|
| L1    | 0.000             |
| L2    | 7.683             |
| L3    | 8.183             |
| L4    | 8.463             |
| L5    | 8.753             |
| L6    | 9.363             |
| L7    | 10.023            |
| L8    | 10.773"           |

Section 9. Section 2-18-315, MCA, is amended to read:

**"2-18-315. Blue-collar pay schedule.** The pay schedule for blue-collar workers for fiscal years 1988 and 1989 is as follows:

Annual Hours — 2080  
Pay Matrix — Blue-Collar

Note: With Insurance  
Matrix Type — Hourly

| Grade | \$/Hour<br>W/Ins. |
|-------|-------------------|
| B1    | 8.153             |
| B2    | 8.553             |
| B3    | 8.953             |
| B4    | 9.353             |
| B5    | 9.753             |
| B6    | 10.153            |
| B7    | 10.553            |
| B8    | 10.953            |
| B9    | 11.353            |
| B10   | 11.753            |
| B11   | 12.153            |
| B12   | 12.553            |
| B00   | 12.953"           |

Section 10. Section 2-18-703, MCA, is amended to read:

**"2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, shall contribute the amount specified in this section towards the group benefits cost.

(2) For employees defined in 2-18-701, other than members of collective bargaining units, and for members of the legislature, the employer contribution for group benefits shall be \$115 per month for the fiscal years ending

June 30, 1988, and June 30, 1989, and \$115 per month for each fiscal year thereafter. Permanent part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution as wages. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act of 1965, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than \$10 per month.

(4) Unused employer contributions for any state employee shall be transferred to an account established for this purpose by the department and upon such transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member."

Section 11. **Repealer.** Section 2-18-311, MCA, is repealed.

Section 12. **Effective date.** This act is effective on passage and approval.

Approved May 19, 1987.

## CHAPTER NO. 662

[SB 228]

AN ACT TO GENERALLY REVISE FOR FISCAL YEARS 1987, 1988, AND 1989 THE ALLOCATION OF THAT PORTION OF THE COAL SEVERANCE TAX PROCEEDS AND INTEREST NOT CONSTITUTIONALLY DEDICATED TO THE PERMANENT TRUST; CREATING SEPARATE LOCAL IMPACT AND EDUCATION TRUST ACCOUNTS; AMENDING SECTIONS 15-35-108, 17-5-704, 20-9-343, 90-2-124, 90-6-202, 90-6-205, 90-6-207, AND 90-6-211, MCA; AND PROVIDING AN APPLICABILITY DATE AND EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-35-108, MCA, is amended to read:

**"15-35-108. Disposal of severance taxes.** *Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:*

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, 1993, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

(a) 4 ½% to the state special revenue fund to the credit of the alternative energy research development and demonstration account;

(b) 4% until June 30, 1989, to the state special revenue fund to the credit of the local impact account and thereafter 20% to the state special revenue fund to the credit of the local impact and education trust fund account and 17.5% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the education trust fund account;

(c) 44.2% until June 30, 1989, and thereafter 10% to the state special revenue fund for state equalization aid to public schools of the state;

(d) 1% to the state special revenue fund to the credit of the county land planning account;

(e) 1 ¼% to the credit of the renewable resource development bond fund;

(f) after June 30, 1989, 5% to a nonexpendable trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) ⅓ for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) ⅔ for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102;

(g) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(h) ½ of 1% to the state special revenue fund for conservation districts;

(i) 1 ¼% to the debt service fund type to the credit of the water development debt service fund;

(j) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(k) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 2. Section 17-5-704, MCA, is amended to read:

**"17-5-704. Investment of funds.** (1) Money in the coal severance tax bond fund, the coal severance tax permanent fund, and the coal severance tax income fund must be invested in accordance with the investment

standards for coal severance tax funds except as provided in subsection (2). Income and earnings from all funds must be transferred to and retained in the coal severance tax income fund until appropriated by the legislature.

(2) *Beginning on July 1, 1987, the legislature shall appropriate 2% of the income and earnings from all funds to be deposited to the coal severance tax permanent fund each year.*

(3) *Beginning on July 1, 1989, the legislature shall appropriate 15% of the income and earnings from all funds to be deposited to the coal severance tax permanent fund each year. The funds appropriated to the coal severance tax permanent fund under this subsection may not be further appropriated except by vote of three-fourths of the members of each house of the legislature."*

Section 3. Section 20-9-343, MCA, is amended to read:

**"20-9-343. Definition of and revenue for state equalization aid.**

(1) As used in this title, the term "state equalization aid" means those moneys deposited in the state special revenue fund as required in this section plus any legislative appropriation of *money* from other sources for distribution to the public schools for the purpose of equalization of the foundation program.

(2) The legislative appropriation for state equalization aid shall be made in a single sum for the biennium. The superintendent of public instruction has authority to spend such appropriation, together with the earmarked revenues provided in subsection (3), as required for foundation program purposes throughout the biennium.

(3) The following shall be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) 25% of all *money* received from the collection of income taxes under chapter 30 of Title 15;

(b) 25% of all *money*, except as provided in 15-31-702, received from the collection of corporation license taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) 100% of the *money allocated to state equalization* from the collection of the severance tax on coal;

(d) 100% of the *money* received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income *money* described in 20-9-341 and 20-9-342;

(f) income from the education trust fund account; and

(g) in addition to these revenues, the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333 shall be paid into the same state special revenue fund.

(4) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce the appropriation

required for the next succeeding biennium [or may be transferred to the state permissive account if revenues in that fund are insufficient to meet the state's permissive amount obligation]."

Section 4. Section 90-2-124, MCA, is amended to read:

**"90-2-124. Appropriation of coal severance tax.** The state pledges and appropriates and directs to be credited to the debt service fund all money *allocated to the renewable resource development bond fund by 15-35-108* and such additional amount thereof, if any, as may be required from time to time to provide sufficient funds for the purposes stated in 90-2-123(2)."

Section 5. Section 90-6-202, MCA, is amended to read:

**"90-6-202. Accounts established.** (1) There is within the state special revenue fund a local impact account. Moneys are payable into this account under 15-35-108. The state treasurer shall draw warrants from this account upon order of the coal board.

(2) There is within the state special revenue fund a coal area highway improvement account.

(3) *There is within the nonexpendable trust fund an education trust fund account.*"

Section 6. Section 90-6-205, MCA, is amended to read:

**"90-6-205. (Temporary) Coal board — general powers.** The board may:

(1) retain professional consultants and advisors;

(2) adopt rules governing its proceedings;

(3) consider applications for grants from the local impact account;

(4) consider applications for loans from the local impact account for periods and interest rates to be determined by the board;

(5) award grants and loans, subject to 90-6-207, *from the local impact account*:

(a) to local governmental units, state agencies, and governing bodies of federally recognized Indian tribes to assist local governmental units and federally recognized Indian tribes in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development; and

(b) notwithstanding the provisions of 90-6-207, to the department of highways established in 2-15-2501 to expedite the construction, repair, and maintenance of deficient sections of highway within the area designated in 90-6-210 if the deficiency is the direct result of increased traffic accompanying the development of coal resources; and

(6) award a grant to a local government unit for the purpose of paying for part or all of the credit that the local government unit is obligated to

give to a major new industrial facility that has prepaid property taxes under 15-16-201. The board must award the grant in accordance with 90-6-206.

**90-6-205. (Effective July 1, 1987) Coal board — general powers.** The board may:

- (1) retain professional consultants and advisors;
- (2) adopt rules governing its proceedings;
- (3) consider applications for grants from the local impact account;
- (4) consider applications for loans from the local impact account for periods and interest rates to be determined by the board; and
- (5) award grants and loans, subject to 90-6-207, *from the local impact account:*

(a) to local governmental units, state agencies, and governing bodies of federally recognized Indian tribes to assist local governmental units and federally recognized Indian tribes in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development; and

(b) notwithstanding the provisions of 90-6-207, to the department of highways established in 2-15-2501 to expedite the construction, repair, and maintenance of deficient sections of highway within the area designated in 90-6-210 if the deficiency is the direct result of increased traffic accompanying the development of coal resources; and

(6) award a grant to a local government unit for the purpose of paying for part or all of the credit that the local government unit is obligated to give to a major new industrial facility that has prepaid property taxes under 15-16-201. The board must award the grant in accordance with 90-6-206."

Section 7. Section 90-6-207, MCA, is amended to read:

**"90-6-207. Priorities for impact grants.** (1) The department of commerce shall annually designate:

(a) each county, incorporated city and town, school district, and other governmental unit which has had or expects to have as a result of the impact of coal development a net increase in estimated population of at least 10% over one of the 3-year periods specified in subsection (4);

(b) each county and all local governmental units within each county in which:

(i) a mining permit in accordance with the Montana Strip and Underground Mine Reclamation Act has been granted by the department of state lands for a project within the county that will establish a new coal mine to produce at least 1 million tons a year or that will increase the production of an existing mine by at least 1 million tons a year and for which the department of commerce determines that the new or expanded production



authorized by the permit will commence within 3 years of the designation; or

(ii) a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act has been granted by the board of natural resources and conservation for a steam-generating or other coal-burning facility that will consume at least 1 million tons a year of Montana-mined coal and for which the department of commerce determines the construction or operation will commence within 3 years of the designation;

(c) each local governmental unit located within 50 miles, measured over the shortest all-weather public road, of a mine or facility qualifying under subsection (1)(b)(i) or (1)(b)(ii); and

(d) each local governmental unit in which:

(i) a mine that has produced 1 million tons or more of coal a year and has ceased all significant mining or is scheduled to cease within 1 year; or

(ii) a steam-generating or other coal-burning facility that has operated under a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act and that has consumed at least 1 million tons of Montana-mined coal a year has closed or is scheduled to close within 1 year.

(2) Designation under subsection (1) of:

(a) any local governmental unit extends to and includes as a designated unit the county in which it is located; and

(b) a county extends to and includes as a designated unit any local governmental unit in the county that contains at least 10% of the total population of the county.

(3) Except as provided in 90-6-205(5)(b), the coal board shall, subject to the appropriations of the legislature, award at least 50% of all grants awarded to governmental units and state agencies for meeting the needs caused by coal development each year to these designated governmental units.

(4) For the purposes of subsection (1), the department of commerce shall use five 3-year periods as follows:

(a) one consecutive 3-year period ending 2 calendar years prior to the current calendar year;

(b) one consecutive 3-year period ending 1 calendar year prior to the current calendar year;

(c) one consecutive 3-year period ending with the current calendar year;

(d) one consecutive 3-year period ending 1 calendar year after the current calendar year; and

(e) one consecutive 3-year period ending 2 calendar years after the current calendar year.

(5) Attention should be given by the coal board to the need for community planning before the full impact is realized. Applicants should be able to show how their request reasonably fits into an overall plan for the orderly management of the existing or contemplated growth problems.

(6) All funds placed in the local impact account established under this part shall be subject to appropriations by the legislature for use related to local impact."

Section 8. Section 90-6-211, MCA, is amended to read:

**"90-6-211. Disposition of interest from balance — education trust.** The balance in the education trust fund account shall be invested as provided by statute by the board of investments. Of the income from such investments each year 10% shall be paid into the state special revenue fund for use by the superintendent of public instruction for purposes of the postsecondary vocational-technical centers and adult basic education programs in the state, subject to the budgeting authority of the legislature. Within the account under 20-9-513, the revenue is shared between the postsecondary vocational-technical centers and the adult basic education programs. Of the remaining 90% of the income from such investments, three-fourths shall be annually paid into the state special revenue fund for state equalization aid to public schools of the state and one-fourth each year shall be paid to the board of regents of higher education for use by the institutions of higher learning in the state, subject to the budgeting authority of the legislature. *Beginning July 1, 1989, the principal of the education trust fund shall be dedicated to education and forever remain inviolate and sacred to this purpose as provided in sections 3 and 10 of Article X of the Montana constitution.*"

**Section 9. Local impact account — disposition of loan repayments, interest, and unexpended balances.** (1) The money derived from loans made pursuant to this part, including interest thereon, must be deposited to the credit of the local impact account created in 90-6-202.

(2) The unexpended money in the local impact account must be invested by the board of investments as provided by statute. Interest and earnings must be deposited to the credit of the education trust fund account.

(3) The unexpended balance in the local impact account at the end of each biennium must be deposited to the credit of the education trust fund account.

**Section 10. Extension of authority.** Any existing authority of the office of public instruction, the board of education, or the coal board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 11. Codification instruction.** Section 9 is intended to be codified as an integral part of Title 90, chapter 6, part 2, and the provisions of Title 90, chapter 6, part 2, apply to section 9.

**Section 12. Coordination instruction.** If section 3 of this act and House Bill No. 12 are both passed and approved, the amendment to 20-9-343(3)(c) contained in House Bill No. 12 is void.

**Section 13. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 14. Applicability.** Section 2 is applicable to interest and income earned after June 30, 1986, and before July 1, 1989.

**Section 15. Effective date.** (1) Sections 2, 8, 14, and this section are effective on passage and approval.

(2) All other sections are effective July 1, 1987.

Approved May 22, 1987.

## CHAPTER NO. 663

[HB 123]

AN ACT ALLOWING PARTIES IN A CIVIL ACTION TO PETITION FOR THE APPOINTMENT OF A RETIRED JUDGE OR QUALIFIED MEMBER OF THE STATE BAR AS A JUDGE PRO TEMPORE; CLARIFYING THE AUTHORITY OF A JUDGE PRO TEMPORE; ESTABLISHING QUALIFICATIONS FOR A JUDGE PRO TEMPORE; MAKING THE PARTIES TO THE ACTION RESPONSIBLE FOR THE EXPENSES OF TRIAL AND THE SALARIES OF THE JUDGE AND COURT REPORTER; ESTABLISHING REQUIREMENTS FOR THE PLACE OF TRIAL, THE KEEPING OF RECORDS, AND APPEALS; ALLOWING A JUDGE PRO TEMPORE TO PRACTICE LAW, ADMINISTER ESTATES, AND HAVE A PARTNER WHO PRACTICES LAW; EXCEPTING A JUDGE PRO TEMPORE FROM THE ELECTION REQUIREMENT; ALLOWING A RETIRED JUDGE TO RECEIVE RETIREMENT BENEFITS WHILE ACTING AS A JUDGE PRO TEMPORE; AND AMENDING SECTIONS 3-1-601, 3-1-603, 3-5-113, 3-5-201, AND 19-5-501, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 3-5-113, MCA, is amended to read:

**"3-5-113. Judges pro tempore.** (1) A civil action in the district court may be tried by a judge pro tempore, who must be a member of the bar of the state, agreed upon in writing by the parties litigant or their attorneys of record, *appointed* by the court as provided in [section 3], and sworn to try the cause before entering upon his duties.

(2) *The judge pro tempore has the authority and power of an elected district court judge in the particular civil action tried in the manner provided for in subsection (1). All proceedings before a judge pro tempore must be conducted in accordance with the rules of evidence and procedure governing district courts.*

(3) Any order, judgment, or decree made or rendered by *the* judge pro tempore shall have the same force and effect as if made or rendered by the *district* court with the regular judge presiding."

**Section 2. Qualifications.** Any of the following individuals may act as a judge pro tempore:

- (1) a member of the bar of the state who meets the qualifications for judge of the district court as provided in 3-5-202;
- (2) a retired judge of the district court; or
- (3) a retired justice of the supreme court.

**Section 3. Agreement, petition, and appointment of judge pro tempore — waiver of jury trial.** (1) Prior to trial and upon written agreement of all the parties to a civil action, the parties may petition for the appointment of a judge pro tempore. If the district court judge having jurisdiction over the case where the action was filed finds that the appointment is in the best interest of the parties and serves justice, he may appoint the judge pro tempore nominated by the parties to preside over the whole or any aspect of the action as if the regular district court judge were presiding.

(2) An appointment of a judge pro tempore constitutes a waiver of the right to trial by jury by any party having the right.

**Section 4. Compensation — expenses.** (1) The salary of the judge pro tempore and court reporter and all other expenses associated with the trial are the responsibility of the parties to the action. The amount of salaries and other expenses and the manner of payment must be established by written agreement.

(2) The judge pro tempore may not withhold his judgment as security for compensation.

**Section 5. Rooms — records.** (1) Each trial before a judge pro tempore must be conducted in a suitable room in the courthouse in the judicial district where the action was filed, unless the parties or their attorneys stipulate in writing that the trial may be held elsewhere.

(2) All records must be filed and kept in accordance with the rules governing the district court where the action was filed.

**Section 6. Appeals.** An appeal from a final judgment of a judge pro tempore must be made in the same manner as an appeal from a final judgment of the district court.

**Section 7.** Section 3-1-601, MCA, is amended to read:

**"3-1-601. Certain officers not to practice law or administer estates.** (1) Except as provided in 3-1-604 and except for a judge pro tempore, no justice or judge of a court of record or clerk of any court may practice law in any court in this state or act as attorney, agent, or solicitor in the prosecution of any claim or application for lands, pensions, or patent rights or other proceedings before any department of the state or general government or any court of the United States during his continuance in office.

(2) Neither the court administrator nor any assistant may practice law in any of the courts of this state while holding his position.

(3) No justice or judge of a court of record, *except a judge pro tempore*, may act as administrator or executor of any estate for compensation."

Section 8. Section 3-1-603, MCA, is amended to read:

**"3-1-603. No judicial officer of court of record to have partner practicing law.** (1) Except as provided in subsection (2), no judicial officer of a court of record may have a partner acting as attorney or counsel in any court of this state.

(2) A partner of *either* a municipal court judge *or a judge pro tempore* may act as attorney or counsel in any court of this state except the court of his partner."

Section 9. Section 3-5-201, MCA, is amended to read:

**"3-5-201. Election and oath of office.** (1) The judges of the district court, *except judges pro tempore*, must be elected by the qualified voters of the district.

(2) *Except as provided in subsection (1), each* judge of a district court must, as soon as he has taken and subscribed his official oath, file the same in the office of the secretary of state."

Section 10. Section 19-5-501, MCA, is amended to read:

**"19-5-501. Eligibility for service retirement.** (1) Any member who has completed at least 5 years or more service and has reached the age of 65 may retire and receive the proportional retirement allowances provided in 19-5-502.

(2) No retirement allowances may be approved by the board while the member is drawing full compensation as a judge or justice. *However, allowances may not be withheld for receiving compensation as a judge pro tempore.*"

Section 11. **Codification instruction.** Sections 2 through 6 are intended to be codified as an integral part of Title 3, chapter 5, part 1, and the provisions of Title 3, chapter 5, part 1, apply to sections 2 through 6.

Approved May 22, 1987.

## CHAPTER NO. 664

[HB 884]

AN ACT TO PROVIDE A SUPPLEMENTAL FUNDING SOURCE FOR THE WORKERS' COMPENSATION STATE FUND THROUGH AN EMPLOYER'S PAYROLL TAX; TO STATUTORILY APPROPRIATE THE PAYROLL TAX TO THE UNFUNDED LIABILITY OF THE STATE FUND; AMENDING SECTION 17-7-502, MCA; REPEALING SECTION 39-71-2326, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Board" means the board of examiners created in 2-15-1007.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Employer" has the meaning set forth in 39-71-117.

(4) "Payroll" means the payroll of an employer for each of the calendar quarters ending March 31, June 30, September 30, and December 31, for all employments covered under 39-71-401.

(5) "State fund" means the state compensation insurance fund referred to in 39-71-2301.

(6) "Tax" means the workers' compensation payroll tax provided for in [section 3].

(7) "Tax account" means the workers' compensation tax account created by [section 4].

**Section 2. Findings and purpose.** (1) Based on current liabilities and actuarial analysis, an unfunded liability presently exists in the state fund and is projected to increase. While legislative action is required to correct the causes of the unfunded liability, those actions will not provide sufficient funds to permit the state fund to pay its existing liabilities and obligations in a timely manner from premium and investment income available to the state fund. Therefore, it is necessary to provide a source of funding for the unfunded liability in addition to premium and investment income.

(2) The police power of the state extends to all great public needs. The state, in the exercise of its police power, has determined that it is greatly and immediately necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability described in subsection (1). The burden of this unfunded liability should not be borne solely by those employers who have insured with the state fund because the availability of insurance to all employers through the state fund has benefited all employers who have workers' compensation coverage. Therefore, all employers who have employments covered by the workers' compensation laws should share in the cost of the unfunded liability.

(3) The purpose of [this act] is to provide a supplemental source of financing for the unfunded liability.

**Section 3. Workers' compensation payroll tax — penalty.** (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to 0.3% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401. This payroll tax must be used to reduce the unfunded liability in the state fund.

(b) The tax is due and payable following the end of each calendar quarter, commencing with the quarter ending September 30, 1987.

(c) The tax must be paid to and collected by the department. The department shall prepare appropriate returns to be filed by each employer or insurer with the payment of the tax.

(d) Each employer shall maintain the records the department requires concerning the employer's payroll. The records are subject to inspection by the department and its employees and agents during regular business hours.

(e) Taxes not paid when due bear interest at the rate of 1% a month. The employer shall also pay a penalty equal to 10% of the amount of the delinquent tax.

(2) All collections of the tax are appropriated to and must be deposited as received in the tax account. The tax is in addition to any other tax or fee assessed against employers subject to the tax.

(3) Sections 15-35-112 through 15-35-114, 15-35-121, and 15-35-122 regarding deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the tax, to employers, and to the department.

**Section 4. Workers' compensation tax account.** There is an account in the state special revenue fund. All collections of the tax and interest and penalties on the tax must be deposited in the account and are statutorily appropriated, as provided in 17-7-502, to the department to be used to reduce the unfunded liability in the state fund.

**Section 5.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations:

- (a) 2-9-202;
- (b) 2-17-105;
- (c) 2-18-812;
- (d) 10-3-203;
- (e) 10-3-312;
- (f) 10-3-314;
- (g) 10-4-301;
- (h) 13-37-304;

- (i) 15-31-702;
- (j) 15-36-112;
- (k) 15-70-101;
- (l) 16-1-404;
- (m) 16-1-410;
- (n) 16-1-411;
- (o) 17-3-212;
- (p) 17-5-404;
- (q) 17-5-424;
- (r) 17-5-804;
- (s) 19-8-504;
- (t) 19-9-702;
- (u) 19-9-1007;
- (v) 19-10-205;
- (w) 19-10-305;
- (x) 19-10-506;
- (y) 19-11-512;
- (z) 19-11-513;
- (aa) 19-11-606;
- (bb) 19-12-301;
- (cc) 19-13-604;
- (dd) 20-6-406;
- (ee) 20-8-111;
- (ff) 23-5-612;
- (gg) 37-51-501;
- (hh) 53-24-206;
- (ii) 75-1-1101;
- (jj) 75-7-305;
- (kk) 80-2-103;
- (ll) 80-2-228;
- (mm) 90-3-301;
- (nn) 90-3-302;
- (oo) 90-15-103;



(pp) Sec. 13, HB 861, L. 1985; and

(qq) [section 4].

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments."

**Section 6. Repealer.** Section 39-71-2326 MCA, is repealed.

**Section 7. Extension of authority.** Any existing authority of the department of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 8. Prior law superseded.** [This act] hereby supersedes the provisions of 1-2-113 as it may apply to [this act].

**Section 9. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 10. Effective date — termination.** This act is effective on passage and approval and terminates June 30, 1991.

Approved May 22, 1987.

## CHAPTER NO. 665

[HB 889]

AN ACT TO CREATE A MONTANA AGRICULTURE DEVELOPMENT COUNCIL; TO PROMOTE INNOVATIONS IN AGRICULTURAL PRODUCTION, PROCESSING, MARKETING, AND DISTRIBUTION AND IN ORGANIZATIONAL STRUCTURES OF AGRICULTURAL BUSINESSES; TO ASSIST IN DEVELOPING AGRICULTURAL BUSINESS INCUBATORS; TO ENHANCE DOMESTIC AND FOREIGN AGRICULTURAL MARKETING OPPORTUNITIES; TO ASSIST EXPORTERS OF MONTANA AGRICULTURAL PRODUCTS; AND AMENDING SECTION 17-7-502, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Montana agriculture development council.** (1) There is a Montana agriculture development council. The council is allocated to the department of commerce for administrative purposes only, as provided in 2-15-121.

(2) The council is composed of seven members appointed by the governor, including the director of the department of agriculture, the director of the department of commerce, and five members who are or have been actively engaged in agriculture. Members shall serve staggered 3-year terms commencing on July 1 of each year of appointment.

**Section 2. Short title.** [Sections 2 through 13] may be cited as the "Montana Growth Through Agriculture Act".

**Section 3. Purpose.** It is the purpose of [sections 2 through 13] to strengthen and diversify Montana's agricultural industry by establishing a public-private sector partnership to assist the development of innovative agricultural business organizational improvements and the commercialization and marketing of new agricultural products in order to keep pace with a transforming agricultural industry and to create new jobs and expand small business opportunities.

**Section 4. Definitions.** As used in [sections 2 through 13], the following definitions apply:

(1) "Agricultural business" means an enterprise engaged in the production, processing, marketing, distribution, or exporting of agricultural products. The term includes any related business the primary function of which is providing goods or services to such an enterprise.

(2) "Council" means the Montana agriculture development council established in [section 1].

(3) "Investment" means an award of money, with or without repayment requirements, for the purposes provided for in [sections 2 through 13].

**Section 5. Council organization — meetings.** (1) The members of the council shall select a member as chairman. In addition to the chairmanship, the council may establish other offices and select council members to fill these offices.

(2) The council shall meet quarterly and at other times as determined by the chairman or a majority of the council.

**Section 6. Powers and duties of the council.** The council shall:

(1) establish policies and priorities to enhance the future development of agriculture in Montana;

(2) make investments in agricultural development projects that have a short- or long-term ability to stimulate agriculture development and diversification in Montana, including but not limited to:

(a) seed capital awards for development and commercialization of new products and processes;

(b) agricultural business incubators;

(c) foreign and domestic market development activities;

(d) applied technological research; and

(e) agricultural technology assistance and transfer;

(3) accept grants or receive devises of money or property for use in making the investments described in [sections 2 through 13];

(4) adopt rules necessary to implement the provisions of [sections 2 through 13], including but not limited to rules:

- (a) governing the conduct of council business;
- (b) establishing matching fund requirements for seed capital investment programs;
- (c) establishing criteria for determining the eligibility of projects and programs for investments; and
- (d) establishing methods of committing funds, types and amounts of fees, return on investments, and types of investments to be made.

**Section 7. Agriculture seed capital account — matching funds — preference.** (1) There is an agriculture seed capital account administered by the council.

(2) The council may invest money from the agriculture seed capital account to support research relating to innovative organizational improvements in agricultural businesses and to the commercialization and marketing of new agricultural products or agricultural production processes.

(3) Investments from the account must be matched by at least an equal amount raised by the applicant from sources that are not state-appropriated.

(4) Preference must be given to applications that:

- (a) can be reasonably expected to provide an economic return to the applicant within a reasonable time;
- (b) demonstrate a potential commercial value to other entrepreneurs in Montana;
- (c) require such a grant to obtain additional private capital;
- (d) involve processing or adding value to agricultural commodities produced in Montana; or
- (e) provide jobs that will be substantially filled by current Montana residents.

**Section 8. Agricultural business incubator program — criteria — limitations.** (1) There is an agricultural business incubator program account in the state special revenue fund. The council may invest from the account an amount not to exceed \$100,000 each in agricultural business incubators. The incubators must operate as self-financing business development entities, providing such services as training, management consultation, accounting, and office space to eligible agricultural businesses. Such agricultural businesses may include but are not limited to marketing cooperatives and associations.

(2) Investments under this section must be awarded by the council, based upon its review of the following criteria:

- (a) the potential ability of the applicant to be financially self-sufficient;
- (b) identification of businesses or industries targeted for development assistance;
- (c) community support for the incubator program; and
- (d) a plan to address business development needs of specific user groups such as displaced farmers.

(3) Investments may be made only in agricultural business incubators that are located in different geographic areas of the state and that are not located in a municipality with a population in excess of 15,000 people. The municipality or community in which the incubator is located must provide funding or contributions of a value at least three times the amount of the investment under this section. Contributions by applicants may include land, buildings, or professional services.

**Section 9. Return-on-investment agreements.** The council shall enter into return-on-investment agreements for those products or processes that are to be developed and commercialized as a result of an investment under [sections 2 through 13]. As a part of such an agreement, the council shall require payment of a return that it considers commensurate with the risk of its original investment.

**Section 10. Appropriation authority and funding — prohibited investments.** (1) The council has authority to accept and expend all funds received by it as grants, donations, or other private or public income, including amounts repaid as principal and interest on investments made by the council. These funds are statutorily appropriated to the council as provided in 17-7-502.

(2) No investment may be made in projects for which matching funds or participation of financial intermediaries is required until such funds have been committed.

(3) Council members may not personally apply for or receive council investment funds. If an organization with which a member is affiliated applies for council funds, the member must disclose the nature of the affiliation and may not participate in the decision of the council regarding the application.

**Section 11. Accountability.** (1) The council shall develop independent review and audit procedures to ensure that investments made by it are used for the purposes identified in its investment agreements.

(2) The council's investment agreements must contain provisions considered necessary by the council to ensure the proper inspection and review of projects, the attainment of project goals, and the maintenance of adequate financial records by recipients of council funds.

**Section 12. Agricultural marketing enhancement.** The council shall assist in identification and development of new domestic and foreign markets for Montana agricultural products. The council shall:

- (1) place one full-time professional marketing person in Japan to develop export marketing opportunities in the Pacific region;

(2) provide assistance for appropriate trade missions of Montana producers, processors, or distributors of agricultural products on a cost-share basis; and

(3) assist in other appropriate means of enhancing domestic markets for Montana agricultural products.

**Section 13. Export finance assistance.** The council shall provide professional assistance to persons who apply for financial assistance for the purpose of developing export sales of Montana agricultural products.

**Section 14.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations:

- (a) 2-9-202;
- (b) 2-17-105;
- (c) 2-18-812;
- (d) 10-3-203;
- (e) 10-3-312;
- (f) 10-3-314;
- (g) 10-4-301;
- (h) 13-37-304;
- (i) 15-31-702;
- (j) 15-36-112;
- (k) 15-70-101;
- (l) 16-1-404;
- (m) 16-1-410;
- (n) 16-1-411;
- (o) 17-3-212;

- (p) 17-5-404;
- (q) 17-5-424;
- (r) 17-5-804;
- (s) 19-8-504;
- (t) 19-9-702;
- (u) 19-9-1007;
- (v) 19-10-205;
- (w) 19-10-305;
- (x) 19-10-506;
- (y) 19-11-512;
- (z) 19-11-513;
- (aa) 19-11-606;
- (bb) 19-12-301;
- (cc) 19-13-604;
- (dd) 20-6-406;
- (ee) 20-8-111;
- (ff) 23-5-612;
- (gg) 37-51-501;
- (hh) 53-24-206;
- (ii) 75-1-1101;
- (jj) 75-7-305;
- (kk) 80-2-103;
- (ll) 80-2-228;
- (mm) 90-3-301;
- (nn) 90-3-302;
- (oo) *[section 10]*;
- (pp) 90-15-103; and
- (qq) Sec. 13, HB 861, L. 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state

treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments."

Approved May 22, 1987.

## CHAPTER NO. 666

[HB 904]

AN ACT TO PROVIDE A 10 PERCENT SURTAX ON MONTANA INDIVIDUAL INCOME TAX, TO INCREASE THE CONTRIBUTION TO STATE EQUALIZATION, AND TO APPROPRIATE FUNDS FROM THE EDUCATION AND LOCAL IMPACT TRUST TO THE SCHOOL FOUNDATION PROGRAM FOR THE PURPOSE OF BALANCING THE FISCAL 1988-89 GENERAL FUND BUDGET; TO APPROPRIATE FUNDS FOR EQUALIZATION AID FOR SCHOOLS; AMENDING SECTIONS 15-1-501, 17-5-408, 20-9-318, 20-9-319, AND 20-9-343, MCA; AND PROVIDING EFFECTIVE DATES, A RETRO-ACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-1-501, MCA, is amended to read:

**"15-1-501. Disposition of moneys from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund all moneys received by him from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone [company] license taxes under chapter 53; and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) *All moneys received from the collection of income taxes under chapter 30 of this title shall be deposited as follows:*

(a) 58.2% to the credit of the state general fund;

(b) 10% to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) 31.8% to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343.

(3) *All moneys received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, shall be deposited as follows:*

(a) *64% to the credit of the state general fund;*

(b) *11% to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and*

(c) *25% to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343.*

(4) The state treasurer shall also deposit to the credit of the state general fund all moneys received by him from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(5) Thirty-three and one-third percent of the total collections of the oil severance tax under chapter 36 shall be deposited into the local government block grant account within the state special revenue fund. After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections shall be deposited in the general fund."

Section 2. Section 17-5-408, MCA, is amended to read:

**"17-5-408. (Effective unless contingency occurs—see compiler's comments) Percentage of income, corporation license, and cigarette tax pledged.** (1) (a) The state pledges and appropriates and directs to be credited as received to the debt service account 10% of all money received from the collection of the individual income tax and 11% of all money, except as provided in 15-31-702, received from the collection of the corporation license and income tax as provided in 15-1-501, and such additional amount of said taxes, if any, as may at any time be needed to comply with the principal and interest and reserve requirements stated in 17-5-405(4).

(b) No more than the percentages described in subsection (1)(a) of such tax collections may be pledged for the purpose of 17-5-403(2). The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of said taxes.

(2) The state pledges and appropriates and directs to be credited to the debt service account 79.75% of all money received from the collection of the excise tax on cigarettes which is levied, imposed, and assessed by 16-11-111. The state also pledges and appropriates and directs to be credited as received to the debt service account all money received from the collection of the taxes on other tobacco products which are or may hereafter be levied, imposed, and assessed by law for that purpose, including the tax levied, imposed, and assessed by 16-11-202. Nothing herein shall impair or otherwise affect the provisions and covenants contained in the resolutions authorizing the presently outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of all taxes referred to in this subsection (2). (Revived July 1, 1987—sec. 4, Ch. 704, L. 1985.)



**17-5-408. (Effective on occurrence of contingency—see compiler's comments) Percentage of income, corporation license, and cigarette tax pledged.** (1) (a) The state pledges and appropriates and directs to be credited as received to the debt service account 10% of all money received from the collection of the individual income tax and 11% of all money, except as provided in 15-31-702, received from the collection of the corporation license and income tax as provided in 15-1-501, and such additional amount of said taxes, if any, as may at any time be needed to comply with the principal and interest and reserve requirements stated in 17-5-405(4).

(b) No more than the percentages described in subsection (1)(a) of such tax collections may be pledged for the purpose of 17-5-403(2). The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of said taxes.

(2) The state pledges and appropriates and directs to be credited to the debt service account 53.17% of all money received from the collection of the excise tax on cigarettes which is levied, imposed, and assessed by 16-11-111. The state also pledges and appropriates and directs to be credited as received to the debt service account all money received from the collection of the taxes on other tobacco products which are or may hereafter be levied, imposed, and assessed by law for that purpose, including the tax levied, imposed, and assessed by 16-11-202. Nothing herein shall impair or otherwise affect the provisions and covenants contained in the resolutions authorizing the presently outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of all taxes referred to in this subsection (2)."

Section 3. Section 20-9-318, MCA, is amended to read:

**"20-9-318. Elementary school maximum budget schedule for 1987-88 and succeeding years.** For 1987-88 and succeeding school years, the elementary school maximum budget schedule is as follows:

(1) For each elementary school having an ANB of nine or fewer pupils, the maximum shall be \$20,158 if said school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be \$20,158 plus \$842.50 per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of at least 14 pupils but less than 18 pupils that qualify for instructional aide funding under 20-9-322, the maximum shall be \$33,042 plus \$842.50 per pupil on the basis of the average number belonging over 14.

(4) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be \$27,741 plus \$842.50 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(5) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be \$44,290 plus \$527.60 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(6) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of \$1,957 shall be decreased at the rate of \$1.90 for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of \$1,843 shall be decreased at the rate of \$1.74 for each additional pupil until the ANB shall have reached 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum shall not exceed \$1,496 for each pupil.

(7) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule."

Section 4. Section 20-9-319, MCA, is amended to read:

**"20-9-319. High school maximum budget schedule for 1987-88 and succeeding years.** For 1987-88 and succeeding school years, the high school maximum budget schedule is as follows:

(1) For each high school having an ANB of 24 or fewer pupils, the maximum shall be \$114,845.

(2) For a secondary school having an ANB of more than 24 pupils, the maximum \$4,785 shall be decreased at the rate of \$26.10 for each additional pupil until the ANB shall have reached a total of 40 such pupils.

(3) For a school having an ANB of more than 40 pupils, the maximum of \$4,368 shall be decreased at the rate of \$26.10 for each additional pupil until the ANB shall have reached 100 pupils.

(4) For a school having an ANB of more than 100 pupils, a maximum of \$2,802 shall be decreased at the rate of \$4.37 for each additional pupil until the ANB shall have reached 200 pupils.

(5) For a school having an ANB of more than 200 pupils, the maximum of \$2,365 shall be decreased by \$2.40 for each additional pupil until the ANB shall have reached 300 pupils.

(6) For a school having an ANB of more than 300 pupils, the maximum of \$2,125 shall be decreased at the rate of 44 cents until the ANB shall have reached 600 pupils.

(7) For a school having an ANB over 600 pupils, the maximum shall not exceed \$1,993 per pupil.

(8) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town, shall be treated as one school for the purpose of this schedule."

Section 5. Section 20-9-343, MCA, is amended to read:

**"20-9-343. Definition of and revenue for state equalization aid.**

(1) As used in this title, the term "state equalization aid" means those moneys deposited in the state special revenue fund as required in this section plus any legislative appropriation of moneys from other sources for distribution to the public schools for the purpose of equalization of the foundation program.

(2) The legislative appropriation for state equalization aid shall be made in a single sum for the biennium. The superintendent of public instruction has authority to spend such appropriation, together with the earmarked revenues provided in subsection (3), as required for foundation program purposes throughout the biennium.

(3) The following shall be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) 31.8% of all moneys received from the collection of income taxes under chapter 30 of Title 15;

(b) 25% of all moneys, except as provided in 15-31-702, received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) 10% of the moneys received from the collection of the severance tax on coal under chapter 35 of Title 15;

(d) 100% of the moneys received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income moneys described in 20-9-341 and 20-9-342;

(f) income from the local impact and education trust fund account; and

(g) in addition to these revenues, the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333 shall be paid into the same state special revenue fund.

(4) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce the appropriation required for the next succeeding biennium [or may be transferred to the state permissive account if revenues in that fund are insufficient to meet the state's permissive amount obligation]."

Section 6. **Surtax.** After the amount of tax liability has been computed as required in 15-30-103, each person filing a Montana individual income tax return shall add as a surtax 10% of the tax liability, and the amount so arrived at is the amount due the state.

**Section 7. Exemption for gain on sale or exchange of certain capital assets.** Notwithstanding the provisions of 15-30-111, adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

**Section 8. Appropriation.** There is appropriated \$34 million from the education and local impact trust and \$62 million from the general fund to the school foundation program for the biennium ending June 30, 1989, for state equalization aid. The governor is authorized to reduce the general fund appropriation to the amount necessary to fund the school foundation schedules in 20-9-318 and 20-9-319.

**Section 9. Codification instruction.** Sections 6 and 7 are intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to sections 6 and 7.

**Section 10. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 11. Effective date — applicability.** (1) This act, except section 8, is effective on passage and approval.

(2) Section 8 is effective July 1, 1987.

(3) Unless otherwise specified or required by a particular section of this act, sections 1 through 7 apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1986.

**Section 12. Termination.** Section 6 terminates December 31, 1989.

Approved May 22, 1987.

# **APPROPRIATIONS**

**ENACTED BY THE**

**Fiftieth Legislature**

**IN REGULAR**

**SESSION**

**STATE OF MONTANA**

**1987**

**1893**



# APPROPRIATIONS

## HOUSE BILL NO. 1

**AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE 50TH LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriation.** The following amounts are appropriated from the general fund for fiscal years 1987, 1988, and 1989 for the operation of the 50th legislature and costs of preparing for the 51st legislature:

### House of Representatives

|                                   |              |
|-----------------------------------|--------------|
| 50th Legislature                  | \$ 2,062,512 |
| Preparations for 51st Legislature | \$ 93,961    |

### Senate

|                                   |              |
|-----------------------------------|--------------|
| 50th Legislature                  | \$ 1,372,949 |
| Preparations for 51st Legislature | \$ 76,869    |

### Legislative Council

|                                                            |            |
|------------------------------------------------------------|------------|
| Legislative Printing, Information,<br>and Business Offices | \$ 431,388 |
| Legislative Telephone Service                              | \$ 152,836 |
| Legislative Publications (Session<br>Laws & Journals)      | \$ 105,876 |
| Revenue Oversight Tax Consultant                           | \$ 18,000  |

### Department of Administration

|                          |          |
|--------------------------|----------|
| Legislative Mail Service | \$ 3,143 |
|--------------------------|----------|

**Section 2. Effective date.** This act is effective on passage and approval.

Approved January 16, 1987.

## HOUSE BILL NO. 2

THE GENERAL APPROPRIATIONS ACT OF 1987 FOR THE APPROPRIATION OF MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1989; AND PROVIDING FISCAL 1987 SUPPLEMENTAL APPROPRIATIONS TO FUND IMPLEMENTATION COSTS OF LEGISLATION ENACTED BY THE 50TH LEGISLATURE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Title.** This act may be cited as "The General Appropriations Act of 1987".

Section 2. **Definitions.** For the purposes of this act, unless otherwise stated, the following definitions apply:

(1) "Agency" means each state office, department, division, board, commission, council, committee, institution, university unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government.

(2) "Approving authority" means the governor or his designated representative for executive branch agencies; the chief justice of the supreme court for judicial branch agencies; appropriate legislative committees for legislative branch agencies; or the board of regents or its designated representative for the university system.

(3) "University system unit" means the board of regents, office of the commissioner of higher education, university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college at Dillon, the agricultural experiment station with central offices at Bozeman, the cooperative extension service with central offices at Bozeman, the forestry and conservation experiment station with central offices at Missoula, or the bureau of mines and geology with central offices at Butte.

Section 3. **Other funds to offset general fund.** The approving authority shall decrease the general fund appropriation of the agency by the amount of funds received from other sources in excess of the appropriation provided in this act unless such action is expressly contrary to state or federal law, rule, or contract or unless the approving authority certifies that the services to be funded by the additional funds are significantly different from those for which the agency has received a general fund appropriation. If the general fund appropriation of an agency is decreased pursuant to this section, the appropriation for the fund in which excess funds are received is increased in the same amount as the general fund is decreased.

Section 4. **Expenditure limit.** Expenditures may not exceed appropriations.

Section 5. **Budget requests.** (1) Sufficient funds are appropriated in this act to enable each agency to submit its 1991 biennial budget request



to the budget director and the legislative fiscal analyst pursuant to the time schedule established in 17-7-112(1). If any agency fails to submit its final, complete budget request by the deadlines established in 17-7-112(1), the expenditure authority granted in this act must be reduced or rescinded by the budget director unless the agency director certifies that an emergency situation has precluded a timely budget presentation and the budget director approves an extension of the deadlines, not to exceed 30 days.

(2) Employees added through the appropriation of federal or state special revenues or proprietary funds in this act may not be included in the current level budget presented to the 1989 legislature if their continued employment requires general fund support.

**Section 6. Detailed budget information.** Within 2 days after submission of the preliminary executive budget to the legislative fiscal analyst, the budget director shall give the legislative fiscal analyst the preliminary expenditure recommendations by object of expenditure to the second level of detail and by funding source detailed by accounting entity. Within 1 day after the legislative finance committee presents the budget analysis to the 51st legislature, the budget director and the legislative fiscal analyst shall mutually exchange expenditure recommendations by object of expenditure to the second level of detail and by funding sources detailed by accounting entity. This final information must be filed in the respective offices and available to members of the legislature and the general public.

**Section 7. Operating budget.** (1) Expenditures by a state agency must be made in substantial compliance with an operating budget approved by an approving authority as defined in 17-7-401. Substantial compliance means that no category in the approved operating budget may be exceeded by more than 5%. Appropriations are contingent upon approval of the operating budget by August 1 of each fiscal year. An approved original operating budget must comply with legislative intent as expressed in state law and legislative statements of intent. Legislative intent for the general appropriations act includes a formally adopted narrative that accompanies the act.

(2) Each operating budget must include expenditures for each agency program, detailed at least by the categories of personal services, operating expenses, equipment, benefits and claims, grants, transfers, and local assistance. Each agency shall record its operating budget and any approved changes on the statewide budget and accounting system. Forms used for changing an operating budget must reference the current fully completed and approved operating budget, show the proposed changes to the operating budget, and reference any other pending documents to change the operating budget.

**Section 8. Program transfers.** Unless prohibited by this act or by statute, the approving authority may approve agency requests to transfer appropriations between programs within each fund type within each fiscal year. The transfer amount may not exceed 5% of the total agency appropriation. All program transfers must be completed within the same fund from where the transfer originated. A request for a transfer accompanied by a justification explaining the reason for the transfer must be submitted by the requesting agency to the approving authority and the legislative fiscal

analyst. Upon approval of the transfer, the approving authority shall inform the fiscal analyst of the approved transfer and the justification for the transfer.

**Section 9. Reduction of appropriation.** In the event of a shortfall in revenue, the governor may reduce any or all appropriations. No appropriation may be reduced by more than 15%. The following appropriations may not be reduced:

- (1) payment of interest and retirement of state debt;
- (2) the legislative branch;
- (3) the judicial branch;
- (4) school foundation program, including special education; or
- (5) salaries of elected officials during their terms of office.

**Section 10. Plans for coordinating services.** (1) Prior to using money appropriated in this act for grants or contracts for services to individuals, after January 1, 1988, all executive departments, including the department of social and rehabilitation services, the department of health and environmental sciences, the department of family services, the department of institutions, and the department of labor and industry, shall develop written plans for coordinating the services with similar services provided by other programs within the department or by other agencies.

(2) The plans must be prepared with an emphasis on reducing the amount of grant or contract money used for administrative costs and maximizing the amount of money used for benefits to individuals.

(3) The plans must be presented to the legislative finance committee before implementation.

**Section 11. Access to records of contracting entities.** (1) Unless a contract made with a nonstate entity complies with subsection (2), no money appropriated by this act may be expended for such contract. Such contract to provide a service to members of the public on behalf of the state may be either written or oral.

(2) A contract described in subsection (1) must contain a provision to allow access, for legislative audit and fiscal analysis, to the records of the contracting nonstate entity sufficient to determine whether the parties to the contract have complied with the terms of the contract. Such an audit and fiscal analysis require access to records necessary to carry out the legislative audit and analysis functions set out in Title 5, chapters 12 and 13.

(3) The state may unilaterally terminate any contract upon refusal by the contracting nonstate entity to allow access to its records necessary to carry out such a legislative audit or analysis.

**Section 12. Coal tax trust income.** Interest income from the coal tax constitutional trust fund established under Article IX, section 5, of the Montana constitution is hereby appropriated to the general fund for use during the biennium ending June 30, 1989. The portion of the general fund

that represents this appropriation is appropriated to the department of commerce, the vocational-technical centers, and the university system.

**Section 13. Severability.** If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision does not affect the validity of the remaining portions of this act.

**Section 14. Audit costs.** Amounts appropriated for audits may be transferred between fiscal years. Agencies shall reserve enough cash in each fund to pay for audit costs and shall to the maximum extent allowable under federal regulations charge audit costs to federal funds.

**Section 15. Fiscal 1987 supplemental appropriations.** There is appropriated from the local impact and education trust fund account the following amounts for fiscal 1987 to implement Senate Bill 200:

- (1) department of revenue, property assessment division, \$89,055;
- (2) department of justice, motor vehicle registrar, \$53,000.

**Section 16. Totals not appropriations.** The totals shown in this act are for informational purposes only and are not appropriations.

**Section 17. Appropriations.** The following money is appropriated for the respective fiscal years:

#### A. GENERAL GOVERNMENT AND HIGHWAYS

| <u>Fiscal 1988</u>                                                                                                                                                                                                                                                                                                                |                              |                                |                    |              | <u>Fiscal 1989</u>  |                              |                                |                    |              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|--------------------------------|--------------------|--------------|---------------------|------------------------------|--------------------------------|--------------------|--------------|
| <u>General Fund</u>                                                                                                                                                                                                                                                                                                               | <u>State Special Revenue</u> | <u>Federal Special Revenue</u> | <u>Proprietary</u> | <u>Total</u> | <u>General Fund</u> | <u>State Special Revenue</u> | <u>Federal Special Revenue</u> | <u>Proprietary</u> | <u>Total</u> |
| <b>LEGISLATIVE AUDITOR</b>                                                                                                                                                                                                                                                                                                        |                              |                                |                    |              |                     |                              |                                |                    |              |
| 1. Operations                                                                                                                                                                                                                                                                                                                     |                              |                                |                    |              |                     |                              |                                |                    |              |
|                                                                                                                                                                                                                                                                                                                                   | 936,807                      |                                |                    | 2,047,948    | 1,102,793           | 963,944                      |                                |                    | 2,066,737    |
| 2. Lottery Audit                                                                                                                                                                                                                                                                                                                  |                              |                                |                    |              |                     |                              |                                |                    |              |
|                                                                                                                                                                                                                                                                                                                                   | 74,256                       |                                |                    | 74,256       |                     | 53,456                       |                                |                    | 53,456       |
| 3. Telephone Audit                                                                                                                                                                                                                                                                                                                |                              |                                |                    |              |                     | 8,000                        |                                |                    | 8,000        |
|                                                                                                                                                                                                                                                                                                                                   |                              |                                |                    |              |                     | 39,000                       |                                |                    | 39,000       |
| -----                                                                                                                                                                                                                                                                                                                             |                              |                                |                    |              |                     |                              |                                |                    |              |
| Total                                                                                                                                                                                                                                                                                                                             |                              |                                |                    |              |                     |                              |                                |                    |              |
| 1,111,141                                                                                                                                                                                                                                                                                                                         | 1,011,063                    |                                |                    | 2,122,204    | 1,102,793           | 1,064,400                    |                                |                    | 2,167,193    |
| Except for issuers of general obligation bonds that are payable solely by general fund revenues, each state bond issuer shall, upon issuance of the bonds, pay 30 cents per thousand of bonds, to be deposited in the state general fund for the purpose of funding a portion of the comprehensive annual financial report audit. |                              |                                |                    |              |                     |                              |                                |                    |              |
| <b>LEGISLATIVE FISCAL ANALYST</b>                                                                                                                                                                                                                                                                                                 |                              |                                |                    |              |                     |                              |                                |                    |              |
| 1. Operations                                                                                                                                                                                                                                                                                                                     |                              |                                |                    |              |                     |                              |                                |                    |              |
|                                                                                                                                                                                                                                                                                                                                   |                              |                                |                    | 712,552      | 788,773             |                              |                                |                    | 788,773      |
| 2. Consultants                                                                                                                                                                                                                                                                                                                    |                              |                                |                    |              |                     |                              |                                |                    |              |
| 20,000                                                                                                                                                                                                                                                                                                                            |                              |                                |                    | 20,000       |                     |                              |                                |                    |              |
| -----                                                                                                                                                                                                                                                                                                                             |                              |                                |                    |              |                     |                              |                                |                    |              |
| Total                                                                                                                                                                                                                                                                                                                             |                              |                                |                    |              |                     |                              |                                |                    |              |
| 732,552                                                                                                                                                                                                                                                                                                                           |                              |                                |                    | 732,552      | 788,773             |                              |                                |                    | 788,773      |

Item 2 is a biennial appropriation.

#### LEGISLATIVE COUNCIL

|                           |  |  |  |           |           |  |  |  |           |
|---------------------------|--|--|--|-----------|-----------|--|--|--|-----------|
| 1. Operations             |  |  |  |           |           |  |  |  |           |
| 1,574,430                 |  |  |  | 1,574,430 | 1,940,593 |  |  |  | 1,940,593 |
| 2. Montana Code Annotated |  |  |  |           |           |  |  |  |           |

|                                                                    | General<br>Fund | Fiscal 1988                 |                               | Proprietary | Total     | General<br>Fund | Fiscal 1989                 |                               | Proprietary | Total     |
|--------------------------------------------------------------------|-----------------|-----------------------------|-------------------------------|-------------|-----------|-----------------|-----------------------------|-------------------------------|-------------|-----------|
|                                                                    |                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |           |                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |           |
| a. Operations                                                      |                 | 775,391                     |                               |             | 775,391   |                 |                             |                               |             |           |
| b. Transfer to General Fund                                        |                 | 200,000                     |                               |             | 200,000   |                 |                             |                               |             |           |
| 3. NCSL Dues                                                       |                 | 22,561                      |                               |             | 22,561    | 23,861          |                             |                               |             | 23,861    |
| 4. CSG Dues                                                        |                 | 20,150                      |                               |             | 20,150    | 20,750          |                             |                               |             | 20,750    |
| 5. NCSL and CSG Travel                                             |                 | 30,000                      |                               |             | 30,000    |                 |                             |                               |             |           |
| 6. Interim Studies                                                 |                 | 20,000                      |                               |             | 20,000    |                 |                             |                               |             |           |
| 7. Forestry Task Force                                             |                 | 8,000                       |                               |             | 8,000     |                 |                             |                               |             |           |
| 8. Revenue Oversight Committee                                     |                 | 30,000                      |                               |             | 30,000    |                 |                             |                               |             |           |
| 9. Administrative Code Committee                                   |                 | 14,000                      |                               |             | 14,000    |                 |                             |                               |             |           |
| 10. Five-State Biennial Conference                                 |                 | 4,100                       |                               |             | 4,100     |                 |                             |                               |             |           |
| 11. Statewide Issues                                               |                 | 20,000                      |                               |             | 20,000    |                 |                             |                               |             |           |
| 12. Coal Tax Subcommittee                                          |                 | 12,000                      |                               |             | 12,000    |                 |                             |                               |             |           |
| 13. Montana-Western Canadian Provinces Boundary Advisory Committee |                 | 2,000                       |                               |             | 2,000     |                 |                             |                               |             |           |
| Total                                                              | 1,745,241       | 987,391                     |                               |             | 2,732,632 | 1,985,204       |                             |                               |             | 1,985,204 |

Items 2a and 5 through 13 are biennial appropriations.

Item 2b is to be transferred to the general fund.

#### CONSUMER COUNSEL

|                      |         |  |         |         |         |
|----------------------|---------|--|---------|---------|---------|
| 1. Operations        | 745,716 |  | 745,716 | 744,336 | 744,336 |
| 2. Contract Services | 100,000 |  | 100,000 | 100,000 | 100,000 |
| Total                | 845,716 |  | 845,716 | 844,336 | 844,336 |

Item 2 is for expert witness fees for unanticipated cases.

#### ENVIRONMENTAL QUALITY COUNCIL

|                           |         |         |         |         |         |
|---------------------------|---------|---------|---------|---------|---------|
| 1. EQC Program            | 243,618 |         | 243,618 | 239,609 | 239,609 |
| 2. Water Policy Committee | 101,200 |         | 101,200 |         |         |
| Total                     | 243,618 | 101,200 | 344,818 | 239,609 | 239,609 |

Item 2 is a biennial appropriation.

#### JUDICIARY

|                              |           |        |           |           |           |
|------------------------------|-----------|--------|-----------|-----------|-----------|
| 1. Supreme Court Operations  |           |        |           |           |           |
| a. Operations                | 1,314,812 |        | 1,314,812 | 1,311,767 | 1,311,767 |
| b. Audit                     | 15,466    |        | 15,466    |           |           |
| 2. Boards and Commissions    | 181,719   |        | 181,719   | 181,623   | 181,623   |
| 3. Law Library               | 511,307   | 18,075 | 529,382   | 502,114   | 529,497   |
| 4. District Court Operations | 2,239,909 | 40,963 | 2,280,872 | 2,246,199 | 2,280,872 |
| 5. Water Courts              | 469,581   |        | 469,581   | 469,664   | 469,664   |
| Total                        |           |        |           |           |           |

| General<br>Fund                                                       | Fiscal 1988                 |                               |             | Total     | General<br>Fund | Fiscal 1989                 |                               |             | Total     |
|-----------------------------------------------------------------------|-----------------------------|-------------------------------|-------------|-----------|-----------------|-----------------------------|-------------------------------|-------------|-----------|
|                                                                       | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue | Proprietary |           |                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue | Proprietary |           |
| 4,263,213                                                             | 487,656                     | 40,963                        |             | 4,791,832 | 4,241,703       | 487,739                     |                               |             | 4,729,442 |
| <b>GOVERNOR'S OFFICE</b>                                              |                             |                               |             |           |                 |                             |                               |             |           |
| 1. Executive Office Program                                           |                             |                               |             |           |                 |                             |                               |             |           |
| a. Operations                                                         |                             |                               |             |           |                 |                             |                               |             |           |
| 911,841                                                               | 90,000                      | 121,613                       |             | 1,123,454 | 910,838         | 90,000                      | 121,619                       |             | 1,122,457 |
| b. Audit                                                              |                             |                               |             |           |                 |                             |                               |             |           |
| 12,889                                                                |                             |                               |             | 12,889    |                 |                             |                               |             |           |
| c. Contingency Funds                                                  |                             |                               |             |           |                 |                             |                               |             |           |
| 25,000                                                                |                             |                               |             | 25,000    |                 |                             |                               |             |           |
| d. Uniform State Laws Commission                                      |                             |                               |             |           |                 |                             |                               |             |           |
| 8,190                                                                 |                             |                               |             | 8,190     | 8,190           |                             |                               |             | 8,190     |
| 2. Mansion Maintenance                                                |                             |                               |             |           |                 |                             |                               |             |           |
| 60,639                                                                |                             |                               |             | 60,639    | 61,602          |                             |                               |             | 61,602    |
| 3. Air Transportation                                                 |                             |                               |             |           |                 |                             |                               |             |           |
| 95,748                                                                |                             |                               |             | 95,748    | 99,224          |                             |                               |             | 99,224    |
| 4. Office of Budget and Program Planning                              |                             |                               |             |           |                 |                             |                               |             |           |
| a. Operations                                                         |                             |                               |             |           |                 |                             |                               |             |           |
| 653,373                                                               |                             |                               |             | 653,373   | 708,984         |                             |                               |             | 708,984   |
| b. Audit                                                              |                             |                               |             |           |                 |                             |                               |             |           |
| 18,044                                                                |                             |                               |             | 18,044    |                 |                             |                               |             |           |
| 5. Pacific Northwest Electric Power and Conservation Planning Council |                             |                               |             |           |                 |                             |                               |             |           |
|                                                                       |                             | 317,038                       |             | 317,038   |                 |                             | 317,155                       |             | 317,155   |
| 6. Lieutenant Governor                                                |                             |                               |             |           |                 |                             |                               |             |           |
| 201,238                                                               |                             |                               |             | 201,238   | 201,244         |                             |                               |             | 201,244   |
| 7. Citizens' Advocate Office                                          |                             |                               |             |           |                 |                             |                               |             |           |
| 47,627                                                                |                             |                               |             | 47,627    | 47,570          |                             |                               |             | 47,570    |
| 8. Board of Visitors                                                  |                             |                               |             |           |                 |                             |                               |             |           |
| 129,279                                                               |                             |                               |             | 129,279   | 129,284         |                             |                               |             | 129,284   |
| 9. Montana Statehood Centennial Office                                |                             |                               |             |           |                 |                             |                               |             |           |
| 1,500,000                                                             |                             |                               |             | 1,500,000 |                 | 1,500,000                   |                               |             | 1,500,000 |
| <hr/>                                                                 |                             |                               |             |           |                 |                             |                               |             |           |
| Total                                                                 | 2,163,868                   | 1,590,000                     | 438,651     | 4,192,519 | 2,166,936       | 1,590,000                   | 438,774                       |             | 4,195,710 |

Any amount remaining in the proprietary fund account in the office of budget and program planning at fiscal year end 1987 collected for the payment of the statewide audit must be transferred to the general fund to partially fund the statewide audit in the legislative auditor's office in the 1989 biennium.

Item 1c is a biennial appropriation.

Item 1d is for expenses related to membership in the uniform state laws commission.

The office of budget and program planning may establish transfer appropriations for vocational-technical centers and university units within the appropriate agency distribution program. This provision is to allow compliance with proper accounting of current unrestricted operations using the CUBA fund structure at individual units of education.

#### SECRETARY OF STATE

|                        |         |         |  |           |         |         |  |  |           |
|------------------------|---------|---------|--|-----------|---------|---------|--|--|-----------|
| 1. Records Management  |         |         |  |           |         |         |  |  |           |
| a. Operations          |         |         |  |           |         |         |  |  |           |
| 510,157                | 383,930 |         |  | 894,087   | 521,931 | 379,136 |  |  | 901,067   |
| b. Audit               |         |         |  |           |         |         |  |  |           |
| 8,900                  |         |         |  | 8,900     |         |         |  |  |           |
| 2. Administrative Code |         |         |  |           |         |         |  |  |           |
| a. Operations          |         |         |  |           |         |         |  |  |           |
| 190,850                |         |         |  | 190,850   |         | 153,095 |  |  | 153,095   |
| b. Audit               |         |         |  |           |         |         |  |  |           |
| 2,700                  |         |         |  | 2,700     |         |         |  |  |           |
| <hr/>                  |         |         |  |           |         |         |  |  |           |
| Total                  | 519,057 | 577,480 |  | 1,096,537 | 521,931 | 532,231 |  |  | 1,054,162 |

#### COMMISSIONER OF POLITICAL PRACTICES

|                   |         |     |  |         |         |       |  |  |         |
|-------------------|---------|-----|--|---------|---------|-------|--|--|---------|
| 1. Administration |         |     |  |         |         |       |  |  |         |
| 100,249           | 800     |     |  | 101,049 | 100,063 | 4,800 |  |  | 104,863 |
| 2. Audit          |         |     |  |         |         |       |  |  |         |
| 2,062             |         |     |  | 2,062   |         |       |  |  |         |
| <hr/>             |         |     |  |         |         |       |  |  |         |
| Total             | 102,311 | 800 |  | 103,111 | 100,063 | 4,800 |  |  | 104,863 |

| General<br>Fund | Fiscal 1988                 |                               |             | Total | General<br>Fund | Fiscal 1989                 |                               |             | Total |
|-----------------|-----------------------------|-------------------------------|-------------|-------|-----------------|-----------------------------|-------------------------------|-------------|-------|
|                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue | Proprietary |       |                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue | Proprietary |       |

The commissioner of political practices is to charge a fee for the Summary of Contributions/Expenditures for Candidates/Committees booklet that is sufficient to recover the costs of printing and distribution of the booklet. Public libraries are exempt from the charge for the books. The proceeds from the sale of the booklet as well as the expenditures for the printing and distribution of the booklet must be accounted for in the state special revenue account already established for the purpose of collecting fees for reimbursement of copier charges. The amount appropriated for the cost of the booklet is \$4,000 in fiscal 1989 only.

## STATE AUDITOR

## 1. Central Management Division

|               |  |  |  |         |         |  |  |  |         |
|---------------|--|--|--|---------|---------|--|--|--|---------|
| a. Operations |  |  |  | 238,271 | 238,039 |  |  |  | 238,039 |
|---------------|--|--|--|---------|---------|--|--|--|---------|

|          |  |  |  |       |  |  |  |  |  |
|----------|--|--|--|-------|--|--|--|--|--|
| b. Audit |  |  |  | 2,832 |  |  |  |  |  |
|----------|--|--|--|-------|--|--|--|--|--|

## 2. Audit Division

|               |         |         |  |         |         |         |  |  |         |
|---------------|---------|---------|--|---------|---------|---------|--|--|---------|
| a. Operations | 563,930 | 421,841 |  | 985,771 | 546,115 | 430,584 |  |  | 976,699 |
|---------------|---------|---------|--|---------|---------|---------|--|--|---------|

|          |        |        |  |        |  |  |  |  |  |
|----------|--------|--------|--|--------|--|--|--|--|--|
| b. Audit | 24,119 | 19,333 |  | 43,452 |  |  |  |  |  |
|----------|--------|--------|--|--------|--|--|--|--|--|

|                                       |         |  |  |         |  |  |  |  |  |
|---------------------------------------|---------|--|--|---------|--|--|--|--|--|
| c. Warrant Writing System Replacement | 199,250 |  |  | 199,250 |  |  |  |  |  |
|---------------------------------------|---------|--|--|---------|--|--|--|--|--|

## 3. Insurance Division

|               |  |         |  |         |  |         |  |  |         |
|---------------|--|---------|--|---------|--|---------|--|--|---------|
| a. Operations |  | 696,740 |  | 696,740 |  | 694,064 |  |  | 694,064 |
|---------------|--|---------|--|---------|--|---------|--|--|---------|

|          |  |       |  |       |  |  |  |  |  |
|----------|--|-------|--|-------|--|--|--|--|--|
| b. Audit |  | 8,107 |  | 8,107 |  |  |  |  |  |
|----------|--|-------|--|-------|--|--|--|--|--|

|                                             |  |         |  |         |  |         |  |  |         |
|---------------------------------------------|--|---------|--|---------|--|---------|--|--|---------|
| c. Added Personnel for Insurance Regulation |  | 116,127 |  | 116,127 |  | 112,442 |  |  | 112,442 |
|---------------------------------------------|--|---------|--|---------|--|---------|--|--|---------|

## 4. Securities Division

|               |  |         |  |         |  |         |  |  |         |
|---------------|--|---------|--|---------|--|---------|--|--|---------|
| a. Operations |  | 283,759 |  | 283,759 |  | 278,514 |  |  | 278,514 |
|---------------|--|---------|--|---------|--|---------|--|--|---------|

|          |  |       |  |       |  |  |  |  |  |
|----------|--|-------|--|-------|--|--|--|--|--|
| b. Audit |  | 2,835 |  | 2,835 |  |  |  |  |  |
|----------|--|-------|--|-------|--|--|--|--|--|

|       |           |           |  |           |         |           |  |  |           |
|-------|-----------|-----------|--|-----------|---------|-----------|--|--|-----------|
| Total | 1,028,402 | 1,548,742 |  | 2,577,144 | 784,154 | 1,515,604 |  |  | 2,299,758 |
|-------|-----------|-----------|--|-----------|---------|-----------|--|--|-----------|

Item 2c is a biennial appropriation.

Item 3c may be expended only if House Bill 372 passes.

## DEPARTMENT OF JUSTICE

## 1. Legal Services

|               |         |        |  |         |         |        |  |  |         |
|---------------|---------|--------|--|---------|---------|--------|--|--|---------|
| a. Operations | 769,153 | 22,035 |  | 791,188 | 765,685 | 21,890 |  |  | 787,575 |
|---------------|---------|--------|--|---------|---------|--------|--|--|---------|

|                        |       |  |  |       |       |  |  |  |       |
|------------------------|-------|--|--|-------|-------|--|--|--|-------|
| b. Case-Related Travel | 9,500 |  |  | 9,500 | 9,500 |  |  |  | 9,500 |
|------------------------|-------|--|--|-------|-------|--|--|--|-------|

## 2. Indian Legal Jurisdiction

|               |  |        |  |        |  |        |  |  |        |
|---------------|--|--------|--|--------|--|--------|--|--|--------|
| a. Operations |  | 65,579 |  | 65,579 |  | 65,657 |  |  | 65,657 |
|---------------|--|--------|--|--------|--|--------|--|--|--------|

|                                  |  |         |  |         |  |  |  |  |  |
|----------------------------------|--|---------|--|---------|--|--|--|--|--|
| b. Legal Fees and Expert Witness |  | 100,000 |  | 100,000 |  |  |  |  |  |
|----------------------------------|--|---------|--|---------|--|--|--|--|--|

## 3. County Prosecutor Services

|  |         |  |  |         |         |  |  |  |         |
|--|---------|--|--|---------|---------|--|--|--|---------|
|  | 135,181 |  |  | 135,181 | 135,334 |  |  |  | 135,334 |
|--|---------|--|--|---------|---------|--|--|--|---------|

## 4. Agency Legal Services

|  |  |  |         |         |  |  |  |         |         |
|--|--|--|---------|---------|--|--|--|---------|---------|
|  |  |  | 492,562 | 492,562 |  |  |  | 493,454 | 493,454 |
|--|--|--|---------|---------|--|--|--|---------|---------|

## 5. Driver Licensing Program

|               |           |         |         |           |           |         |         |  |           |
|---------------|-----------|---------|---------|-----------|-----------|---------|---------|--|-----------|
| a. Operations | 1,897,971 | 390,407 | 275,000 | 2,563,378 | 1,756,674 | 521,153 | 145,000 |  | 2,422,827 |
|---------------|-----------|---------|---------|-----------|-----------|---------|---------|--|-----------|

|                                          |        |  |  |        |  |         |  |  |         |
|------------------------------------------|--------|--|--|--------|--|---------|--|--|---------|
| b. Commercial Vehicle Operator Licensing | 55,900 |  |  | 55,900 |  | 129,800 |  |  | 129,800 |
|------------------------------------------|--------|--|--|--------|--|---------|--|--|---------|

## 6. Highway Patrol

|              |           |         |  |           |  |           |         |  |           |
|--------------|-----------|---------|--|-----------|--|-----------|---------|--|-----------|
| a. Uniformed | 8,709,992 | 191,500 |  | 8,901,492 |  | 8,802,922 | 191,500 |  | 8,994,422 |
|--------------|-----------|---------|--|-----------|--|-----------|---------|--|-----------|

|                 |         |  |  |         |  |         |  |  |         |
|-----------------|---------|--|--|---------|--|---------|--|--|---------|
| b. Nonuniformed | 305,803 |  |  | 305,803 |  | 305,561 |  |  | 305,561 |
|-----------------|---------|--|--|---------|--|---------|--|--|---------|

|           |        |  |  |        |  |        |  |  |        |
|-----------|--------|--|--|--------|--|--------|--|--|--------|
| c. Cadets | 81,851 |  |  | 81,851 |  | 81,734 |  |  | 81,734 |
|-----------|--------|--|--|--------|--|--------|--|--|--------|

|          |        |         |  |         |  |        |         |  |         |
|----------|--------|---------|--|---------|--|--------|---------|--|---------|
| d. MCSAP | 71,633 | 432,211 |  | 503,844 |  | 61,333 | 391,011 |  | 452,344 |
|----------|--------|---------|--|---------|--|--------|---------|--|---------|

|                          |         |  |  |         |  |         |  |  |         |
|--------------------------|---------|--|--|---------|--|---------|--|--|---------|
| e. Communications Bureau | 484,367 |  |  | 484,367 |  | 483,702 |  |  | 483,702 |
|--------------------------|---------|--|--|---------|--|---------|--|--|---------|

## 7. Vehicle Registration

|               |  |  |  |  |  |  |  |  |  |
|---------------|--|--|--|--|--|--|--|--|--|
| a. Operations |  |  |  |  |  |  |  |  |  |
|---------------|--|--|--|--|--|--|--|--|--|

| Fiscal 1988                                |                       |                         |             |           | Fiscal 1989  |                       |                         |             |           |            |
|--------------------------------------------|-----------------------|-------------------------|-------------|-----------|--------------|-----------------------|-------------------------|-------------|-----------|------------|
| General Fund                               | State Special Revenue | Federal Special Revenue | Proprietary | Total     | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total     |            |
|                                            | 1,905,923             | 26,000                  |             | 1,931,923 |              | 1,976,472             |                         |             | 1,976,472 |            |
| b. Renewal Notices                         | 88,000                |                         |             | 88,000    |              | 88,000                |                         |             | 88,000    |            |
| c. Administration — Senate Bill 200        |                       | 60,000                  |             | 60,000    |              |                       | 60,000                  |             | 60,000    |            |
| 8. Law Enforcement Services Administration | 78,662                |                         |             | 78,662    | 77,884       |                       |                         |             | 77,884    |            |
| 9. County Attorney Payroll                 | 924,317               |                         |             | 924,317   | 937,463      |                       |                         |             | 937,463   |            |
| 10. Law Enforcement Academy                |                       |                         |             |           |              |                       |                         |             |           |            |
| a. Operations                              | 622,291               |                         |             | 622,291   |              | 628,272               |                         |             | 628,272   |            |
| b. Training Handguns                       | 3,500                 |                         |             | 3,500     |              |                       |                         |             |           |            |
| c. Additional Basic Course                 |                       |                         |             |           |              | 15,984                |                         |             | 15,984    |            |
| 11. Fire Marshal                           | 318,327               |                         |             | 318,327   | 319,335      |                       |                         |             | 319,335   |            |
| 12. Identification Program                 | 236,734               |                         |             | 236,734   | 233,088      |                       |                         |             | 233,088   |            |
| 13. Criminal Investigators                 | 180,805               | 116,616                 |             | 297,421   | 165,527      |                       | 102,348                 |             | 267,875   |            |
| 14. Criminal Investigation — Coal Board    | 145,864               | 649,832                 |             | 795,696   |              | 129,136               | 680,044                 |             | 809,180   |            |
| 15. Central Services                       |                       |                         |             |           |              |                       |                         |             |           |            |
| a. Operations                              | 343,981               | 11,826                  |             | 355,807   | 344,299      | 11,826                |                         |             | 356,125   |            |
| b. Audit                                   | 7,983                 | 21,777                  | 1,597       | 31,935    |              |                       |                         |             |           |            |
| 16. Data Processing Program                | 891,851               |                         |             | 891,851   |              | 888,503               |                         |             | 888,503   |            |
| 17. Extradition and Transfer of Prisoners  | 147,321               |                         |             | 147,321   | 147,337      |                       |                         |             | 147,337   |            |
| 18. Forensic Science Division              |                       |                         |             |           |              |                       |                         |             |           |            |
| a. Operations                              | 777,799               |                         |             | 777,799   |              | 772,600               |                         |             | 772,600   |            |
| b. Equipment — Chromatographs/Fume Hoods   | 38,000                |                         |             | 38,000    |              |                       |                         |             |           |            |
| Total                                      | 5,215,514             | 14,628,819              | 1,752,756   | 493,140   | 22,090,229   | 4,957,783             | 14,918,888              | 1,569,903   | 493,454   | 21,940,028 |

Items 2b, 10b, 15b, and 18b are biennial appropriations.

Item 6c is to operate the regional dispatch centers. The department of justice shall develop a cost allocation plan for the purpose of recovering the operational cost of regional dispatch centers from all user agencies on an equitable basis and shall submit the funding plan to the 51st legislature within the department's 1991 biennium budget request. It is the intent that after fiscal 1989 the state special highway revenue account be reimbursed for services provided to user agencies that are not funded by the state special highway revenue account.

The department shall purchase the modular facilities in Bozeman that currently house the Montana law enforcement academy. For the purpose of purchasing such facilities, the department is authorized to expend funds appropriated in item 10a.

The source of funding in item 7c is the local impact and education trust fund account.

#### HIGHWAY TRAFFIC SAFETY

|               |        |           |  |           |  |        |           |  |           |
|---------------|--------|-----------|--|-----------|--|--------|-----------|--|-----------|
| 1. Operations | 70,818 | 1,104,550 |  | 1,175,368 |  | 72,000 | 1,103,942 |  | 1,175,942 |
| 2. Audit      | 1,182  | 1,182     |  | 2,364     |  |        |           |  |           |
| Total         | 72,000 | 1,105,732 |  | 1,177,732 |  | 72,000 | 1,103,942 |  | 1,175,942 |

#### BOARD OF CRIME CONTROL

|                                                     |         |         |         |         |         |         |         |  |         |
|-----------------------------------------------------|---------|---------|---------|---------|---------|---------|---------|--|---------|
| 1. Operations                                       | 412,791 | 102,550 | 146,065 | 661,406 | 411,834 | 100,354 | 152,136 |  | 664,324 |
| 2. Audit                                            | 7,951   |         | 1,571   | 9,522   |         |         |         |  |         |
| 3. Juvenile Justice Pass-Through Grants             |         |         | 142,500 | 142,500 |         |         | 142,500 |  | 142,500 |
| 4. Bureau of Justice Assistance Pass-Through Grants |         |         | 396,000 | 396,000 |         |         | 396,000 |  | 396,000 |

| General Fund                                      | Fiscal 1988           |                         | Proprietary | Total     | General Fund | Fiscal 1989           |                         | Proprietary | Total     |
|---------------------------------------------------|-----------------------|-------------------------|-------------|-----------|--------------|-----------------------|-------------------------|-------------|-----------|
|                                                   | State Special Revenue | Federal Special Revenue |             |           |              | State Special Revenue | Federal Special Revenue |             |           |
| 5. Victims' Assistance Pass-Through Grants        |                       | 224,000                 |             | 224,000   |              |                       | 224,000                 |             | 224,000   |
| 6. Drug Enforcement/Education Pass-Through Grants |                       | 1,150,463               |             | 1,150,463 |              |                       | 1,182,015               |             | 1,182,015 |
| 7. Crime Victims' Compensation                    | 380,245               | 129,000                 |             | 509,245   |              | 380,582               | 136,000                 |             | 516,582   |
| Total                                             | 420,742               | 482,795                 | 2,189,599   | 3,093,136 | 411,834      | 480,936               | 2,232,651               |             | 3,125,421 |

Items 2 through 6 are biennial appropriations.

All remaining appropriation authority for the 1987 biennium federal pass-through grant authority is authorized to continue into fiscal 1988 and fiscal 1989.

Item 7 may be expended only if House Bill 309 passes.

The board of crime control is to charge tuition and fees for the juvenile training program appropriated in item 1 each year. The tuition and fees collected as well as charges for related expenditures are to be deposited into a state special revenue account.

#### DEPARTMENT OF REVENUE

|                                                   |            |           |           |            |            |           |           |         |            |
|---------------------------------------------------|------------|-----------|-----------|------------|------------|-----------|-----------|---------|------------|
| 1. Director's Office                              |            |           |           |            |            |           |           |         |            |
| a. Operations                                     | 315,151    | 81,658    |           | 396,809    | 316,648    | 80,365    |           |         | 397,013    |
| b. Audit                                          | 77,950     | 14,848    |           | 92,798     |            |           |           |         |            |
| c. Legal Bureau                                   | 219,734    |           | 47,870    | 267,604    | 219,049    |           |           | 48,600  | 267,649    |
| 2. Centralized Services                           | 889,546    | 6,600     |           | 896,146    | 886,766    |           | 6,600     |         | 893,366    |
| 3. Data Processing Division                       | 1,005,278  |           | 419,408   | 1,424,686  | 1,007,144  |           |           | 422,380 | 1,429,524  |
| 4. Investigations and Enforcement Division        |            |           |           |            |            |           |           |         |            |
| a. Administration                                 | 50,397     | 55,637    | 18,712    | 124,746    | 50,470     |           | 55,716    | 18,739  | 124,925    |
| b. Investigations Program                         | 31,509     | 230,728   | 129,685   | 391,922    | 25,460     | 238,348   | 129,683   | 249,651 | 643,142    |
| c. Child Support Enforcement                      | 499,750    | 1,130,102 |           | 1,629,852  | 497,519    |           | 1,140,772 |         | 1,638,291  |
| 5. Income and Miscellaneous Tax Division          | 3,079,383  | 82,884    |           | 3,162,267  | 3,156,379  | 87,884    |           |         | 3,244,263  |
| 6. Natural Resources and Corporation Tax Division | 1,106,908  | 57,048    | 122,128   | 1,286,084  | 1,107,619  | 57,048    | 122,128   |         | 1,286,795  |
| 7. Property Assessment Division                   |            |           |           |            |            |           |           |         |            |
| a. Elected Assessors                              | 769,479    |           |           | 769,479    | 770,886    |           |           |         | 770,886    |
| b. Appraisers and Nonelected Assessors            | 8,472,371  |           |           | 8,472,371  | 8,508,144  |           |           |         | 8,508,144  |
| c. Property Assessment — Helena                   |            |           |           |            |            |           |           |         |            |
| i. Operations                                     | 362,527    |           |           | 362,527    | 354,058    |           |           |         | 354,058    |
| ii. Railroad Appraisal                            | 60,000     |           |           | 60,000     | 60,000     |           |           |         | 60,000     |
| d. Property Assessment — Administration           | 551,651    |           |           | 551,651    | 551,005    |           |           |         | 551,005    |
| e. Property Assessment — House Bill 436           |            |           |           |            |            |           | 500,789   |         | 500,789    |
| 8. Motor Fuels Tax Division                       | 710,785    |           |           | 710,785    |            | 708,349   |           |         | 708,349    |
| Total                                             | 17,482,614 | 1,177,951 | 1,444,152 | 20,104,717 | 17,511,147 | 1,171,994 | 1,955,688 | 739,370 | 21,378,199 |

Funds for resource indemnity trust projects approved by the 50th legislature in other state agencies are appropriated for transfer purposes to the extent that these funds are available.

Liquor division proprietary funds necessary to maintain adequate inventories of liquor and wine and to operate the state liquor operation are appropriated. During the 1989 biennium, the division shall attempt to return at least 10% of net sales. Net sales are gross sales less discounts and all taxes collected. The division shall limit operational expenses of the liquor merchandising system to not more than 15% of net sales. Operational expenses may not include product costs, freight charges, or expenses allocable to other divisions or licensing bureau expenses.

Item 7e is an appropriation to deal with legal issues arising under federal nondiscriminatory taxation acts such as the Tax Equity and Fiscal Responsibility Act, the Railroad Revitalization and Regulatory Reform Act, and any subsequent federal legislation that directs the state to take a nondiscriminatory posture in the taxation of entities doing business within the state. This appropriation may be used only for attorney fees, expert witnesses, and extraordinary expenses associated solely with resolving disputes related to such legal issues.

The source of funding in item 7e is the local impact and education trust fund account.

For the purposes of implementing Senate Bill 200, there may be no more than 36 FTE in fiscal 1988 and 34 FTE in fiscal 1989.



|                                               | Fiscal 1988  |                       |                         |             | Fiscal 1989 |              |                       |                         |             |           |
|-----------------------------------------------|--------------|-----------------------|-------------------------|-------------|-------------|--------------|-----------------------|-------------------------|-------------|-----------|
|                                               | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total       | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total     |
| DEPARTMENT OF ADMINISTRATION                  |              |                       |                         |             |             |              |                       |                         |             |           |
| 1. Director's Office                          |              |                       |                         |             |             |              |                       |                         |             |           |
| 254,147                                       |              |                       | 49,076                  | 303,223     | 255,153     |              |                       |                         | 48,689      | 303,842   |
| 2. Governor-Elect Program                     |              |                       |                         |             | 5,000       |              |                       |                         |             | 5,000     |
| 3. Accounting Division                        |              |                       |                         |             |             |              |                       |                         |             |           |
| a. Operations                                 |              |                       |                         |             |             |              |                       |                         |             |           |
| 841,557                                       |              |                       |                         | 841,557     | 828,075     |              |                       |                         |             | 828,075   |
| b. Audit                                      |              |                       |                         | 19,333      |             |              |                       |                         |             |           |
| 19,333                                        |              |                       |                         | 19,333      |             |              |                       |                         |             |           |
| 4. Architecture and Engineering Division      |              |                       |                         |             |             |              |                       |                         |             |           |
| a. Operations                                 |              | 559,040               |                         | 560,472     | 1,119,512   |              | 562,400               |                         | 562,400     | 1,124,800 |
| b. Audit                                      |              |                       |                         |             | 1,432       |              |                       |                         |             |           |
| 1,432                                         |              |                       |                         |             | 1,432       |              |                       |                         |             |           |
| 5. Publications and Graphics Division         |              |                       |                         |             |             |              |                       |                         |             |           |
| a. Purchasing and Print Coordinator           |              |                       |                         | 2,033,844   | 2,033,844   |              |                       |                         | 2,034,093   | 2,034,093 |
| b. Operations Program                         |              |                       |                         | 1,129,984   | 1,129,984   |              |                       |                         | 1,399,877   | 1,399,877 |
| c. Administration Program                     |              |                       |                         |             |             |              |                       |                         |             |           |
| i. Operations                                 |              |                       |                         | 691,682     | 691,682     |              |                       |                         | 712,883     | 712,883   |
| ii. Audit                                     |              |                       |                         | 8,907       | 8,907       |              |                       |                         |             |           |
| 6. Information Services Division              |              |                       |                         |             |             |              |                       |                         |             |           |
| a. Resource Management Administration Program |              |                       |                         |             |             |              |                       |                         |             |           |
| i. Operations                                 |              |                       |                         | 280,637     | 280,637     |              |                       |                         | 281,127     | 281,127   |
| ii. Audit                                     |              |                       |                         | 35,449      | 35,449      |              |                       |                         |             |           |
| b. Central Computer Operations Program        |              |                       |                         | 5,801,217   | 5,801,217   |              |                       |                         | 5,688,025   | 5,688,025 |
| c. Information Center Program                 |              |                       |                         | 447,458     | 447,458     |              |                       |                         | 447,969     | 447,969   |
| d. Systems Development Program                |              |                       |                         |             |             |              |                       |                         |             |           |
| i. Operations                                 |              |                       |                         | 959,913     | 959,913     |              |                       |                         | 960,067     | 960,067   |
| ii. Contract Programming                      |              |                       |                         | 200,000     | 200,000     |              |                       |                         |             |           |
| e. Telecommunications                         |              |                       |                         |             |             |              |                       |                         |             |           |
| i. Operations                                 |              |                       |                         | 7,879,201   | 7,879,201   |              |                       |                         | 7,960,693   | 7,960,693 |
| ii. Audit                                     |              |                       |                         | 15,755      | 15,755      |              |                       |                         |             |           |
| f. 911 Emergency Service                      |              |                       |                         | 76,671      | 76,671      |              |                       |                         | 76,671      | 76,671    |
| 7. General Services Division                  |              |                       |                         |             |             |              |                       |                         |             |           |
| a. Operations                                 |              |                       |                         | 3,115,355   | 3,468,636   | 366,033      |                       |                         | 3,227,877   | 3,593,910 |
| 353,281                                       |              |                       |                         |             | 6,722       |              |                       |                         |             |           |
| b. Audit                                      |              |                       |                         |             | 6,722       |              |                       |                         |             |           |
| c. Security                                   |              |                       |                         |             | 55,043      | 54,963       |                       |                         |             | 54,963    |
| 55,043                                        |              |                       |                         |             |             |              |                       |                         |             |           |
| 8. Purchasing Division                        |              |                       |                         |             |             |              |                       |                         |             |           |
| a. Purchasing Bureau                          |              |                       |                         |             | 403,942     | 404,406      |                       |                         |             | 404,406   |
| 403,942                                       |              |                       |                         |             |             |              |                       |                         |             |           |
| b. Property and Supply Bureau                 |              |                       |                         |             |             |              |                       |                         |             |           |
| i. Operations                                 |              |                       |                         | 2,872,774   | 2,872,774   |              |                       |                         | 2,873,757   | 2,873,757 |
| ii. Audit                                     |              |                       |                         | 7,418       | 7,418       |              |                       |                         |             |           |
| 9. Mail and Management Program                |              |                       |                         |             |             |              |                       |                         |             |           |
| a. Operations                                 |              |                       |                         | 1,127,863   | 1,127,863   |              |                       |                         | 1,226,129   | 1,226,129 |
| b. Audit                                      |              |                       |                         | 2,623       | 2,623       |              |                       |                         |             |           |
| 10. Treasury Central Services Division        |              |                       |                         |             |             |              |                       |                         |             |           |
| a. Operations                                 |              |                       |                         | 30,964      | 438,740     | 408,266      |                       |                         | 30,909      | 439,175   |
| 407,776                                       |              |                       |                         |             |             |              |                       |                         |             |           |
| b. Audit                                      |              |                       |                         |             | 10,126      |              |                       |                         |             |           |
| 10,126                                        |              |                       |                         |             |             |              |                       |                         |             |           |
| 11. Tort Claims Division                      |              |                       |                         |             |             |              |                       |                         |             |           |
| a. Operations                                 |              |                       |                         |             |             |              |                       |                         |             |           |

|                                           | Fiscal 1988  |                       |                         |             | Fiscal 1989 |              |                       |                         |             |            |
|-------------------------------------------|--------------|-----------------------|-------------------------|-------------|-------------|--------------|-----------------------|-------------------------|-------------|------------|
|                                           | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total       | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total      |
| b. Audit                                  |              |                       |                         | 2,194,094   | 2,194,094   |              |                       |                         | 2,171,525   | 2,171,525  |
|                                           |              |                       |                         | 2,663       | 2,663       |              |                       |                         |             |            |
| 12. Personnel Division                    |              |                       |                         |             |             |              |                       |                         |             |            |
| a. Personnel Program                      |              |                       |                         |             |             |              |                       |                         |             |            |
| 871,763                                   |              |                       |                         |             | 871,753     | 872,040      |                       |                         |             | 872,040    |
| b. Group Benefits Program                 |              |                       |                         |             |             |              |                       |                         |             |            |
| i. Operations                             |              |                       |                         | 255,975     | 287,505     | 34,030       |                       |                         | 254,942     | 288,972    |
| 31,530                                    |              |                       |                         |             |             |              |                       |                         |             |            |
| ii. Audit                                 |              |                       |                         | 510         | 510         |              |                       |                         |             |            |
|                                           |              |                       |                         |             |             |              |                       |                         |             |            |
| iii. Genetics                             |              |                       |                         | 11,804      | 11,804      |              |                       |                         | 11,804      | 11,804     |
| c. Training Program                       |              |                       |                         |             |             |              |                       |                         |             |            |
| i. Operations                             |              |                       |                         | 145,456     | 180,028     | 34,544       |                       |                         | 145,512     | 180,056    |
| 34,572                                    |              |                       |                         |             |             |              |                       |                         |             |            |
| ii. Audit                                 |              |                       |                         | 349         | 349         |              |                       |                         |             |            |
|                                           |              |                       |                         |             |             |              |                       |                         |             |            |
| 13. Workers' Compensation Court           |              |                       |                         |             |             |              |                       |                         |             |            |
| a. Operations                             |              | 277,864               |                         |             | 277,864     |              | 277,679               |                         |             | 277,679    |
| b. Audit                                  |              | 842                   |                         |             | 842         |              |                       |                         |             |            |
| c. Moving Costs                           |              | 8,155                 |                         |             | 8,155       |              |                       |                         |             |            |
| d. Building Rent                          |              | 19,500                |                         |             | 19,500      |              | 19,500                |                         |             | 19,500     |
| 14. State Tax Appeal Board                |              |                       |                         |             |             |              |                       |                         |             |            |
| a. Operations                             |              |                       |                         |             | 478,792     | 387,995      |                       |                         |             | 387,995    |
| 478,792                                   |              |                       |                         |             |             |              |                       |                         |             |            |
| b. Manual Disparity Issue                 |              |                       |                         |             | 33,750      |              |                       |                         |             |            |
| 33,750                                    |              |                       |                         |             |             |              |                       |                         |             |            |
| c. Hearings Officers                      |              |                       |                         |             | 61,480      |              |                       |                         |             |            |
| 61,480                                    |              |                       |                         |             |             |              |                       |                         |             |            |
| 15. Public Employees' Retirement Division |              |                       |                         |             |             |              |                       |                         |             |            |
| a. Operations                             |              |                       |                         | 738,267     | 738,267     |              |                       |                         | 714,774     | 714,774    |
| b. Audit                                  |              |                       |                         | 32,221      | 32,221      |              |                       |                         |             |            |
|                                           |              |                       |                         |             |             |              |                       |                         |             |            |
| 16. Teachers' Retirement System           |              |                       |                         |             |             |              |                       |                         |             |            |
| a. Operations                             |              |                       |                         | 402,400     | 402,400     |              |                       |                         | 397,093     | 397,093    |
| b. Audit                                  |              |                       |                         | 19,333      | 19,333      |              |                       |                         |             |            |
|                                           |              |                       |                         |             |             |              |                       |                         |             |            |
| Total                                     | 3,857,082    | 866,833               |                         | 31,137,057  | 35,860,972  | 3,650,505    | 859,579               |                         | 31,226,816  | 35,736,900 |

The appropriation in item 4a in the proprietary column is appropriated from the capital projects fund.

Item 6dii is a biennial appropriation for contract programming.

The appropriation in item 7a in the proprietary column includes \$58,801 in fiscal 1988 and \$58,801 in fiscal 1989 from the capital projects fund.

Item 12biii is the state's contribution for the voluntary statewide genetics program.

Items 13c and 13d are for moving costs and building rent if the court is forced to move from its present location.

The amounts listed in items 15 and 16 are appropriated from the pension trust fund.

In item 7, the department may charge a maximum of \$2.97 per square foot in fiscal 1988 and \$3.08 per square foot in fiscal 1989. At the end of fiscal 1989, the maximum working capital the department may carry over is \$320,000.

The department may expend available self-insurance reserves and revenues to pay any deficit that may be incurred for property or liability insurance premiums due and payable through June 30, 1989.

Item 14b is a biennial appropriation to be used only for state tax appeal board expenses directly related to settlement of the "34 percent" or manual disparity issue.

Item 14c is a biennial appropriation to satisfy the provisions of Senate Bill 122, which authorizes the state tax appeal board to contract and use hearings officers.

Funds remaining in the capital land grant account of the capital projects fund, after the appropriation has been met for the general services division of the department of administration, are appropriated to the long-range building debt service fund for the payment of principal and interest on bonds issued for public buildings at the capitol for executive, legislative, and judicial purposes, as outlined in section 12 of The Enabling Act. This appropriation is for the biennium ending June 30, 1989, and is not to exceed the annual debt service required on these bonds.

| General Fund                     | Fiscal 1988           |                         | Proprietary | Total       | General Fund | Fiscal 1989           |                         | Proprietary | Total       |
|----------------------------------|-----------------------|-------------------------|-------------|-------------|--------------|-----------------------|-------------------------|-------------|-------------|
|                                  | State Special Revenue | Federal Special Revenue |             |             |              | State Special Revenue | Federal Special Revenue |             |             |
| DEPARTMENT OF HIGHWAYS           |                       |                         |             |             |              |                       |                         |             |             |
| 1. Construction                  | 58,742,869            | 85,241,460              |             | 143,984,329 |              | 61,094,015            | 86,791,294              |             | 147,885,309 |
| 2. General Operations            |                       |                         |             |             |              |                       |                         |             |             |
| a. Operations                    | 5,321,330             | 1,606,694               |             | 6,928,024   |              | 5,208,734             | 1,555,856               |             | 6,764,590   |
| b. Audit                         | 61,865                |                         |             | 61,865      |              |                       |                         |             |             |
| 3. Preconstruction               | 5,459,612             | 8,838,599               |             | 14,298,211  |              | 4,357,716             | 6,953,804               |             | 11,311,520  |
| 4. Service Revolving             |                       |                         | 2,903,023   | 2,903,023   |              |                       |                         | 2,882,715   | 2,882,715   |
| 5. Maintenance                   | 40,613,889            |                         |             | 40,613,889  |              | 40,865,147            |                         |             | 40,865,147  |
| 6. Equipment                     | 1,930,659             |                         | 12,807,396  | 14,738,055  |              | 1,705,659             |                         | 12,881,144  | 14,586,803  |
| 7. Motor Pool                    |                       |                         | 787,608     | 787,608     |              |                       |                         | 701,709     | 701,709     |
| 8. Stores Inventory              | 13,602,298            |                         |             | 13,602,298  |              | 13,672,810            |                         |             | 13,672,810  |
| 9. Gross Vehicle Weight Division | 3,497,307             |                         |             | 3,497,307   |              | 3,503,362             |                         |             | 3,503,362   |
| Total                            | 129,229,829           | 95,686,753              | 16,498,027  | 241,414,609 |              | 130,407,443           | 95,300,954              | 16,465,568  | 242,173,965 |

In the event additional federal highway funds become available, additional spending authority and additional FTE may be requested through budget amendment.

Funding may be transferred among all programs, including stores inventory, to reflect personal services expenditures.

The department is appropriated \$15,023,916 in fiscal 1988 and \$26,476,461 in fiscal 1989 for a cash transfer from the highway state special revenue accounts to the highway reconstruction trust account.

The department of highways is directed to submit to the 1989 legislature a construction work plan for the 1991 biennium that is detailed by year and project. This work plan must specify, by road system or project area, proposed projects on which \$1 million or more would be spent during the 1991 biennium and an aggregate cost for projects with anticipated expenditures of less than \$1 million. Costs must be detailed by year and project.

The legislature anticipates that the equipment program will receive, by budget amendment, spending authority from the proprietary fund account if gasoline costs exceed \$1,519,802 in fiscal 1988 and \$1,571,409 in fiscal 1989 due to increases in gasoline prices greater than a 1% increase per gallon from fiscal 1986 to fiscal 1988 and a 4.4% increase per gallon from fiscal 1986 to fiscal 1989.

The legislature anticipates that the motor pool will receive, by budget amendment, spending authority from the proprietary fund account if gasoline costs exceed \$131,684 in fiscal 1988 and \$136,169 in fiscal 1989 due to increases in gasoline prices greater than a 1% increase per gallon from fiscal 1986 to fiscal 1988 and a 4.4% increase per gallon from fiscal 1986 to fiscal 1989.

The department may adjust appropriations in the construction and preconstruction programs between fiscal years and funding sources to reflect actual expenditures related to the projected work plan.

The internal service program may request a budget amendment for \$210,000 in fiscal 1988 or fiscal 1989 to overhaul the department's airplane.

The legislature anticipates that the maintenance division will receive, by budget amendment for each fiscal year of the 1989 biennium, spending authority for any funds in excess of \$292,840 in each fiscal year that it collects from damage situations.

#### DEPARTMENT OF MILITARY AFFAIRS

|                           |         |           |  |           |         |  |           |  |           |
|---------------------------|---------|-----------|--|-----------|---------|--|-----------|--|-----------|
| 1. Administration Program |         |           |  |           |         |  |           |  |           |
| a. Operations             | 166,816 | 10,101    |  | 176,917   | 170,627 |  | 10,145    |  | 180,772   |
| b. Audit                  | 4,511   |           |  | 4,511     |         |  |           |  |           |
| 2. Army National Guard    | 848,274 | 883,124   |  | 1,731,398 | 868,498 |  | 895,004   |  | 1,763,502 |
| 3. Air National Guard     | 119,185 | 1,173,214 |  | 1,292,399 | 125,671 |  | 1,204,677 |  | 1,330,348 |
| 4. Veterans' Affairs      |         |           |  |           |         |  |           |  |           |
| a. Operations             | 449,104 | 30,000    |  | 479,104   | 445,638 |  | 30,000    |  | 475,638   |
| b. Audit                  |         |           |  |           |         |  |           |  |           |

|                                      | Fiscal 1988  |                       |                         |             | Fiscal 1989 |              |                       |                         |             |             |
|--------------------------------------|--------------|-----------------------|-------------------------|-------------|-------------|--------------|-----------------------|-------------------------|-------------|-------------|
|                                      | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total       | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total       |
|                                      | 4,511        |                       |                         |             | 4,511       |              |                       |                         |             |             |
| 5. Disaster Coordination             |              |                       |                         |             |             |              |                       |                         |             |             |
| a. Operations                        | 219,055      |                       | 239,438                 |             | 458,493     | 219,001      |                       | 239,383                 |             | 458,384     |
| b. Audit                             | 3,265        |                       | 3,265                   |             | 6,530       |              |                       |                         |             |             |
| 6. Emergency Management              |              |                       |                         |             |             |              |                       |                         |             |             |
| a. Operations                        |              |                       | 268,198                 |             | 268,198     |              |                       | 268,134                 |             | 268,134     |
| b. Audit                             |              |                       | 2,492                   |             | 2,492       |              |                       |                         |             |             |
| 7. Local Civil Defense Reimbursement |              |                       | 2,000,000               |             | 2,000,000   |              |                       | 2,000,000               |             | 2,000,000   |
|                                      |              |                       |                         |             |             |              |                       |                         |             |             |
| Total                                | 1,814,721    |                       | 4,609,832               |             | 6,424,553   | 1,829,435    |                       | 4,647,343               |             | 6,476,778   |
| TOTAL SECTION A                      |              |                       |                         |             |             |              |                       |                         |             |             |
|                                      | 40,700,076   | 153,608,275           | 107,268,438             | 48,895,783  | 350,472,572 | 40,291,870   | 153,949,950           | 107,249,255             | 48,925,208  | 350,416,283 |

## B. HUMAN SERVICES

## DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

|                                                    |           |           |            |  |            |           |           |            |  |            |
|----------------------------------------------------|-----------|-----------|------------|--|------------|-----------|-----------|------------|--|------------|
| 1. Director's Division                             |           |           | 93,809     |  | 429,826    | 335,757   |           | 82,725     |  | 418,482    |
| 336,017                                            |           |           |            |  |            |           |           |            |  |            |
| 2. Centralized Services Division                   |           |           |            |  |            |           |           |            |  |            |
| a. Operations                                      | 790,781   | 514,243   | 549,702    |  | 1,854,726  | 776,763   | 495,601   | 569,281    |  | 1,841,645  |
| b. Audit                                           | 23,421    |           | 20,400     |  | 43,821     |           |           |            |  |            |
| c. Chemistry Lab Equipment                         | 83,300    |           |            |  | 83,300     |           |           |            |  |            |
| d. Microbiology Lab Equipment                      | 57,500    |           |            |  | 57,500     |           |           |            |  |            |
| e. Contingency Fund                                | 50,000    |           |            |  | 50,000     |           |           |            |  |            |
| f. AIDS Testing                                    | 70,000    |           |            |  | 70,000     |           |           |            |  |            |
| 3. Environmental Sciences                          |           |           |            |  |            |           |           |            |  |            |
| a. Operations                                      | 793,173   | 121,236   | 663,823    |  | 1,578,232  | 791,887   | 121,261   | 664,102    |  | 1,577,250  |
| b. Environmental Protection Fund                   | 100,000   |           |            |  | 100,000    |           |           |            |  |            |
| c. Local Board Inspection Fees                     | 250,000   |           |            |  | 250,000    |           | 250,000   |            |  | 250,000    |
| 4. Solid and Hazardous Waste Management            |           |           |            |  |            |           |           |            |  |            |
| a. Operations                                      | 75,734    | 1,220,300 | 6,102,261  |  | 7,398,355  | 76,181    | 1,212,055 | 7,261,768  |  | 8,549,994  |
| b. Pre-CERCLA and Emergency Hazardous Waste        | 60,000    |           |            |  | 60,000     |           |           |            |  |            |
| 5. Water Quality                                   |           |           |            |  |            |           |           |            |  |            |
| a. Operations                                      | 394,988   | 96,620    | 1,368,386  |  | 1,859,994  | 394,158   | 100,320   | 1,350,658  |  | 1,845,136  |
| b. Wellhead Protection                             | 66,667    |           | 200,000    |  | 266,667    | 66,667    |           | 200,000    |  | 266,667    |
| 6. Health Services and Medical Facilities Division | 353,823   | 47,019    | 202,081    |  | 602,923    | 353,775   | 47,025    | 202,008    |  | 602,808    |
| 7. Family/Maternal and Child Health                | 30,635    |           | 11,726,980 |  | 11,757,615 | 31,013    |           | 11,998,964 |  | 12,029,977 |
| 8. Preventive Health                               | 223,645   |           | 827,624    |  | 1,051,269  | 223,707   |           | 812,776    |  | 1,036,483  |
| 9. Licensing and Certification                     | 368,558   |           | 514,618    |  | 883,176    | 367,630   |           | 513,418    |  | 881,048    |
| 10. Health Planning                                | 176,106   |           |            |  | 176,106    | 170,483   |           |            |  | 170,483    |
| Total                                              | 3,703,548 | 2,600,278 | 22,269,684 |  | 28,573,510 | 3,588,021 | 2,226,262 | 23,655,690 |  | 29,469,973 |

| General<br>Fund | Fiscal 1988                 |                               | Proprietary | Total | General<br>Fund | Fiscal 1989                 |                               | Proprietary | Total |
|-----------------|-----------------------------|-------------------------------|-------------|-------|-----------------|-----------------------------|-------------------------------|-------------|-------|
|                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |       |                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |       |

The total appropriation for the department includes \$1,897,421 in fiscal 1988 and \$1,897,421 in fiscal 1989 from the maternal and child health block grant. To the extent revenues from the grant exceed these amounts, they must be distributed to the counties. The director of the department of health may distribute these revenues based upon identifiable needs. To the extent revenues from the grant are less than these amounts, distributions to the counties must be reduced.

The total appropriation for the department includes \$632,187 in fiscal 1988 and \$632,187 in fiscal 1989 from the preventive health block grant. To the extent revenues from the grant exceed these amounts, they must be distributed at the discretion of the director of the department of health based upon identifiable needs. To the extent revenues from the grant are less than these amounts, the director of the department of health shall make program reductions.

If federal revenues exceed the amounts budgeted, the department may submit a budget amendment to include additional federal spending authority unless specifically prohibited by legislative action.

State and federal funds appropriated in items 2 through 9 include internal transfers of indirect charges. The amount of indirect charges collected for internal use by the department in excess of \$390,000 in fiscal 1988 and \$390,000 in fiscal 1989 for current programs must cause a like reversion to the general fund.

Item 2a includes \$99,012 in fiscal 1988 and \$77,231 in fiscal 1989 of vital statistics income. To the extent revenues exceed these amounts, it must cause a like reversion to the general fund. To the extent the vital statistics fund balance exceeds \$10,000 at fiscal year ends 1988 and 1989, it must cause a like reversion to the general fund.

Item 2e is for supplies and materials and communications costs in excess of \$99,258 in fiscal 1988 and \$100,974 in fiscal 1989 in the microbiology and chemistry laboratories caused by additional reimbursable services.

General fund appropriated in item 9 is for operations of the licensing and certification bureau only. The department may transfer general fund into the licensing and certification bureau. No general fund may be transferred out of the licensing and certification bureau unless the governor requests general fund reductions of all state agencies.

Items 2c, 2d, 2e, 3b, and 4b are biennial appropriations.

Item 2f is a biennial appropriation for AIDS testing only. If federal funds become available for laboratory testing of AIDS, it will cause a like reversion to the general fund.

Item 3c is for license fees to pay local boards of health for inspections of food establishments, accommodations, and camping facilities. No funds may be transferred out of this item. If the authority is inadequate to reimburse local boards, a budget amendment may be requested.

#### DEPARTMENT OF LABOR AND INDUSTRY

##### 1. Employment Services Division

|                                 |           |            |           |            |           |         |            |           |            |
|---------------------------------|-----------|------------|-----------|------------|-----------|---------|------------|-----------|------------|
| a. Job Services                 | 66,883    | 11,223,483 |           | 11,290,366 |           | 61,407  | 11,303,399 |           | 11,364,806 |
| b. Unemployment Insurance       |           | 3,512,517  |           | 3,512,517  |           |         | 3,486,867  |           | 3,486,867  |
| c. Centralized Services         |           |            | 2,403,349 | 2,403,349  |           |         |            | 2,380,650 | 2,380,650  |
| d. Audit                        |           |            | 58,946    | 58,946     |           |         |            |           |            |
| e. Job Training Partnership Act | 216,760   | 8,437,483  |           | 8,654,243  | 216,760   |         | 8,766,622  |           | 8,983,382  |
| f. Employment Relations         | 621,358   | 239,337    | 1,096,309 | 3,500      | 1,960,504 | 622,676 | 233,801    | 1,081,351 | 3,500      |
| g. Employment Policy            | 19,567    | 2,195,283  |           | 2,214,850  |           |         | 2,186,075  |           | 2,186,075  |
| h. Human Rights                 | 216,042   | 96,000     |           | 312,042    | 213,377   |         | 96,000     |           | 309,377    |
| i. Commissioner's Office        |           |            | 156,408   | 156,408    |           |         |            | 156,599   | 156,599    |
| j. General Assistance           | 1,427,722 |            |           | 1,427,722  | 1,427,633 |         |            |           | 1,427,633  |
| k. AFDC Day Care                | 90,909    |            |           | 90,909     | 109,091   |         |            |           | 109,091    |
| l. New Horizons                 | 27,095    |            |           | 27,095     | 27,095    |         |            |           | 27,095     |

|       |           |         |            |           |            |           |         |            |           |            |
|-------|-----------|---------|------------|-----------|------------|-----------|---------|------------|-----------|------------|
| Total | 2,619,453 | 306,220 | 26,561,075 | 2,622,203 | 32,108,951 | 2,616,632 | 295,208 | 26,920,314 | 2,540,749 | 32,372,903 |
|-------|-----------|---------|------------|-----------|------------|-----------|---------|------------|-----------|------------|

##### 2. Workers' Compensation

|                    |           |        |  |           |  |           |        |  |           |
|--------------------|-----------|--------|--|-----------|--|-----------|--------|--|-----------|
| a. Administration  | 1,574,318 | 33,100 |  | 1,607,418 |  | 1,857,391 | 33,069 |  | 1,890,460 |
| b. Audit           | 41,585    |        |  | 41,585    |  |           |        |  |           |
| c. Legal Secretary |           |        |  |           |  |           |        |  |           |

| General Fund            | Fiscal 1988           |                         |             |           | General Fund | Fiscal 1989           |                         |             |           |
|-------------------------|-----------------------|-------------------------|-------------|-----------|--------------|-----------------------|-------------------------|-------------|-----------|
|                         | State Special Revenue | Federal Special Revenue | Proprietary | Total     |              | State Special Revenue | Federal Special Revenue | Proprietary | Total     |
|                         | 17,541                |                         |             | 17,541    |              | 17,518                |                         |             | 17,518    |
| d. State Insurance Fund | 3,604,890             |                         |             | 3,604,890 |              | 3,669,794             |                         |             | 3,669,794 |
| e. Additional FTE       | 339,300               |                         |             | 339,300   |              | 285,202               |                         |             | 285,202   |
| f. Insurance Compliance | 69,582                | 1,915,918               |             | 1,985,500 | 64,583       | 1,836,103             |                         |             | 1,900,686 |
| g. Safety               | 796,127               | 91,349                  |             | 887,476   |              | 798,431               | 91,807                  |             | 890,238   |
| <hr/>                   |                       |                         |             |           |              |                       |                         |             |           |
| Total                   | 69,582                | 8,289,679               | 124,449     | 8,483,710 | 64,583       | 8,464,439             | 124,876                 |             | 8,653,898 |

Item 1a includes federal spending authority for current level operations of all existing job service offices. If federal funds are less than these amounts, the department may seek a budget amendment to supplement federal funds with state unemployment assessments as provided in 39-51-404(4).

Item 2c is for the 1989 biennium only.

The human rights division may ask for a budget amendment of federal funds received for case processing and related travel up to \$9,607 for fiscal 1988 and \$9,593 for fiscal 1989. Any federal funds received for case processing and related travel in excess of \$105,607 in fiscal 1988 and \$105,593 in fiscal 1989 shall cause a like reversion of general fund.

The department shall seek federal funds for general assistance training program activities. The department shall offset allowable general fund work training project expenses with federal funds received to administer such programs.

Item 11 is contingent upon passage and approval of House Bill 460. If House Bill 460 is not passed and approved, general fund in item 1e is reduced to \$125,000 in fiscal 1988 and \$125,000 in fiscal 1989.

#### DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

##### 1. Assistance Payments

|                                             |            |            |            |            |            |
|---------------------------------------------|------------|------------|------------|------------|------------|
| a. Operations                               |            |            |            |            |            |
| 1,389,735                                   | 5,735,323  | 7,125,058  | 1,029,446  | 3,549,363  | 4,578,809  |
| b. Benefits                                 |            |            |            |            |            |
| i. Legal Services                           |            |            |            |            |            |
| 100,000                                     |            | 100,000    | 100,000    |            | 100,000    |
| ii. State General Assistance                |            |            |            |            |            |
| 3,932,568                                   |            | 3,932,568  | 3,447,576  |            | 3,447,576  |
| iii. Nonresident General Relief             |            |            |            |            |            |
| 180,000                                     |            | 180,000    | 180,000    |            | 180,000    |
| iv. Aid to Families With Dependent Children |            |            |            |            |            |
| 11,033,494                                  | 26,726,580 | 37,760,074 | 11,413,301 | 30,347,772 | 41,761,073 |
| v. Other Benefits                           |            |            |            |            |            |
| 305,804                                     | 14,135,711 | 14,441,515 | 307,381    | 14,444,518 | 14,751,879 |

|       |            |            |            |            |            |            |
|-------|------------|------------|------------|------------|------------|------------|
| Total | 16,941,601 | 46,597,614 | 63,539,215 | 16,477,684 | 48,341,653 | 64,819,337 |
|-------|------------|------------|------------|------------|------------|------------|

##### 2. Eligibility Determination

|           |           |           |           |           |           |
|-----------|-----------|-----------|-----------|-----------|-----------|
| 2,235,057 | 6,149,944 | 8,385,001 | 2,234,149 | 6,147,799 | 8,381,948 |
|-----------|-----------|-----------|-----------|-----------|-----------|

##### 3. Administration and Support

|                      |           |           |           |           |           |
|----------------------|-----------|-----------|-----------|-----------|-----------|
| a. Operations        |           |           |           |           |           |
| 1,202,227            | 1,684,002 | 2,886,229 | 1,196,115 | 1,676,205 | 2,872,320 |
| b. Legislative Audit |           |           |           |           |           |
| 51,315               | 67,215    | 118,530   |           |           |           |

|       |           |           |           |           |           |           |
|-------|-----------|-----------|-----------|-----------|-----------|-----------|
| Total | 1,253,542 | 1,751,217 | 3,004,769 | 1,196,115 | 1,676,205 | 2,872,320 |
|-------|-----------|-----------|-----------|-----------|-----------|-----------|

##### 4. County Administration

|         |         |           |         |         |           |
|---------|---------|-----------|---------|---------|-----------|
| 934,987 | 338,380 | 1,273,347 | 918,972 | 338,604 | 1,257,576 |
|---------|---------|-----------|---------|---------|-----------|

##### 5. Medical Assistance

|               |           |           |           |           |           |
|---------------|-----------|-----------|-----------|-----------|-----------|
| a. Operations |           |           |           |           |           |
| 1,186,090     | 2,497,422 | 3,683,512 | 1,378,316 | 3,061,857 | 4,440,173 |
| b. Benefits   |           |           |           |           |           |

| General Fund                     | Fiscal 1988           |                         | Proprietary | Total       | General Fund | Fiscal 1989           |                         | Proprietary | Total       |
|----------------------------------|-----------------------|-------------------------|-------------|-------------|--------------|-----------------------|-------------------------|-------------|-------------|
|                                  | State Special Revenue | Federal Special Revenue |             |             |              | State Special Revenue | Federal Special Revenue |             |             |
| i. State Medical                 |                       |                         |             |             |              |                       |                         |             |             |
| 6,000,000                        |                       |                         |             | 6,000,000   | 6,000,000    |                       |                         |             | 6,000,000   |
| ii. Medicaid - Waiver, Elderly   |                       |                         |             |             |              |                       |                         |             |             |
| 479,427                          |                       | 1,062,634               |             | 1,542,061   | 448,432      |                       | 1,093,629               |             | 1,542,061   |
| iii. Medicaid - Waiver, Disabled |                       |                         |             |             |              |                       |                         |             |             |
| 420,539                          |                       | 932,111                 |             | 1,352,650   | 393,350      |                       | 959,300                 |             | 1,352,650   |
| iv. Medicaid - Institutions      |                       |                         |             |             |              |                       |                         |             |             |
| 4,299,820                        |                       | 9,530,416               |             | 13,830,235  | 4,175,138    |                       | 10,182,283              |             | 14,357,421  |
| v. Medicaid - Nursing Homes      |                       |                         |             |             |              |                       |                         |             |             |
| 14,800,705                       |                       | 32,805,295              |             | 47,606,000  | 14,119,794   |                       | 34,435,206              |             | 48,555,000  |
| vi. Medicaid - Primary Care      |                       |                         |             |             |              |                       |                         |             |             |
| 18,503,560                       |                       | 7,168,000               |             | 82,571,758  | 20,395,249   | 7,349,000             | 67,662,386              |             | 95,406,635  |
| vii. Other Benefits              |                       |                         |             |             |              |                       |                         |             |             |
| 1,183,353                        |                       | 2,608,742               |             | 3,792,095   | 1,281,800    |                       | 2,734,700               |             | 4,016,500   |
| <hr/>                            |                       |                         |             |             |              |                       |                         |             |             |
| Total                            |                       |                         |             |             |              |                       |                         |             |             |
| 46,873,494                       | 7,168,000             | 106,336,817             |             | 160,378,311 | 48,192,079   | 7,349,000             | 120,129,361             |             | 175,670,440 |
| <hr/>                            |                       |                         |             |             |              |                       |                         |             |             |
| 6. Audit and Program Compliance  |                       |                         |             |             |              |                       |                         |             |             |
| 576,930                          |                       | 703,252                 |             | 1,280,182   | 576,982      |                       | 704,370                 |             | 1,281,352   |
| 7. Vocational Rehabilitation     |                       |                         |             |             |              |                       |                         |             |             |
| a. Operations                    |                       |                         |             |             |              |                       |                         |             |             |
| 379,528                          | 83,445                | 1,553,031               |             | 2,016,004   | 378,574      | 78,213                | 1,548,456               |             | 2,005,243   |
| b. Benefits                      |                       |                         |             |             |              |                       |                         |             |             |
| 324,381                          | 965,070               | 3,185,088               |             | 4,474,539   | 324,381      | 1,118,170             | 3,185,088               |             | 4,627,639   |
| c. Supported Employment          |                       |                         |             |             |              |                       |                         |             |             |
|                                  |                       | 947,080                 |             | 947,080     |              |                       | 845,517                 |             | 845,517     |
| <hr/>                            |                       |                         |             |             |              |                       |                         |             |             |
| Total                            |                       |                         |             |             |              |                       |                         |             |             |
| 703,909                          | 1,048,515             | 5,685,199               |             | 7,437,623   | 702,955      | 1,196,383             | 5,579,061               |             | 7,478,399   |
| <hr/>                            |                       |                         |             |             |              |                       |                         |             |             |
| 8. Disability Determination      |                       |                         |             |             |              |                       |                         |             |             |
|                                  |                       | 2,384,632               |             | 2,384,632   |              |                       | 2,377,937               |             | 2,377,937   |
| 9. Visual Services               |                       |                         |             |             |              |                       |                         |             |             |
| a. Operations                    |                       |                         |             |             |              |                       |                         |             |             |
| 121,523                          |                       | 487,969                 |             | 609,492     | 121,401      |                       | 487,479                 |             | 608,880     |
| b. Benefits                      |                       |                         |             |             |              |                       |                         |             |             |
| 153,749                          |                       | 270,518                 |             | 424,267     | 153,749      |                       | 270,518                 |             | 424,267     |
| <hr/>                            |                       |                         |             |             |              |                       |                         |             |             |
| Total                            |                       |                         |             |             |              |                       |                         |             |             |
| 275,272                          |                       | 758,487                 |             | 1,033,759   | 275,150      |                       | 757,997                 |             | 1,033,147   |
| 10. Developmental Disabilities   |                       |                         |             |             |              |                       |                         |             |             |
| a. Operations                    |                       |                         |             |             |              |                       |                         |             |             |
| 278,841                          |                       | 917,890                 |             | 1,197,731   | 280,458      |                       | 908,722                 |             | 1,189,180   |
| b. Benefits                      |                       |                         |             |             |              |                       |                         |             |             |
| 5,277,964                        |                       | 13,421,903              |             | 18,699,867  | 5,502,908    |                       | 13,396,869              |             | 18,899,777  |
| <hr/>                            |                       |                         |             |             |              |                       |                         |             |             |
| Total                            |                       |                         |             |             |              |                       |                         |             |             |
| 5,557,805                        |                       | 14,339,793              |             | 19,897,598  | 5,783,366    |                       | 14,305,591              |             | 20,088,957  |
| <hr/>                            |                       |                         |             |             |              |                       |                         |             |             |
| 11. DDPAC                        |                       |                         |             |             |              |                       |                         |             |             |
| a. Operations                    |                       |                         |             |             |              |                       |                         |             |             |
|                                  |                       | 203,596                 |             | 203,596     |              |                       | 121,976                 |             | 121,976     |
| b. Benefits                      |                       |                         |             |             |              |                       |                         |             |             |
|                                  |                       | 195,000                 |             | 195,000     |              |                       | 195,000                 |             | 195,000     |
| <hr/>                            |                       |                         |             |             |              |                       |                         |             |             |
| Total                            |                       |                         |             |             |              |                       |                         |             |             |
|                                  |                       | 398,596                 |             | 398,596     |              |                       | 316,976                 |             | 316,976     |
| <hr/>                            |                       |                         |             |             |              |                       |                         |             |             |
| TOTAL SRS                        |                       |                         |             |             |              |                       |                         |             |             |
| 75,352,577                       | 8,216,515             | 185,443,931             |             | 269,013,023 | 76,357,452   | 8,545,383             | 200,675,554             |             | 285,578,389 |

| General<br>Fund | Fiscal 1988                 |                               | Proprietary | Total | General<br>Fund | Fiscal 1989                 |                               | Proprietary | Total |
|-----------------|-----------------------------|-------------------------------|-------------|-------|-----------------|-----------------------------|-------------------------------|-------------|-------|
|                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |       |                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |       |

In each fiscal year, 10% of the low income energy block grant must be transferred to the social services block grant. If the transfer is greater than \$1,103,548 in either fiscal year, a like amount of general fund must revert. Ten percent of the low income energy block grant must be used for the weatherization program in each fiscal year.

SRS is directed to implement a pilot percentage-of-income LIEAP project within the next biennium and report to the 51st legislature the feasibility of adopting such a system statewide.

Except for 5% in fiscal 1988 and 5% in fiscal 1989 that the department may use for administrative expenses, all other funds appropriated for the community services block grant must be allocated to the human resource development councils.

Funds appropriated under item 1bi are for a contract with the Montana legal services corporation to provide legal assistance to all general relief clients seeking eligibility for the federal supplemental security income program and to those current recipients of supplemental security income who have been notified of termination of benefits. The appropriation is intended to reduce the general assistance caseload by a minimum of 320 clients by the end of the 1989 biennium.

SRS shall make all changes in eligibility criteria allowed by Montana statute and federal regulations as are necessary to contain expenditures within the amount appropriated for aid to families with dependent children.

The department may not consider donated or nondepartmental contracted funds obtained by developmental disabilities providers when allocating or contracting state payments for developmental disabilities services.

No FTE or spending authority may be transferred out of the eligibility determination program or the disability determination program.

Item 3b is a biennial appropriation.

Transfer of funds may be made among items 1bii, 5bi, 5bv, and 5bvi. No funds may be transferred from these items to any other portion of the SRS budget.

No funds may be transferred out of item 5biv.

If collections of county mill levy funds from state-assumed counties exceed \$7,168,000 in fiscal 1988 and \$7,349,000 in fiscal 1989, excepting mill levy funds received from any county becoming state assumed after fiscal 1987, there must be a general fund reversion of an amount equal to the excess mill levy revenue.

Funds appropriated under item 11b must be expended for direct services in accordance with recommendations of the developmental disabilities planning and advisory council.

The department of social and rehabilitation services is urged to find ways to reduce current workers' compensation and unemployment insurance costs in its budget for personal care attendant services. These savings, if any, should be used to increase wages paid to those providing personal care attendant services.

Insofar as item 5bvi pertains to the optional medicalid service of inpatient psychiatric hospital services for individuals under age 21, as provided in 42 U.S.C. 1396d(a)(16), the appropriation is limited to the provision of services in psychiatric hospitals exclusively devoted to the care of individuals under age 21. This restriction does not prohibit payment for psychiatric services provided in a general inpatient hospital setting.

The department of social and rehabilitation services may request additional federal authority for work training programs through the budget amendment process. The department may contract with the department of labor to administer such programs.

#### TOTAL SECTION B

|            |            |             |           |             |            |            |             |           |             |
|------------|------------|-------------|-----------|-------------|------------|------------|-------------|-----------|-------------|
| 81,745,160 | 19,412,692 | 234,399,139 | 2,822,203 | 338,179,194 | 82,626,688 | 19,531,292 | 251,376,434 | 2,540,749 | 356,075,163 |
|------------|------------|-------------|-----------|-------------|------------|------------|-------------|-----------|-------------|

#### C. NATURAL RESOURCES

##### PUBLIC SERVICE COMMISSION

|                        |  |        |        |           |           |  |        |        |           |
|------------------------|--|--------|--------|-----------|-----------|--|--------|--------|-----------|
| 1. Operations          |  |        |        |           |           |  |        |        |           |
| 1,686,876              |  | 33,491 | 15,000 | 1,735,367 | 1,679,762 |  | 35,134 | 15,000 | 1,729,896 |
| 2. Audit               |  |        |        |           |           |  |        |        |           |
| 13,404                 |  |        |        | 13,404    |           |  |        |        |           |
| 3. Consultants         |  |        |        |           |           |  |        |        |           |
| 11,967                 |  |        |        | 11,967    |           |  |        |        |           |
| 4. Computer Consultant |  |        |        |           |           |  |        |        |           |
| 57,000                 |  |        |        | 57,000    |           |  |        |        |           |
| Total                  |  |        |        |           |           |  |        |        |           |
| 1,769,247              |  | 33,491 | 15,000 | 1,817,738 | 1,679,762 |  | 35,134 | 15,000 | 1,729,896 |

Item 3 is a biennial appropriation.

If the governor exercises the reduction of appropriation authorized in section 9 during the 1989 biennium, item 4 is not to be reduced, but rather the reductions are to be taken from items 1, 2, or 3 of the department's budget.



| Fiscal 1988                             |                       |                         |             |           | Fiscal 1989  |                       |                         |             |           |
|-----------------------------------------|-----------------------|-------------------------|-------------|-----------|--------------|-----------------------|-------------------------|-------------|-----------|
| General Fund                            | State Special Revenue | Federal Special Revenue | Proprietary | Total     | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total     |
| DEPARTMENT OF LIVESTOCK                 |                       |                         |             |           |              |                       |                         |             |           |
| 1. Central Services                     |                       |                         |             |           |              |                       |                         |             |           |
| a. Operations                           |                       |                         |             |           |              |                       |                         |             |           |
| 55,068                                  | 346,304               |                         |             | 401,372   | 54,659       | 344,711               |                         |             | 399,370   |
| b. Audit                                |                       |                         |             |           |              |                       |                         |             |           |
| 2,591                                   | 14,680                |                         |             | 17,271    |              |                       |                         |             |           |
| 2. Diagnostic Laboratory                |                       |                         |             |           |              |                       |                         |             |           |
| 300,222                                 | 371,513               |                         |             | 671,735   | 305,330      | 378,356               |                         |             | 683,686   |
| 3. Disease Control                      |                       |                         |             |           |              |                       |                         |             |           |
| 492,868                                 |                       |                         |             | 492,868   |              | 491,731               |                         |             | 491,731   |
| 4. Milk and Egg Program                 |                       |                         |             |           |              |                       |                         |             |           |
| 203,948                                 |                       | 20,000                  |             | 223,948   | 205,160      |                       | 20,000                  |             | 225,160   |
| 5. Inspection and Control               |                       |                         |             |           |              |                       |                         |             |           |
| 2,058,015                               |                       |                         |             | 2,058,015 |              | 2,078,118             |                         |             | 2,078,118 |
| 6. Beef and Pork Research and Marketing |                       |                         |             |           |              |                       |                         |             |           |
| 75,000                                  |                       |                         |             | 75,000    |              |                       | 75,000                  |             | 75,000    |
| 7. Predatory Animal Control             |                       |                         |             |           |              |                       |                         |             |           |
| 287,776                                 |                       |                         |             | 287,776   |              | 271,287               |                         |             | 271,287   |
| 8. Rabies Control                       |                       |                         |             |           |              |                       |                         |             |           |
| 45,113                                  | 15,000                |                         |             | 60,113    | 45,113       | 15,000                |                         |             | 60,113    |
| Total                                   |                       |                         |             |           |              |                       |                         |             |           |
| 606,942                                 | 3,566,156             | 95,000                  |             | 4,268,098 | 610,262      | 3,579,203             | 95,000                  |             | 4,284,465 |

**DEPARTMENT OF AGRICULTURE**

|                                     |           |           |         |           |           |           |           |         |           |  |
|-------------------------------------|-----------|-----------|---------|-----------|-----------|-----------|-----------|---------|-----------|--|
| 1. Centralized Services             |           |           |         |           |           |           |           |         |           |  |
| a. Operations                       |           |           |         |           |           |           |           |         |           |  |
| 242,558                             | 594,830   | 71,526    | 30,226  | 939,140   | 252,481   | 588,609   | 46,935    | 28,809  | 916,834   |  |
| b. Audit                            |           |           |         |           |           |           |           |         |           |  |
| 21,911                              |           |           |         | 21,911    |           |           |           |         |           |  |
| 2. Hail Insurance                   |           |           |         |           |           |           |           |         |           |  |
|                                     |           |           | 160,131 | 160,131   |           |           |           | 156,969 | 156,969   |  |
| 3. Wheat Research and Marketing     |           |           |         |           |           |           |           |         |           |  |
|                                     | 1,360,198 |           |         | 1,360,198 |           |           | 1,360,491 |         | 1,360,491 |  |
| 4. Environmental Management         |           |           |         |           |           |           |           |         |           |  |
| 613,589                             | 153,544   | 184,554   |         | 951,687   | 612,823   | 142,615   | 243,830   |         | 999,268   |  |
| 5. Plant Industry                   |           |           |         |           |           |           |           |         |           |  |
| 422,997                             | 510,344   | 32,023    | 33,289  | 998,653   | 422,945   | 494,081   | 33,271    | 33,490  | 983,787   |  |
| 6. Agriculture Development Division |           |           |         |           |           |           |           |         |           |  |
| 107,664                             | 41,594    | 40,300    | 71,253  | 260,811   | 104,182   | 41,419    | 45,300    | 72,874  | 263,775   |  |
| Total                               |           |           |         |           |           |           |           |         |           |  |
| 1,408,719                           | 1,300,312 | 1,688,601 | 294,899 | 4,692,531 | 1,392,431 | 1,266,724 | 1,729,827 | 292,142 | 4,681,124 |  |

The program in item 3 is to promote both the development of markets for Montana wheat and barley and intensive scientific and practical research into all phases of wheat and barley culture, production, and use. The wheat research and marketing unit is attached to the department for administrative purposes only. The department director is an ex-officio member of the wheat research and marketing committee.

Within proprietary funds appropriated to the department are revenues received under the provisions of 80-2-221 for hail insurance and 80-2-103 for rural development. Amounts included are:

|                       |         | Fiscal 1988 | Fiscal 1989 |
|-----------------------|---------|-------------|-------------|
| Section 80-2-221, MCA | Item 1a | \$24,041    | \$22,050    |
|                       | Item 2  | 160,131     | 156,969     |
| Section 80-2-103, MCA | Item 1a | 6,185       | 6,759       |
|                       | Item 6  | 71,253      | 72,874      |

The general fund loan authorized for the establishment of the beginning farm loan program in House Bill 447 of the 48th legislature is forgiven.

| General<br>Fund | Fiscal 1988                 |                               | Proprietary | Total | General<br>Fund | Fiscal 1989                 |                               | Proprietary | Total |
|-----------------|-----------------------------|-------------------------------|-------------|-------|-----------------|-----------------------------|-------------------------------|-------------|-------|
|                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |       |                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |       |

**DEPARTMENT OF STATE LANDS**

1. Central Management
  - a. Operations

| Fiscal 1988              |                       |                         |             |           | Fiscal 1989  |                       |                         |             |           |            |
|--------------------------|-----------------------|-------------------------|-------------|-----------|--------------|-----------------------|-------------------------|-------------|-----------|------------|
| General Fund             | State Special Revenue | Federal Special Revenue | Proprietary | Total     | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total     |            |
| 1,025,678                | 157,885               | 89,282                  | 191,781     | 1,464,626 | 1,028,672    | 114,559               | 89,282                  | 190,319     | 1,422,832 |            |
| b. Audit                 |                       |                         |             | 32,221    |              |                       |                         |             |           |            |
| 32,221                   |                       |                         |             | 32,221    |              |                       |                         |             |           |            |
| 2. Reclamation           |                       |                         |             |           |              |                       |                         |             |           |            |
| a. Operations            |                       |                         |             |           |              |                       |                         |             |           |            |
| 85,057                   | 1,033,887             | 6,932,286               |             | 8,051,230 | 84,177       | 1,012,474             | 6,922,728               |             | 8,019,379 |            |
| b. Hard-Rock Reclamation |                       |                         |             |           |              |                       |                         |             |           |            |
| 100,000                  |                       |                         |             | 100,000   |              |                       |                         |             |           |            |
| 3. Land Administration   |                       |                         |             |           |              |                       |                         |             |           |            |
| 571,921                  |                       |                         |             | 571,921   | 567,235      |                       |                         |             | 567,235   |            |
| 4. Resource Development  |                       |                         |             |           |              |                       |                         |             |           |            |
| 273,185                  |                       |                         |             | 273,185   |              | 293,433               |                         |             | 293,433   |            |
| 5. Forestry              |                       |                         |             |           |              |                       |                         |             |           |            |
| 5,245,065                | 1,245,692             | 1,713,849               |             | 8,204,606 | 5,154,352    | 1,259,453             | 1,654,861               |             | 8,068,666 |            |
| Total                    | 6,959,942             | 2,810,649               | 8,735,417   | 191,781   | 18,697,789   | 6,834,436             | 2,679,919               | 8,666,871   | 190,319   | 18,371,545 |

Item 2a contains a budget modification for three new hard-rock mining positions. If the number of hard-rock mining applications in May 1988 is less than the number in May 1987, the department shall eliminate one of the modified positions.

Item 2b is a biennial appropriation. The funds appropriated in item 2b may not be used for any research activities.

Item 5 contains \$3,440,190 in fiscal 1988 and \$3,443,679 in fiscal 1989 for pre-fire suppression costs.

The department shall consolidate support functions by July 1, 1988. If any relocation costs are incurred in consolidating functions, they must be financed from the forestry division's fiscal 1988 appropriation. The department shall report to the 51st legislature on the fiscal savings of the consolidation.

#### DEPARTMENT OF FISH, WILDLIFE, AND PARKS

|                                         |  |           |           |           |           |  |           |           |           |           |
|-----------------------------------------|--|-----------|-----------|-----------|-----------|--|-----------|-----------|-----------|-----------|
| 1. Centralized Services                 |  |           |           |           |           |  |           |           |           |           |
| a. Operations                           |  | 1,805,955 | 278,235   | 1,910,736 | 3,994,926 |  | 1,867,282 | 269,821   | 2,081,686 | 4,218,789 |
| b. Audit                                |  | 51,554    |           |           | 51,554    |  |           |           |           |           |
| c. Legislative Contract Authority       |  |           | 25,000    |           | 25,000    |  |           | 25,000    |           | 25,000    |
| 2. Field Services Division              |  |           |           |           |           |  |           |           |           |           |
| a. Operations                           |  | 1,847,537 | 274,267   |           | 2,121,804 |  | 1,762,237 | 262,326   |           | 2,024,563 |
| b. Legislative Contract Authority       |  |           | 45,000    |           | 45,000    |  |           | 45,000    |           | 45,000    |
| c. Kalispell Regional Headquarters Rent |  |           | 72,000    |           | 72,000    |  |           |           |           |           |
| 3. Fisheries                            |  |           |           |           |           |  |           |           |           |           |
| a. Operations                           |  | 2,766,308 | 1,280,267 |           | 4,036,575 |  | 2,782,335 | 1,200,844 |           | 3,983,179 |
| b. Legislative Contract Authority       |  |           | 920,000   |           | 920,000   |  |           | 920,000   |           | 920,000   |
| 4. Law Enforcement                      |  |           |           |           |           |  |           |           |           |           |
| a. Operations                           |  | 3,702,088 | 16,147    |           | 3,718,235 |  | 3,703,724 | 15,842    |           | 3,719,566 |
| b. Legislative Contract Authority       |  |           | 138,474   |           | 138,474   |  |           | 138,790   |           | 138,790   |
| 5. Wildlife                             |  |           |           |           |           |  |           |           |           |           |
| a. Operations                           |  | 2,677,150 | 2,256,873 |           | 4,934,023 |  | 2,627,810 | 2,256,891 |           | 4,884,701 |
| b. Legislative Contract Authority       |  |           | 1,165,000 |           | 1,165,000 |  |           | 1,165,000 |           | 1,165,000 |
| c. Wildlife Habitat                     |  | 3,600,000 |           |           | 3,600,000 |  |           |           |           |           |
| d. Pheasant Enhancement Program         |  | 987,000   |           |           | 987,000   |  |           |           |           |           |
| 6. Parks Program                        |  | 2,947,038 | 445,000   | 273,345   | 3,665,383 |  | 2,932,286 | 445,000   | 265,469   | 3,642,755 |
| 7. Conservation Education               |  | 1,111,104 | 139,525   |           | 1,250,629 |  | 1,088,942 | 139,525   |           | 1,228,467 |
| 8. Administration                       |  |           |           |           |           |  |           |           |           |           |
| a. Operations                           |  | 781,073   | 155,834   |           | 936,907   |  | 833,905   | 149,049   |           | 982,954   |
| b. Legislative Contract Authority       |  |           | 25,000    |           | 25,000    |  |           | 25,000    |           | 25,000    |

| General<br>Fund | Fiscal 1988                 |                               |             |            | General<br>Fund | Fiscal 1989                 |                               |             |            |
|-----------------|-----------------------------|-------------------------------|-------------|------------|-----------------|-----------------------------|-------------------------------|-------------|------------|
|                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue | Proprietary | Total      |                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue | Proprietary | Total      |
| Total           | 22,338,807                  | 7,164,622                     | 2,184,081   | 31,687,510 |                 | 17,598,521                  | 7,058,088                     | 2,347,155   | 27,003,764 |

The appropriation for the legislative contract authority in items 1c, 2b, 3b, 4b, 5b, and 8b is subject to the following provisions:

1. Legislative contract authority applies only to federal and private funds.
2. Legislative contract authority expenditures must be reported on state accounting records. The records must be separate from current level operations.
3. A report must be submitted by the department to the legislative fiscal analyst following the end of each fiscal year of the biennium. The report must include the following:

- a. a description of the additional services provided by each grant of federal or private funds;
- b. an evaluation of the effectiveness of the additional services relating to each grant.

Items 1b, 2c, 5c, and 5d are biennial appropriations.

No funds may be used for lawsuits between state agencies in which the department is a plaintiff unless it has been approved by written consent of the governor.

The department shall not use funds in accounts created by 15-35-108 or 23-1-105 to acquire wildlife habitat.

#### DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

|                                             |           |           |           |            |           |           |           |  |            |
|---------------------------------------------|-----------|-----------|-----------|------------|-----------|-----------|-----------|--|------------|
| 1. Centralized Services                     |           |           |           |            |           |           |           |  |            |
| a. Operations                               |           |           |           |            |           |           |           |  |            |
| 981,687                                     | 350,859   | 215,893   |           | 1,548,439  | 1,013,227 | 350,717   | 231,043   |  | 1,594,987  |
| b. Audit                                    |           |           |           |            |           |           |           |  |            |
| 30,933                                      |           |           |           | 30,933     |           |           |           |  |            |
| 2. Oil and Gas                              |           |           |           |            |           |           |           |  |            |
| a. Operations                               |           |           |           |            |           |           |           |  |            |
| 798,478                                     |           |           |           | 798,478    |           | 818,894   |           |  | 818,894    |
| b. Microfilming                             |           |           |           |            |           |           |           |  |            |
| 20,000                                      |           |           |           | 20,000     |           |           |           |  |            |
| c. Litigation                               |           |           |           |            |           |           |           |  |            |
| 5,000                                       |           |           |           | 5,000      |           |           |           |  |            |
| 3. Conservation Districts                   |           |           |           |            |           |           |           |  |            |
| a. Operations                               |           |           |           |            |           |           |           |  |            |
| 648,332                                     |           | 2,703     |           | 651,035    |           | 649,833   | 2,703     |  | 652,536    |
| b. Streambank Reclamation                   |           |           |           |            |           |           |           |  |            |
| 30,000                                      |           |           |           | 30,000     |           |           |           |  |            |
| 4. Water Resources                          |           |           |           |            |           |           |           |  |            |
| a. Operations                               |           |           |           |            |           |           |           |  |            |
| 2,234,629                                   | 2,099,976 | 69,675    |           | 4,404,280  | 2,251,263 | 2,075,592 | 69,675    |  | 4,396,530  |
| b. State Water Projects                     |           |           |           |            |           |           |           |  |            |
| 800,000                                     |           |           |           | 800,000    |           |           |           |  |            |
| c. Middle Creek                             |           |           |           |            |           |           |           |  |            |
| 4,040,000                                   |           |           |           | 4,040,000  |           |           |           |  |            |
| d. Powder River Negotiations                |           |           |           |            |           |           |           |  |            |
| 35,500                                      |           |           |           | 35,500     |           |           |           |  |            |
| e. Poplar River Monitoring                  |           |           |           |            |           |           |           |  |            |
| 15,650                                      |           |           |           | 15,650     | 15,650    |           |           |  | 15,650     |
| f. Reserved Water Rights Compact Commission |           |           |           |            |           |           |           |  |            |
| 114,884                                     | 114,883   |           |           | 229,767    | 114,740   | 114,739   |           |  | 229,479    |
| 5. Energy Division                          |           |           |           |            |           |           |           |  |            |
| a. Operations                               |           |           |           |            |           |           |           |  |            |
| 438,162                                     | 1,274,512 | 1,056,319 |           | 2,768,983  | 451,118   | 1,273,399 | 993,871   |  | 2,718,388  |
| b. Lake Broadview Mitigation                |           |           |           |            |           |           |           |  |            |
| 40,000                                      |           |           |           | 40,000     |           |           |           |  |            |
| c. Rock Creek Mitigation                    |           |           |           |            |           |           |           |  |            |
| 1,650,000                                   |           |           |           | 1,650,000  |           |           |           |  |            |
| d. Chevron Oil Overcharge                   |           |           |           |            |           |           |           |  |            |
| 15,500                                      |           |           |           | 15,500     |           |           |           |  |            |
| Total                                       | 3,815,935 | 6,177,540 | 7,090,090 | 17,083,565 | 3,845,998 | 5,283,174 | 1,297,292 |  | 10,426,464 |

| General Fund                                                                                                                                                                                                                                                                          | Fiscal 1988   |                         | Proprietary | Total      | General Fund | Fiscal 1989           |                         | Proprietary | Total      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|-------------------------|-------------|------------|--------------|-----------------------|-------------------------|-------------|------------|
|                                                                                                                                                                                                                                                                                       | State Revenue | Federal Special Revenue |             |            |              | State Special Revenue | Federal Special Revenue |             |            |
| Items 2b, 2c, 4b, 4c, 4d, 5b, 5c, and 5d are biennial appropriations.                                                                                                                                                                                                                 |               |                         |             |            |              |                       |                         |             |            |
| The department is authorized up to \$500,000 from the account established in 76-14-112 for rangeland loans during the 1989 biennium.                                                                                                                                                  |               |                         |             |            |              |                       |                         |             |            |
| Item 3a contains \$220,000 for each year of the biennium for conservation district grants for distribution as specified in 76-15-530. Any funds reverted from unexpended grant funds are authorized for distribution as grants as specified in 76-15-530.                             |               |                         |             |            |              |                       |                         |             |            |
| The energy division is authorized to spend up to \$40,000 it may receive from the Bonneville power administration for technical assistance and up to \$50,000 it may receive from the Montana power company for builder training, and such funds are appropriated for those purposes. |               |                         |             |            |              |                       |                         |             |            |
| Of the funds appropriated in item 4a, not more than \$584,788 for each year of the biennium may be used for adjudication of pre-July 1, 1973, water rights.                                                                                                                           |               |                         |             |            |              |                       |                         |             |            |
| Enactment of House Bill 642 and House Bill 831 satisfies the emergency provisions of 17-7-403, and the department may request a budget amendment to spend the fees collected under the authority of the bills.                                                                        |               |                         |             |            |              |                       |                         |             |            |
| DEPARTMENT OF COMMERCE                                                                                                                                                                                                                                                                |               |                         |             |            |              |                       |                         |             |            |
| 1. Business Licensing and Regulation - Program Support                                                                                                                                                                                                                                |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       | 93,059        |                         | 59,789      | 152,848    |              | 93,059                |                         | 59,937      | 152,996    |
| 2. Weights and Measures Bureau                                                                                                                                                                                                                                                        |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       | 437,858       |                         |             | 437,858    | 436,178      |                       |                         |             | 436,178    |
| 3. Financial Division                                                                                                                                                                                                                                                                 |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       | 790,952       |                         |             | 790,952    |              | 785,373               |                         |             | 785,373    |
| 4. Milk Control Bureau                                                                                                                                                                                                                                                                |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       | 281,749       |                         |             | 281,749    |              | 279,598               |                         |             | 279,598    |
| 5. Professional and Occupational Licensing                                                                                                                                                                                                                                            |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       | 1,846,166     |                         | 714,478     | 2,560,644  |              | 1,835,579             |                         | 706,154     | 2,541,733  |
| 6. Aeronautics Division                                                                                                                                                                                                                                                               |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       | 659,465       | 75,000                  | 62,083      | 796,548    |              | 659,960               |                         | 62,083      | 722,043    |
| 7. Transportation Division                                                                                                                                                                                                                                                            |               |                         |             |            |              |                       |                         |             |            |
| a. Operations                                                                                                                                                                                                                                                                         |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       | 513,626       | 71,250                  | 2,753,930   | 3,338,806  | 510,444      | 71,250                | 1,816,000               |             | 2,397,694  |
| b. Rail Assistance                                                                                                                                                                                                                                                                    |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       |               |                         | 501,905     | 501,905    |              |                       |                         |             |            |
| 8. Business Assistance                                                                                                                                                                                                                                                                |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       | 638,692       | 130,114                 | 581,226     | 1,348,032  | 633,219      | 159,257               | 639,513                 |             | 1,431,989  |
| 9. Montana Promotion                                                                                                                                                                                                                                                                  |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       | 4,475,215     | 350,000                 |             | 4,825,215  |              | 4,572,834             | 350,000                 |             | 4,922,834  |
| 10. Housing Division                                                                                                                                                                                                                                                                  |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       |               | 10,032,634              |             | 10,032,634 |              |                       | 10,032,792              |             | 10,032,792 |
| 11. Hard-Rock Mining Board                                                                                                                                                                                                                                                            |               |                         |             |            |              |                       |                         |             |            |
| a. Administration                                                                                                                                                                                                                                                                     |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       | 104,085       |                         |             | 104,085    |              | 103,633               |                         |             | 103,633    |
| b. Hard-Rock Mitigation and Arbitration                                                                                                                                                                                                                                               |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       | 1,026,288     |                         |             | 1,026,288  |              | 1,211,934             |                         |             | 1,211,934  |
| 12. Coal Board                                                                                                                                                                                                                                                                        |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       | 862,668       |                         |             | 862,668    |              | 148,782               |                         |             | 148,782    |
| 13. Community Development                                                                                                                                                                                                                                                             |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       | 214,748       | 5,447,656               |             | 5,662,404  | 213,995      |                       | 5,446,515               |             | 5,660,510  |
| 14. Local Government Systems                                                                                                                                                                                                                                                          |               |                         |             |            |              |                       |                         |             |            |
| a. Administration                                                                                                                                                                                                                                                                     |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       | 86,208        |                         | 168,716     | 254,924    | 86,208       |                       |                         | 168,857     | 253,065    |
| b. District Court Reimbursement                                                                                                                                                                                                                                                       |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       | 2,286,259     |                         |             | 2,286,259  | 2,373,870    |                       |                         |             | 2,373,870  |
| c. County Planning                                                                                                                                                                                                                                                                    |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       | 299,000       |                         |             | 299,000    |              | 311,000               |                         |             | 311,000    |
| 15. Local Government Administration                                                                                                                                                                                                                                                   |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       |               |                         | 98,666      | 98,666     |              |                       |                         | 98,233      | 98,233     |
| 16. Building Codes                                                                                                                                                                                                                                                                    |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       | 1,170,240     |                         |             | 1,170,240  |              | 1,312,662             |                         |             | 1,312,662  |
| 17. Office of Economic Analysis                                                                                                                                                                                                                                                       |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       | 242,347       | 40,000                  |             | 282,347    | 237,410      |                       | 40,000                  |             | 277,410    |
| 18. Local Government Audit Service                                                                                                                                                                                                                                                    |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       | 43,560        |                         | 984,407     | 1,027,967  | 43,546       |                       |                         | 975,234     | 1,018,780  |
| 19. Indian Affairs Coordinator                                                                                                                                                                                                                                                        |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       | 84,629        |                         |             | 84,629     | 81,208       |                       |                         |             | 81,208     |
| 20. Health Facility Authority                                                                                                                                                                                                                                                         |               |                         |             |            |              |                       |                         |             |            |
| a. Operations                                                                                                                                                                                                                                                                         |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       |               |                         | 120,098     | 120,098    |              |                       |                         | 119,161     | 119,161    |
| b. Audit                                                                                                                                                                                                                                                                              |               |                         |             |            |              |                       |                         |             |            |
|                                                                                                                                                                                                                                                                                       |               |                         | 3,222       | 3,222      |              |                       |                         | 3,222       | 3,222      |

| General Fund                                | Fiscal 1988           |                         | Proprietary | Total      | General Fund | Fiscal 1989           |                         | Proprietary | Total      |
|---------------------------------------------|-----------------------|-------------------------|-------------|------------|--------------|-----------------------|-------------------------|-------------|------------|
|                                             | State Special Revenue | Federal Special Revenue |             |            |              | State Special Revenue | Federal Special Revenue |             |            |
| 21. Montana Science and Technology Alliance |                       |                         |             |            |              |                       |                         |             |            |
| a. Operations                               | 1,345,000             |                         |             | 1,345,000  |              | 1,410,000             |                         |             | 1,410,000  |
| b. Seed Capital Program Operations          |                       |                         | 72,549      | 72,549     |              |                       |                         | 105,060     | 105,060    |
| 22. Board of Housing                        |                       |                         | 1,068,773   | 1,068,773  |              |                       |                         | 1,066,961   | 1,066,961  |
| 23. Board of Investments                    |                       |                         |             |            |              |                       |                         |             |            |
| a. Operations                               |                       |                         | 1,311,931   | 1,311,931  |              |                       |                         | 1,348,021   | 1,348,021  |
| b. Audit                                    |                       |                         | 85,064      | 85,064     |              |                       |                         |             |            |
| c. Termination Pay                          |                       |                         | 15,000      | 15,000     |              |                       |                         |             |            |
| 24. Lottery                                 |                       |                         |             |            |              |                       |                         |             |            |
| a. Operations                               |                       |                         | 24,935,744  | 24,935,744 |              |                       |                         | 25,046,544  | 25,046,544 |
| b. Audit                                    |                       |                         | 74,256      | 74,256     |              |                       |                         | 53,456      | 53,456     |
| 25. Board of Horseracing                    |                       |                         |             |            |              |                       |                         |             |            |
| 240,302                                     |                       |                         |             | 240,302    |              | 233,346               |                         |             | 233,346    |
| 26. Video Poker                             |                       |                         |             |            |              |                       |                         |             |            |
| 658,411                                     |                       |                         |             | 658,411    |              | 597,247               |                         |             | 597,247    |
| 27. Director's Office Management Services   |                       |                         |             |            |              |                       |                         |             |            |
| a. Operations                               |                       |                         | 729,035     | 849,249    | 116,128      |                       |                         | 726,724     | 842,852    |
| b. Audit                                    |                       |                         | 67,021      | 67,021     |              |                       |                         |             |            |
| Total                                       | 4,666,141             | 14,053,964              | 19,782,351  | 30,570,832 | 69,073,288   | 4,732,206             | 13,785,514              | 18,324,820  | 30,537,647 |
|                                             |                       |                         |             |            |              |                       |                         |             | 67,380,187 |

Item 11b may be expended only for the purposes as detailed in 90-6-307, 90-6-311, 90-6-321, and 90-6-304(1). No transfers may be made in or out of item 11b.

The hard-rock mining board shall report to the legislature any expenditures from the hard-rock mitigation and arbitration account.

If the board of milk control receives a petition to establish a state pooling arrangement as a method of paying producer prices, the department may request a budget amendment for additional operating costs for holding hearings and establishing the pool. Receiving of such a petition is considered to be an emergency under the provisions of 17-7-403.

If a computerized adaptive testing program becomes mandatory in fiscal 1989, the board of nursing may request a budget amendment to cover the costs of implementing the program. If computerized adaptive testing becomes mandatory, this is considered an emergency under the provisions of 17-7-403.

The transportation division may request budget amendment authority to add a maximum of three FTE to be funded entirely with federal funds.

Item 7a includes no less than \$95,000 per year for costs associated with the McCarty Farms case.

Should the economy improve to the point where there is a need for more building standard inspectors, a maximum of three FTE, operating costs, and equipment may be added by budget amendment to the building codes division.

If bonding activity increases in the 1989 biennium, a budget amendment may be requested to cover the additional bonding costs.

The department shall develop a one-stop business licensing proposal that must be submitted to the 1989 legislature.

The board of horseracing may request a budget amendment for the cost of implementing harness racing in Montana. Such a request shall be considered to meet the emergency provisions of 17-7-403.

The board of outfitters may request a budget amendment for the cost of implementing and enforcing the outfitter licensing laws of the state. Such a request must be considered to meet the emergency provisions of 17-7-403.

Under item 21a, the state special revenue appropriation is limited to the revenue received into the alternative energy account, established by 90-4-103, from the coal tax revenue allocated to the account from 15-35-108.

Item 21b shall be expended only if House Bill 700 is passed.

The board of investments may utilize designated commissions paid on the purchase and sale of securities for products and services customarily provided by brokers for such transactions according to applicable securities industries rules and regulations and Montana statutes. The board will make a report to the 51st legislature on the use of the designated commissions.

Item 23c is termination pay for the current chief investment officer in fiscal 1988.

Items 7b and 23b are biennial appropriations.

The \$150,000 general fund loan to the Montana economic development board which is due to be repaid by fiscal year end 1987 is extended to June 30, 1989.

If the revenues deposited to the general fund through the implementation of Senate Bill 200 are less than the appropriation for district court reimbursement, the department shall reduce the reimbursement to equal the revenues generated.

| General Fund                          | Fiscal 1988           |                         | Proprietary | Total       | General Fund | Fiscal 1989           |                         | Proprietary | Total       |
|---------------------------------------|-----------------------|-------------------------|-------------|-------------|--------------|-----------------------|-------------------------|-------------|-------------|
|                                       | State Special Revenue | Federal Special Revenue |             |             |              | State Special Revenue | Federal Special Revenue |             |             |
| TOTAL SECTION C                       |                       |                         |             |             |              |                       |                         |             |             |
| 19,226,926                            | 50,247,428            | 44,589,572              | 33,256,593  | 147,320,519 | 19,095,095   | 44,193,055            | 37,207,032              | 33,382,263  | 133,877,445 |
| D. DEPARTMENT OF INSTITUTIONS         |                       |                         |             |             |              |                       |                         |             |             |
| CENTRAL OFFICE                        |                       |                         |             |             |              |                       |                         |             |             |
| 1. Director's Office                  |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 376,401               |                         |             | 376,401     | 377,277      |                       |                         |             | 377,277     |
| 2. Management Services Division       |                       |                         |             |             |              |                       |                         |             |             |
| a. Management Services                |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 867,437               |                         |             | 867,437     | 821,689      |                       |                         |             | 821,689     |
| b. Audit                              |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 143,932               | 4,521                   | 7,709       | 6,278       | 162,440      |                       |                         |             |             |
| 3. Alcohol and Drug Abuse Division    |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 215,200               | 341,564                 | 1,290,800   | 1,847,564   | 215,200      | 326,700               | 1,290,800               |             | 1,832,700   |
| 4. Corrections Division               |                       |                         |             |             |              |                       |                         |             |             |
| a. Central Office                     |                       |                         |             |             |              |                       |                         |             |             |
| i. Operations                         |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 3,629,593             | 1,000                   |             | 3,630,593   | 3,640,609    | 1,000                 |                         |             | 3,641,609   |
| ii. Equipment                         |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 40,000                |                         |             | 40,000      |              |                       |                         |             |             |
| b. Women's Corrections                |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 782,476               |                         |             | 782,476     | 788,829      |                       |                         |             | 788,829     |
| c. Corrections Medical                |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 867,114               |                         |             | 867,114     | 883,457      |                       |                         |             | 883,457     |
| d. Montana State Prison               |                       |                         |             |             |              |                       |                         |             |             |
| i. Care and Custody — Operations      |                       |                         |             |             |              |                       |                         |             |             |
| 12,562,609                            | 51,424                | 120,641                 |             | 12,734,674  | 12,801,624   | 51,424                | 94,772                  |             | 12,947,820  |
| ii. Ranch and Dairy Operations        |                       |                         |             |             |              |                       |                         |             |             |
|                                       |                       |                         | 1,228,480   | 1,228,480   |              |                       |                         | 1,277,736   | 1,277,736   |
| iii. License Plate Factory Operations |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 484,321               |                         |             | 484,321     |              | 496,117               |                         |             | 496,117     |
| iv. Industries Operations             |                       |                         |             |             |              |                       |                         |             |             |
|                                       |                       |                         | 678,311     | 678,311     |              |                       |                         | 701,903     | 701,903     |
| v. Canteen Operations                 |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 600,000               |                         |             | 600,000     |              | 700,000               |                         |             | 700,000     |
| vi. Industries Training Operations    |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 173,015               | 36,496                  | 221,579     | 431,090     | 163,881      |                       | 34,330                  | 221,579     | 419,790     |
| e. Swan River Forest Camp             |                       |                         |             |             |              |                       |                         |             |             |
| i. Operations                         |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 837,854               | 86,383                  | 38,902      | 963,139     | 848,631      | 86,617                | 27,898                  |             | 963,146     |
| ii. Equipment                         |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 8,000                 |                         |             | 8,000       |              |                       |                         |             |             |
| 5. Mental Health Division             |                       |                         |             |             |              |                       |                         |             |             |
| a. Central Office                     |                       |                         |             |             |              |                       |                         |             |             |
| i. Operations                         |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 4,108,977             |                         | 1,249,805   | 5,358,782   | 4,108,940    |                       | 1,249,806               |             | 5,358,746   |
| b. Montana Developmental Center       |                       |                         |             |             |              |                       |                         |             |             |
| i. Operations                         |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 11,689,951            | 13,626                  | 42,661      | 11,746,238  | 11,852,130   | 13,626                | 44,384                  |             | 11,910,140  |
| ii. Equipment                         |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 50,000                |                         |             | 50,000      |              |                       |                         |             |             |
| c. Center for the Aged                |                       |                         |             |             |              |                       |                         |             |             |
| i. General Operations                 |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 2,637,888             | 9,735                   |             | 2,647,623   | 2,649,528    | 9,735                 |                         |             | 2,659,263   |
| ii. Equipment                         |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 25,000                |                         |             | 25,000      |              |                       |                         |             |             |
| d. Eastmont                           |                       |                         |             |             |              |                       |                         |             |             |
| i. General Operations                 |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 2,229,779             | 4,000                   |             | 2,233,779   | 2,248,146    | 4,000                 |                         |             | 2,252,146   |
| ii. Equipment                         |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 10,000                |                         |             | 10,000      |              |                       |                         |             |             |
| e. Veterans' Home                     |                       |                         |             |             |              |                       |                         |             |             |
| i. General Operations                 |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 542,000               | 20,764                  | 1,636,773   | 2,199,537   | 552,504      | 20,764                | 1,650,215               |             | 2,223,483   |
| f. Montana State Hospital             |                       |                         |             |             |              |                       |                         |             |             |
| i. General Operations                 |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 19,826,836            | 1,740,583               | 3,775       | 21,571,194  | 20,146,957   | 1,729,533             | 3,775                   |             | 21,880,265  |
| 6. Board of Pardons                   |                       |                         |             |             |              |                       |                         |             |             |
|                                       | 160,439               |                         |             | 160,439     | 160,441      |                       |                         |             | 160,441     |

| General<br>Fund                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Fiscal 1988                 |                               | Proprietary | Total      | General<br>Fund | Fiscal 1989                 |                               | Proprietary | Total      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|-------------------------------|-------------|------------|-----------------|-----------------------------|-------------------------------|-------------|------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |            |                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |            |
| 160,439                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                             |                               |             | 160,439    | 160,441         |                             |                               |             | 160,441    |
| <p>Within item 4, transfers may be made between line items in excess of 5% of the total appropriation authority in each line item upon approval of the governor or his designated representative.</p> <p>If the amounts billed and paid, including volume discount rebates, for the corrections division's workers' compensation costs are less than \$876,796 in fiscal 1988 and \$979,198 in fiscal 1989, the balance must revert to the appropriate fund.</p> <p>Within item 5, transfers may be made between line items in excess of 5% of the total appropriation authority in each line item upon approval of the governor or his designated representative.</p> <p>If the amounts billed and paid, including volume discount rebates, for the mental health division's workers' compensation costs are less than \$3,114,215 in fiscal 1988 and \$3,191,394 in fiscal 1989, the balance must revert to the appropriate fund.</p> <p>Items 4a1i, 4c, 4e1i, 5b1i, 5c1i, and 5d1i are biennial appropriations.</p> <p>The department is authorized to maintain a fund balance of not more than \$15,000 at the end of each fiscal year in the prison industries training proprietary account. Any funds in excess of \$15,000 in the proprietary account are subject to the provisions of section 3.</p> |                             |                               |             |            |                 |                             |                               |             |            |
| <b>DEPARTMENT OF FAMILY SERVICES</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                             |                               |             |            |                 |                             |                               |             |            |
| <b>1. Management Support</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                             |                               |             |            |                 |                             |                               |             |            |
| <b>a. Operations</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                             |                               |             |            |                 |                             |                               |             |            |
| 440,890                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                             | 257,092                       |             | 697,982    | 463,954         |                             | 269,062                       |             | 733,016    |
| <b>b. Legislative Audit</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                             |                               |             |            |                 |                             |                               |             |            |
| 28,806                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                             | 16,794                        |             | 45,600     |                 |                             |                               |             |            |
| <hr/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                             |                               |             |            |                 |                             |                               |             |            |
| <b>Total</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                             |                               |             |            |                 |                             |                               |             |            |
| 469,696                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                             | 273,886                       |             | 743,582    | 463,954         |                             | 269,062                       |             | 733,016    |
| <hr/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                             |                               |             |            |                 |                             |                               |             |            |
| <b>2. Social Services</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                             |                               |             |            |                 |                             |                               |             |            |
| <b>a. Operations</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                             |                               |             |            |                 |                             |                               |             |            |
| 6,920,671                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                             | 2,326,796                     |             | 9,247,467  | 6,920,120       |                             | 2,326,593                     |             | 9,246,713  |
| <b>b. Benefits</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                             |                               |             |            |                 |                             |                               |             |            |
| 7,516,081                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 89,000                      | 7,316,208                     |             | 14,921,289 | 7,589,146       | 89,000                      | 7,343,637                     |             | 15,021,783 |
| <hr/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                             |                               |             |            |                 |                             |                               |             |            |
| <b>Total</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                             |                               |             |            |                 |                             |                               |             |            |
| 14,436,752                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 89,000                      | 9,643,004                     |             | 24,168,756 | 14,509,266      | 89,000                      | 9,670,230                     |             | 24,268,496 |
| <hr/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                             |                               |             |            |                 |                             |                               |             |            |
| <b>3. Mountain View School</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                             |                               |             |            |                 |                             |                               |             |            |
| <b>a. Operations</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                             |                               |             |            |                 |                             |                               |             |            |
| 1,730,990                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 15,982                      | 107,846                       |             | 1,854,818  | 1,747,299       | 14,982                      | 107,950                       |             | 1,870,231  |
| <b>b. Equipment</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                             |                               |             |            |                 |                             |                               |             |            |
| 3,000                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                             |                               |             | 3,000      |                 |                             |                               |             |            |
| <hr/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                             |                               |             |            |                 |                             |                               |             |            |
| <b>Total</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                             |                               |             |            |                 |                             |                               |             |            |
| 1,733,990                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 15,982                      | 107,846                       |             | 1,857,818  | 1,747,299       | 14,982                      | 107,950                       |             | 1,870,231  |
| <hr/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                             |                               |             |            |                 |                             |                               |             |            |
| <b>4. Pine Hills School</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                             |                               |             |            |                 |                             |                               |             |            |
| <b>a. Operations</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                             |                               |             |            |                 |                             |                               |             |            |
| 2,833,740                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 59,169                      | 525,722                       |             | 3,418,631  | 2,858,834       | 59,260                      | 525,722                       |             | 3,443,816  |
| <b>b. Equipment</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                             |                               |             |            |                 |                             |                               |             |            |
| 2,000                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                             |                               |             | 2,000      |                 |                             |                               |             |            |
| <hr/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                             |                               |             |            |                 |                             |                               |             |            |
| <b>Total</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                             |                               |             |            |                 |                             |                               |             |            |
| 2,835,740                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 59,169                      | 525,722                       |             | 3,420,631  | 2,858,834       | 59,260                      | 525,722                       |             | 3,443,816  |
| <hr/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                             |                               |             |            |                 |                             |                               |             |            |
| <b>5. Aftercare Services</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                             |                               |             |            |                 |                             |                               |             |            |
| <b>a. Operations</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                             |                               |             |            |                 |                             |                               |             |            |
| 399,026                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                             | 2,800                         |             | 401,826    | 399,080         |                             | 2,800                         |             | 401,880    |
| <b>b. Equipment</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                             |                               |             |            |                 |                             |                               |             |            |
| 30,000                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                             |                               |             | 30,000     |                 |                             |                               |             |            |
| <hr/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                             |                               |             |            |                 |                             |                               |             |            |
| <b>Total</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                             |                               |             |            |                 |                             |                               |             |            |
| 429,026                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                             | 2,800                         |             | 431,826    | 399,080         |                             | 2,800                         |             | 401,880    |
| <hr/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                             |                               |             |            |                 |                             |                               |             |            |
| <b>6. Youth Evaluations</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                             |                               |             |            |                 |                             |                               |             |            |
| 146,292                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                             |                               |             | 146,292    | 146,173         |                             |                               |             | 146,173    |
| <hr/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                             |                               |             |            |                 |                             |                               |             |            |
| <b>Total</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                             |                               |             |            |                 |                             |                               |             |            |

| <u>General Fund</u> | <u>Fiscal 1988</u>           |                                |                    | <u>Total</u> | <u>General Fund</u> | <u>Fiscal 1989</u>           |                                |                    | <u>Total</u> |
|---------------------|------------------------------|--------------------------------|--------------------|--------------|---------------------|------------------------------|--------------------------------|--------------------|--------------|
|                     | <u>State Special Revenue</u> | <u>Federal Special Revenue</u> | <u>Proprietary</u> |              |                     | <u>State Special Revenue</u> | <u>Federal Special Revenue</u> | <u>Proprietary</u> |              |
| 146,292             |                              |                                |                    | 146,292      | 146,173             |                              |                                |                    | 146,173      |
| <b>Total</b>        |                              |                                |                    |              |                     |                              |                                |                    |              |
| 20,051,496          | 164,151                      | 10,553,258                     |                    | 30,768,905   | 20,124,606          | 163,242                      | 10,575,764                     |                    | 30,863,612   |

Items 3b, 4b, and 5b are biennial appropriations.

Any third-party payments or reimbursement from any source received by the department to offset costs of the foster care program, in excess of \$350,000 in fiscal 1988 or \$350,000 in fiscal 1989, must cause a general fund reversion of an amount equal to the excess payments or reimbursement.

The department may not consider donated or nondepartmental contracted funds obtained by foster care providers when allocating or contracting state payments for foster care services.

If House Bill 460 is not passed and approved, general fund in item 2b is reduced to \$7,503,511 in fiscal 1988 and \$7,576,576 in fiscal 1989.

#### MONTANA ARTS COUNCIL

|                           |  |         |  |         |         |  |         |  |         |
|---------------------------|--|---------|--|---------|---------|--|---------|--|---------|
| 1. Administration         |  |         |  |         |         |  |         |  |         |
| 103,972                   |  | 396,450 |  | 500,422 | 105,011 |  | 401,377 |  | 506,388 |
| 2. Artists-in-the-Schools |  |         |  |         |         |  |         |  |         |
| 15,143                    |  |         |  | 15,143  | 15,143  |  |         |  | 15,143  |
| 3. Audit                  |  |         |  |         |         |  |         |  |         |
| 6,200                     |  | 5,400   |  | 11,600  |         |  |         |  |         |
| <b>Total</b>              |  |         |  |         |         |  |         |  |         |
| 125,315                   |  | 401,850 |  | 527,165 | 120,154 |  | 401,377 |  | 521,531 |

#### MONTANA STATE LIBRARY

|                              |         |         |  |           |         |         |         |  |           |
|------------------------------|---------|---------|--|-----------|---------|---------|---------|--|-----------|
| 1. Reference and Information |         |         |  |           |         |         |         |  |           |
| 534,475                      | 299,000 | 762,477 |  | 1,595,952 | 520,199 | 311,000 | 720,085 |  | 1,551,284 |
| 2. Audit                     |         |         |  |           |         |         |         |  |           |
| 14,177                       |         |         |  | 14,177    |         |         |         |  |           |
| 3. Natural Heritage Program  |         |         |  |           |         |         |         |  |           |
| 130,461                      |         | 6,500   |  | 136,961   |         | 107,979 | 22,637  |  | 130,616   |
| <b>Total</b>                 |         |         |  |           |         |         |         |  |           |
| 548,652                      | 429,461 | 768,977 |  | 1,747,090 | 520,199 | 418,979 | 742,722 |  | 1,681,900 |

The amounts included in item 1 in the federal special revenue column represent Library Services and Construction Act funds that may be transferred between fiscal 1988 and 1989.

Amounts in item 3 represent a biennial appropriation.

#### MONTANA HISTORICAL SOCIETY

|                                          |  |         |         |         |         |  |         |         |         |
|------------------------------------------|--|---------|---------|---------|---------|--|---------|---------|---------|
| 1. Administration                        |  |         |         |         |         |  |         |         |         |
| a. Operations                            |  |         |         |         |         |  |         |         |         |
| 425,760                                  |  | 59,810  |         | 485,570 | 431,418 |  | 59,926  |         | 491,344 |
| b. Audit                                 |  |         |         |         |         |  |         |         |         |
| 14,113                                   |  |         |         | 14,113  |         |  |         |         |         |
| 2. Library Program                       |  |         |         |         |         |  |         |         |         |
| 154,194                                  |  | 26,074  |         | 180,268 | 154,151 |  | 16,074  |         | 170,225 |
| 3. Museum Program                        |  |         |         |         |         |  |         |         |         |
| 207,379                                  |  | 165,442 |         | 372,821 | 207,342 |  | 131,304 |         | 338,646 |
| 4. Publications Program                  |  |         |         |         |         |  |         |         |         |
| a. Operations                            |  |         |         |         |         |  |         |         |         |
| 41,320                                   |  |         | 484,927 | 526,247 | 41,320  |  |         | 519,880 | 561,200 |
| b. Audit                                 |  |         |         |         |         |  |         |         |         |
|                                          |  |         | 1,160   | 1,160   |         |  |         |         |         |
| 5. Photo Archives                        |  |         |         |         |         |  |         |         |         |
| 81,319                                   |  | 22,600  |         | 103,919 | 81,961  |  | 17,000  |         | 98,961  |
| 6. Historical Sites Preservation Program |  |         |         |         |         |  |         |         |         |
| a. Operations                            |  |         |         |         |         |  |         |         |         |
| 65,729                                   |  | 760,395 |         | 826,124 | 64,359  |  | 761,630 |         | 825,989 |
| b. Audit                                 |  |         |         |         |         |  |         |         |         |
| 650                                      |  | 3,410   |         | 4,060   |         |  |         |         |         |
| 7. Archives Program                      |  |         |         |         |         |  |         |         |         |
| 130,949                                  |  | 2,500   |         | 133,449 | 131,186 |  | 2,500   |         | 133,686 |
| 8. Education Program                     |  |         |         |         |         |  |         |         |         |
|                                          |  | 53,549  |         | 53,549  |         |  | 53,484  |         | 53,484  |
| <b>Total</b>                             |  |         |         |         |         |  |         |         |         |



| General Fund    | State Special Revenue | Fiscal 1988             |             | Total       | General Fund | State Special Revenue | Fiscal 1989             |             | Total       |
|-----------------|-----------------------|-------------------------|-------------|-------------|--------------|-----------------------|-------------------------|-------------|-------------|
|                 |                       | Federal Special Revenue | Proprietary |             |              |                       | Federal Special Revenue | Proprietary |             |
| 1,121,413       |                       | 1,093,780               | 486,087     | 2,701,280   | 1,111,737    |                       | 1,041,918               | 519,880     | 2,673,535   |
| TOTAL SECTION D |                       |                         |             |             |              |                       |                         |             |             |
| 83,631,377      | 3,951,533             | 17,245,427              | 2,620,735   | 107,449,072 | 84,136,539   | 4,021,737             | 17,157,761              | 2,721,098   | 108,037,135 |

## E. OTHER EDUCATION

## BOARD OF PUBLIC EDUCATION

|                                                                  |  |         |        |           |           |  |         |        |           |
|------------------------------------------------------------------|--|---------|--------|-----------|-----------|--|---------|--------|-----------|
| 1. Board Administration                                          |  |         |        |           |           |  |         |        |           |
| a. Operations                                                    |  |         |        |           |           |  |         |        |           |
| 104,834                                                          |  |         |        | 104,834   | 104,755   |  |         |        | 104,755   |
| b. Audit                                                         |  |         |        |           |           |  |         |        |           |
| 2,578                                                            |  |         |        | 2,578     |           |  |         |        |           |
| c. Interim Study on Adequacy and Cost of Accreditation Standards |  |         |        |           |           |  |         |        |           |
| 47,100                                                           |  |         |        | 47,100    | 50,725    |  |         |        | 50,725    |
| Total                                                            |  |         |        |           |           |  |         |        |           |
| 154,512                                                          |  |         |        | 154,512   | 155,480   |  |         |        | 155,480   |
| 2. Fire Services Training School                                 |  |         |        |           |           |  |         |        |           |
| a. Operations                                                    |  |         |        |           |           |  |         |        |           |
| 196,814                                                          |  | 2,000   | 12,000 | 210,814   | 199,440   |  | 2,000   | 12,000 | 213,440   |
| b. Audit                                                         |  |         |        |           |           |  |         |        |           |
| 2,578                                                            |  |         |        | 2,578     |           |  |         |        |           |
| Total                                                            |  |         |        |           |           |  |         |        |           |
| 199,392                                                          |  | 2,000   | 12,000 | 213,392   | 199,440   |  | 2,000   | 12,000 | 213,440   |
| 3. Montana School for the Deaf and Blind                         |  |         |        |           |           |  |         |        |           |
| a. Administration                                                |  |         |        |           |           |  |         |        |           |
| 179,849                                                          |  |         |        | 179,849   | 179,838   |  |         |        | 179,838   |
| b. General Services                                              |  |         |        |           |           |  |         |        |           |
| 248,725                                                          |  |         |        | 248,725   | 259,536   |  |         |        | 259,536   |
| c. Student Services                                              |  |         |        |           |           |  |         |        |           |
| 686,096                                                          |  | 35,000  |        | 721,096   | 691,805   |  | 35,000  |        | 726,805   |
| d. Education                                                     |  |         |        |           |           |  |         |        |           |
| 932,039                                                          |  | 350,370 |        | 1,282,409 | 930,878   |  | 349,926 |        | 1,280,804 |
| e. Audit                                                         |  |         |        |           |           |  |         |        |           |
| 18,044                                                           |  |         |        | 18,044    |           |  |         |        |           |
| Total                                                            |  |         |        |           |           |  |         |        |           |
| 2,064,753                                                        |  | 385,370 |        | 2,450,123 | 2,062,057 |  | 384,926 |        | 2,446,983 |

To the extent interest income collections from school trust lands exceed amounts appropriated of \$177,000 in fiscal 1988 and \$177,000 in fiscal 1989, there will be a dollar-for-dollar reversion of general fund.

## OFFICE OF PUBLIC INSTRUCTION

|                               |         |           |  |           |           |         |           |  |           |
|-------------------------------|---------|-----------|--|-----------|-----------|---------|-----------|--|-----------|
| 1. Chief State School Officer |         |           |  |           |           |         |           |  |           |
| 124,190                       |         | 21,568    |  | 145,758   | 124,062   |         | 13,068    |  | 137,130   |
| 2. Basic Skills               |         |           |  |           |           |         |           |  |           |
| 853,468                       | 237,905 | 122,514   |  | 1,213,887 | 855,549   | 237,944 | 122,651   |  | 1,216,144 |
| 3. Vocational Education       |         |           |  |           |           |         |           |  |           |
| 178,167                       |         | 274,085   |  | 452,252   | 177,974   |         | 274,044   |  | 452,018   |
| 4. Administrative Services    |         |           |  |           |           |         |           |  |           |
| a. Operations                 |         |           |  |           |           |         |           |  |           |
| 849,051                       | 416,266 | 617,759   |  | 1,883,076 | 852,423   | 416,149 | 617,920   |  | 1,886,492 |
| b. Audit                      |         |           |  |           |           |         |           |  |           |
| 38,666                        |         |           |  | 38,666    |           |         |           |  |           |
| 5. Special Services           |         |           |  |           |           |         |           |  |           |
| a. Operations                 |         |           |  |           |           |         |           |  |           |
| 131,488                       |         | 1,332,804 |  | 1,464,292 | 131,388   |         | 1,332,392 |  | 1,463,780 |
| b. Audiology                  |         |           |  |           |           |         |           |  |           |
| 310,200                       |         |           |  | 310,200   | 310,200   |         |           |  | 310,200   |
| Total                         |         |           |  |           |           |         |           |  |           |
| 2,485,230                     | 654,171 | 2,368,730 |  | 5,508,131 | 2,451,596 | 654,093 | 2,360,075 |  | 5,465,764 |

| General<br>Fund | Fiscal 1988                 |                               | Proprietary | Total | General<br>Fund | Fiscal 1989                 |                               | Proprietary | Total |
|-----------------|-----------------------------|-------------------------------|-------------|-------|-----------------|-----------------------------|-------------------------------|-------------|-------|
|                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |       |                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |       |

State and federal funds appropriated in items 1 through 5 include internal transfers of indirect costs. The amount of indirect costs in excess of \$387,266 in fiscal 1988 and \$387,108 in fiscal 1989 that is recovered must cause a like reversion to the general fund.

The office of public instruction shall use its best efforts, including legal proceedings if necessary, to collect by June 30 county surplus revenues under 20-9-331 and 20-9-333.

Item 3 includes \$150,271 in fiscal 1988 and \$150,282 in fiscal 1989 of general fund and \$179,925 in fiscal 1988 and \$179,938 in fiscal 1989 of federal funds, contingent upon the board of regents contracting with the office of public instruction to administer and supervise K-12 vocational education programs, services, and activities in accordance with House Bill 39.

#### OFFICE OF PUBLIC INSTRUCTION — DISTRIBUTION TO SCHOOLS

|                                  |         |  |  |            |            |         |  |  |            |
|----------------------------------|---------|--|--|------------|------------|---------|--|--|------------|
| 1. School Transportation         |         |  |  |            |            |         |  |  |            |
| 6,200,918                        |         |  |  | 6,200,918  | 6,200,918  |         |  |  | 6,200,918  |
| 2. School Lunch                  |         |  |  |            |            |         |  |  |            |
| 594,751                          |         |  |  | 594,751    | 594,751    |         |  |  | 594,751    |
| 3. Gifted and Talented Grants    |         |  |  |            |            |         |  |  |            |
| 100,000                          |         |  |  | 100,000    | 100,000    |         |  |  | 100,000    |
| 4. Adult Basic Education         |         |  |  |            |            |         |  |  |            |
| 147,523                          |         |  |  | 147,523    | 33,822     | 113,701 |  |  | 147,523    |
| 5. Special Education             |         |  |  |            |            |         |  |  |            |
| 27,361,646                       |         |  |  | 27,361,646 | 27,361,646 |         |  |  | 27,361,646 |
| 6. Special Education Contingency |         |  |  |            |            |         |  |  |            |
| 500,000                          |         |  |  | 500,000    | 500,000    |         |  |  | 500,000    |
| 7. State Impact Payments         |         |  |  |            |            |         |  |  |            |
| 5,000                            |         |  |  | 5,000      | 5,000      |         |  |  | 5,000      |
| Total                            |         |  |  |            |            |         |  |  |            |
| 34,762,315                       | 147,523 |  |  | 34,909,838 | 34,796,137 | 113,701 |  |  | 34,909,838 |

All revenues received in the state traffic education account under the provisions of 20-7-504 are appropriated to be distributed as provided in 20-7-506.

Item 6, a biennial appropriation, is for emergencies that may arise in special education programs in local districts. A district board of trustees may apply for an allocation from these funds by presenting to the superintendent of public instruction, for each child, a child-study team report and an individual education plan relating to this unforeseen expense and a current listing of program, caseloads, and related costs. The contingency appropriation is for the biennium, and the specific amounts may be transferred between fiscal years.

All revenues received under the provisions of 20-9-343 for state equalization aid are appropriated to the superintendent of public instruction for the biennium ending June 30, 1989, for public school support other than special education.

If House Bill 904 does not pass, there is appropriated from the general fund \$93,000,000 for the biennium ending June 30, 1989, to be used to the extent funds appropriated under the provisions of 20-9-343 are insufficient to finance the maximum general fund budget schedules for public schools, excluding special education.

#### OFFICE OF PUBLIC INSTRUCTION — DISCRETIONARY GRANTS

|                                          |           |  |  |           |  |           |  |  |           |
|------------------------------------------|-----------|--|--|-----------|--|-----------|--|--|-----------|
| 1. Job Training Partnership              |           |  |  |           |  |           |  |  |           |
| 475,000                                  |           |  |  | 475,000   |  | 475,000   |  |  | 475,000   |
| 2. Vocational Education Grants           |           |  |  |           |  |           |  |  |           |
| 1,025,000                                |           |  |  | 1,025,000 |  | 1,025,000 |  |  | 1,025,000 |
| 3. Adult Basic Education Grants          |           |  |  |           |  |           |  |  |           |
| 425,000                                  |           |  |  | 425,000   |  | 425,000   |  |  | 425,000   |
| 4. Education of the Handicapped — Part B |           |  |  |           |  |           |  |  |           |
| 450,000                                  |           |  |  | 450,000   |  | 400,000   |  |  | 400,000   |
| 5. Preschool Incentive Grants            |           |  |  |           |  |           |  |  |           |
| 150,000                                  |           |  |  | 150,000   |  | 110,000   |  |  | 110,000   |
| Total                                    |           |  |  |           |  |           |  |  |           |
|                                          | 2,525,000 |  |  | 2,525,000 |  | 2,435,000 |  |  | 2,435,000 |

Items 1 through 5 are biennial appropriations.

Item 2 is contingent upon the board of regents contracting with the office of public instruction to administer and supervise K-12 vocational education programs, services, and activities in accordance with House Bill 39.

|                                             | General<br>Fund | Fiscal 1988<br>Current<br>Unrestricted | Total     | General<br>Fund | Fiscal 1989<br>Current<br>Unrestricted | Total     |
|---------------------------------------------|-----------------|----------------------------------------|-----------|-----------------|----------------------------------------|-----------|
| <b>BILLINGS VOCATIONAL-TECHNICAL CENTER</b> |                 |                                        |           |                 |                                        |           |
| 1. Instruction                              | 552,545         | 417,556                                | 970,101   | 590,773         | 379,328                                | 970,101   |
| 2. Plant Operation and Maintenance          | 146,541         | 119,898                                | 266,439   | 151,359         | 123,839                                | 275,198   |
| 3. Equipment                                | 22,805          | 22,805                                 | 45,610    | 22,805          | 22,805                                 | 45,610    |
| 4. Support                                  |                 |                                        |           |                 |                                        |           |
| a. Operations                               | 133,026         | 253,106                                | 386,132   | 64,279          | 321,888                                | 386,167   |
| b. Audit                                    | 9,333           | 10,000                                 | 19,333    |                 |                                        |           |
| Total                                       | 864,250         | 823,365                                | 1,687,615 | 829,216         | 847,860                                | 1,677,076 |

Total audit costs are estimated to be \$21,481 for the biennium. Ten percent of these costs are to be paid from funds other than those appropriated in items 1 through 4.

The current unrestricted funding for equipment in item 3 must come from federal funds.

**BLTTE VOCATIONAL-TECHNICAL CENTER**

|                                    |         |         |           |         |         |           |
|------------------------------------|---------|---------|-----------|---------|---------|-----------|
| 1. Instruction                     | 563,073 | 238,747 | 801,820   | 595,265 | 206,555 | 801,820   |
| 2. Plant Operation and Maintenance | 90,485  | 74,034  | 164,519   | 93,464  | 76,470  | 169,934   |
| 3. Equipment                       | 21,432  | 21,432  | 42,864    | 21,432  | 21,432  | 42,864    |
| 4. Support                         |         |         |           |         |         |           |
| a. Operations                      | 218,767 | 131,488 | 350,255   | 174,982 | 175,303 | 350,285   |
| b. Audit                           | 9,333   | 10,000  | 19,333    |         |         |           |
| Total                              | 903,090 | 475,701 | 1,378,791 | 885,143 | 479,760 | 1,364,903 |

Total audit costs are estimated to be \$21,481 for the biennium. Ten percent of these costs are to be paid from funds other than those appropriated in items 1 through 4.

The current unrestricted funding for equipment in item 3 must come from federal funds.

**GREAT FALLS VOCATIONAL-TECHNICAL CENTER**

|                                    |         |         |           |         |         |           |
|------------------------------------|---------|---------|-----------|---------|---------|-----------|
| 1. Instruction                     | 524,403 | 299,194 | 823,597   | 556,595 | 267,002 | 823,597   |
| 2. Plant Operation and Maintenance | 98,030  | 83,507  | 181,537   | 102,197 | 87,057  | 189,254   |
| 3. Equipment                       | 21,609  | 21,610  | 43,219    | 21,609  | 21,610  | 43,219    |
| 4. Support                         |         |         |           |         |         |           |
| a. Operations                      | 226,358 | 150,749 | 377,107   | 179,795 | 197,346 | 377,141   |
| b. Audit                           | 9,333   | 10,000  | 19,333    |         |         |           |
| Total                              | 879,733 | 565,060 | 1,444,793 | 860,196 | 573,015 | 1,433,211 |

Total audit costs are estimated to be \$21,481 for the biennium. Ten percent of these costs are to be paid from funds other than those appropriated in items 1 through 4.

The current unrestricted funding for equipment in item 3 must come from federal funds.

**HELENA VOCATIONAL-TECHNICAL CENTER**

|                                    |         |         |           |         |         |           |
|------------------------------------|---------|---------|-----------|---------|---------|-----------|
| 1. Instruction                     | 873,033 | 429,675 | 1,302,708 | 925,345 | 377,363 | 1,302,708 |
| 2. Plant Operation and Maintenance | 172,168 | 140,864 | 313,032   | 176,183 | 144,150 | 320,333   |
| 3. Equipment                       | 25,518  | 25,518  | 51,036    | 25,518  | 25,518  | 51,036    |
| 4. Support                         |         |         |           |         |         |           |
| a. Operations                      | 325,996 | 89,901  | 415,897   | 178,698 | 239,237 | 415,935   |

|          | <u>General<br/>Fund</u> | <u>Fiscal 1988<br/>Current<br/>Unrestricted</u> | <u>Total</u> | <u>General<br/>Fund</u> | <u>Fiscal 1989<br/>Current<br/>Unrestricted</u> | <u>Total</u> |
|----------|-------------------------|-------------------------------------------------|--------------|-------------------------|-------------------------------------------------|--------------|
| b. Audit | 8,259                   | 10,000                                          | 18,259       |                         |                                                 |              |
| Total    | 1,404,974               | 695,958                                         | 2,100,932    | 1,303,744               | 786,268                                         | 2,090,012    |

Total audit costs are estimated to be \$21,481 for the biennium. Fifteen percent of these costs are to be paid from funds other than those appropriated in items 1 through 4.

The current unrestricted funding for equipment in item 3 must come from federal funds.

#### MISSOULA VOCATIONAL-TECHNICAL CENTER

|                                    |           |         |           |           |         |           |
|------------------------------------|-----------|---------|-----------|-----------|---------|-----------|
| 1. Instruction                     | 689,752   | 470,411 | 1,160,163 | 736,028   | 424,135 | 1,160,163 |
| 2. Plant Operation and Maintenance | 129,477   | 158,251 | 287,728   | 144,150   | 155,643 | 299,793   |
| 3. Equipment                       | 24,355    | 24,355  | 48,710    | 24,355    | 24,355  | 48,710    |
| 4. Support                         |           |         |           |           |         |           |
| a. Operations                      | 155,351   | 265,727 | 421,078   | 295,110   | 126,007 | 421,117   |
| b. Audit                           | 8,259     | 10,000  | 18,259    |           |         |           |
| Total                              | 1,007,194 | 928,744 | 1,935,938 | 1,199,643 | 730,140 | 1,929,783 |

Total audit costs are estimated to be \$21,481 for the biennium. Fifteen percent of these costs are to be paid from funds other than those appropriated in items 1 through 4.

The current unrestricted funding for equipment in item 3 must come from federal funds.

The commissioner of higher education may transfer county millage collections among centers. Millage received by the centers from the 1.5-mill levy that in the aggregate exceeds \$800,291 in fiscal 1988 and \$808,294 in fiscal 1989 must cause a general fund reversion of a like amount each year. Any voted millage funds available for the vocational-technical centers are appropriated.

If a vocational-technical center can provide matching funds for federal funds in excess of its share of the \$807,474 federal funds included in the current unrestricted funds each fiscal year of the biennium, then the center may request a budget amendment for the matching and federal funds to pay for the additional equipment, training, and programs. The matching funds for any budget amendment may not come from the current unrestricted funds appropriated in the general appropriations bill.

|                                        | <u>General<br/>Fund</u> | <u>State<br/>Special<br/>Revenue</u> | <u>Fiscal 1988<br/>Federal<br/>Special<br/>Revenue</u> | <u>Proprietary</u> | <u>Total</u> | <u>General<br/>Fund</u> | <u>State<br/>Special<br/>Revenue</u> | <u>Fiscal 1989<br/>Federal<br/>Special<br/>Revenue</u> | <u>Proprietary</u> | <u>Total</u> |
|----------------------------------------|-------------------------|--------------------------------------|--------------------------------------------------------|--------------------|--------------|-------------------------|--------------------------------------|--------------------------------------------------------|--------------------|--------------|
| STATE COUNCIL FOR VOCATIONAL EDUCATION |                         |                                      |                                                        |                    |              |                         |                                      |                                                        |                    |              |
| 1. Operations                          |                         |                                      | 116,907                                                |                    | 116,907      |                         |                                      | 120,000                                                |                    | 120,000      |
| 2. Audit                               |                         |                                      | 3,093                                                  |                    | 3,093        |                         |                                      |                                                        |                    |              |
| Total                                  |                         |                                      | 120,000                                                |                    | 120,000      |                         |                                      | 120,000                                                |                    | 120,000      |
| TOTAL SECTION E                        | 44,725,443              | 4,290,522                            | 5,401,100                                              | 12,000             | 54,429,065   | 44,742,652              | 4,184,837                            | 5,302,001                                              | 12,000             | 54,241,490   |

NOTE: The total of state special revenues for section E includes the following amounts of current unrestricted funds:

Fiscal 1988 ——— \$3,468,828  
Fiscal 1989 ——— \$3,417,043

| General<br>Fund | State<br>Special<br>Revenue | Fiscal 1988                   |             | Total | General<br>Fund | State<br>Special<br>Revenue | Fiscal 1989                   |             | Total |
|-----------------|-----------------------------|-------------------------------|-------------|-------|-----------------|-----------------------------|-------------------------------|-------------|-------|
|                 |                             | Federal<br>Special<br>Revenue | Proprietary |       |                 |                             | Federal<br>Special<br>Revenue | Proprietary |       |

## F. HIGHER EDUCATION

All funds, other than plant funds and current unrestricted operating funds, may be spent and are appropriated contingent upon approval by the board of regents by July 1 of each year of the comprehensive program budget. The budget must contain detailed revenues and expenditures and anticipated fund balances of current funds, loan funds, and endowment funds. All movement of funds between the current unrestricted subfund and the designated subfund account entities must be clearly identified in the state budgeting and accounting system.

Programs for the university budgets include instruction, organized research, public service, academic support, student services, institutional support, operation and maintenance of plant, and scholarships and fellowships.

The six university units shall account for expenditures consistently within programs and funds across all units and shall use the national center for higher education management systems program classification structure along with the college and university business administration (CUBA) system as a minimum standard for achieving consistency.

Each year of the biennium, the portion of indirect cost reimbursements that exceeds the amount set forth in the current unrestricted operating subfund appropriation for each unit is appropriated to the respective unit. All indirect cost reimbursement not expended in the current unrestricted operating subfund account must be clearly identified and separately accounted for during the 1989 biennium. Each university system unit shall submit a written report to the legislative finance committee by October 14, 1988, of the activities supported and accomplishments achieved with all indirect cost reimbursements expended in funds other than the current unrestricted operating subfund for fiscal 1988.

Included within current unrestricted funds to the six institutions is the sum of \$12,864,200 in fiscal 1988 and \$12,906,000 in fiscal 1989 from revenues generated under the provisions of 20-25-423. The department of revenue shall levy the full 6 mills as authorized in 20-25-423. Revenues received by the university system under the provisions of 20-25-423 that exceed \$12,864,200 in fiscal 1988 and \$12,906,000 in fiscal 1989 must cause a general fund reversion of a like amount each year.

|                                         |           |           |           |           |            |           |         |           |            |
|-----------------------------------------|-----------|-----------|-----------|-----------|------------|-----------|---------|-----------|------------|
| <b>BOARD OF REGENTS</b>                 |           |           |           |           |            |           |         |           |            |
|                                         | 27,951    |           |           | 27,951    |            | 28,008    |         |           | 28,008     |
| <b>COMMISSIONER OF HIGHER EDUCATION</b> |           |           |           |           |            |           |         |           |            |
| 1. Office Administration                |           |           |           |           |            |           |         |           |            |
| a. Operations                           |           |           |           |           |            |           |         |           |            |
| 773,253                                 |           |           |           | 773,253   |            | 774,104   |         |           | 774,104    |
| b. Audit                                |           |           |           |           |            |           |         |           |            |
| 13,885                                  |           |           |           | 13,885    |            |           |         |           |            |
| 2. Vocational-Technical Administration  |           |           |           |           |            |           |         |           |            |
| 82,319                                  |           | 153,319   |           | 235,638   |            | 93,165    |         | 153,165   | 246,330    |
| 3. Vocational Education Grants          |           |           |           |           |            |           |         |           |            |
|                                         |           | 2,325,000 |           | 2,325,000 |            |           |         | 2,325,000 | 2,325,000  |
| 4. WICHE Dues                           |           |           |           |           |            |           |         |           |            |
| 59,000                                  |           |           |           | 59,000    |            |           | 62,000  |           | 62,000     |
| 5. WICHE - Student Assistance           |           |           |           |           |            |           |         |           |            |
| 1,161,470                               |           | 624,164   |           | 1,785,634 |            | 1,436,131 |         | 150,537   | 1,586,668  |
| 6. WAMI                                 |           |           |           |           |            |           |         |           |            |
| 1,933,618                               |           |           |           | 1,933,618 |            | 1,949,929 |         | 41,792    | 1,991,721  |
| 7. Minnesota Rural Dentistry            |           |           |           |           |            |           |         |           |            |
| 90,400                                  |           |           |           | 90,400    |            | 69,000    |         |           | 69,000     |
| 8. State Student Incentive Grants       |           |           |           |           |            |           |         |           |            |
| 210,000                                 |           | 210,000   |           | 420,000   |            | 210,000   |         | 210,000   | 420,000    |
| 9. National Direct Student Loan         |           |           |           |           |            |           |         |           |            |
| 55,000                                  |           |           |           | 55,000    |            | 55,000    |         |           | 55,000     |
| 10. State College Work Study            |           |           |           |           |            |           |         |           |            |
| 276,450                                 |           |           |           | 276,450   |            | 276,450   |         |           | 276,450    |
| 11. Carl D. Perkins Scholarships        |           |           |           |           |            |           |         |           |            |
|                                         |           | 50,000    |           | 50,000    |            |           |         | 50,000    | 50,000     |
| 12. Education for Economic Security     |           |           |           |           |            |           |         |           |            |
|                                         |           | 58,000    |           | 58,000    |            |           |         | 58,000    | 58,000     |
| 13. Talent Search                       |           |           |           |           |            |           |         |           |            |
| a. Operations                           |           |           |           |           |            |           |         |           |            |
| 173,804                                 |           |           |           | 173,804   |            |           |         | 173,617   | 173,617    |
| b. Audit                                |           |           |           |           |            |           |         |           |            |
| 550                                     |           |           |           | 550       |            |           |         |           |            |
| 14. Guaranteed Student Loan             |           |           |           |           |            |           |         |           |            |
| a. Operations                           |           |           |           |           |            |           |         |           |            |
| 851,434                                 |           |           |           | 851,434   |            |           |         | 903,808   | 903,808    |
| b. Audit                                |           |           |           |           |            |           |         |           |            |
| 2,578                                   |           |           |           | 2,578     |            |           |         | 2,578     | 2,578      |
| 15. University System Group Insurance   |           |           |           |           |            |           |         |           |            |
|                                         |           |           | 8,739,609 | 8,739,609 |            |           |         | 9,205,338 | 9,205,338  |
| <hr/>                                   |           |           |           |           |            |           |         |           |            |
| Total                                   | 4,596,395 | 683,164   | 3,824,685 | 8,739,609 | 17,843,853 | 4,863,779 | 254,329 | 3,876,168 | 18,199,614 |

In each fiscal year, the commissioner of higher education is allowed to transfer appropriation authority between the amounts included in the WICHE appropriation for dentistry, which is \$120,534 in fiscal 1988 and \$122,668 in fiscal 1989, and the Minnesota rural dentistry appropriation.

General fund support of the family practice program does not extend beyond fiscal 1988.

|                                      | <u>General<br/>Fund</u> | <u>Fiscal 1988<br/>Current<br/>Unrestricted</u> | <u>Total</u>     | <u>General<br/>Fund</u> | <u>Fiscal 1989<br/>Current<br/>Unrestricted</u> | <u>Total</u>     |
|--------------------------------------|-------------------------|-------------------------------------------------|------------------|-------------------------|-------------------------------------------------|------------------|
| <b>COMMUNITY COLLEGES</b>            |                         |                                                 |                  |                         |                                                 |                  |
| 1. Dawson Community College          |                         |                                                 |                  |                         |                                                 |                  |
| a. Operations                        | 695,424                 |                                                 | 695,424          | 699,264                 |                                                 | 699,264          |
| b. Audit                             | 8,640                   |                                                 | 8,640            |                         |                                                 |                  |
| 2. Flathead Valley Community College |                         |                                                 |                  |                         |                                                 |                  |
| a. Operations                        | 1,613,384               |                                                 | 1,613,384        | 1,622,292               |                                                 | 1,622,292        |
| b. Audit                             | 8,640                   |                                                 | 8,640            |                         |                                                 |                  |
| 3. Miles Community College           |                         |                                                 |                  |                         |                                                 |                  |
| a. Operations                        | 716,286                 |                                                 | 716,286          | 720,242                 |                                                 | 720,242          |
| b. Audit                             | 8,640                   |                                                 | 8,640            |                         |                                                 |                  |
| <b>Total</b>                         | <b>3,051,014</b>        |                                                 | <b>3,051,014</b> | <b>3,041,798</b>        |                                                 | <b>3,041,798</b> |

The above appropriation provides 48% of the total unrestricted budgets for the community colleges, which budgets must be approved by the board of regents.

The general fund appropriation for each community college includes 48% of the total audit cost. The remaining 52% of these costs are to be paid from funds other than those appropriated in items 1 through 3. Audit costs may not exceed \$18,000 for each unit for the biennium.

Dawson, Flathead Valley, and Miles community colleges are prohibited from including in student enrollment, used in calculating the unrestricted budget referred to in 20-15-310, student FTE from out-of-district centers not approved under board of regent Policy 220.1.

#### **BUREAU OF MINES**

|                                        |                  |                  |                  |                  |                  |                  |
|----------------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| 1. Research                            | 1,232,850        | 53,000           | 1,285,850        | 1,233,523        | 53,000           | 1,286,523        |
| <b>AGRICULTURAL EXPERIMENT STATION</b> |                  |                  |                  |                  |                  |                  |
| 1. Agricultural Experiment Station     | 6,204,968        | 1,998,303        | 8,203,271        | 6,257,135        | 1,998,303        | 8,255,438        |
| 2. U.S. Range Laboratory               |                  | 385,954          | 385,954          |                  | 385,954          | 385,954          |
| <b>Total</b>                           | <b>6,204,968</b> | <b>2,384,257</b> | <b>8,589,225</b> | <b>6,257,135</b> | <b>2,384,257</b> | <b>8,641,392</b> |

General fund support for startup of the spring wheat breeding and biotechnology program at the agricultural experiment station is for the 1989 biennium only. Other funds will be required to continue the program beyond the 1989 biennium.

#### **COOPERATIVE EXTENSION SERVICE**

|                                             |                  |                  |                  |                  |                  |                  |
|---------------------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| 1. Public Service                           | 1,868,964        | 1,829,268        | 3,698,232        | 1,868,436        | 1,829,268        | 3,697,704        |
| 2. Professional Retirement Benefit Increase | 659,420          |                  | 659,420          | 665,731          |                  | 665,731          |
| <b>Total</b>                                | <b>2,528,384</b> | <b>1,829,268</b> | <b>4,355,652</b> | <b>2,534,167</b> | <b>1,829,268</b> | <b>4,363,435</b> |

The total money appropriated in item 2 may only be spent if a federal district or appellate court determines that cooperative extension service employees are federal employees within the meaning of Public Law 99-335. In the event these employees are not federal employees within the meaning of Public Law 99-335, up to \$221,300 in fiscal 1988 and up to \$277,611 in fiscal 1989 of the funds appropriated in item 2 may be spent for social security coverage and retirement benefits for 124 professional employees. There may be no transfers in or out of this item.

|                                                   | <u>General<br/>Fund</u> | <u>Fiscal 1988<br/>Current<br/>Unrestricted</u> | <u>Total</u> | <u>General<br/>Fund</u> | <u>Fiscal 1989<br/>Current<br/>Unrestricted</u> | <u>Total</u> |
|---------------------------------------------------|-------------------------|-------------------------------------------------|--------------|-------------------------|-------------------------------------------------|--------------|
| <b>FOREST AND CONSERVATION EXPERIMENT STATION</b> |                         |                                                 |              |                         |                                                 |              |
| 1. Research                                       | 643,535                 |                                                 | 643,535      | 644,954                 |                                                 | 644,954      |

**UNIVERSITY FUNDING STUDY**

|                                             |         |         |
|---------------------------------------------|---------|---------|
| 1. Commissioner of Higher Education         | 15,000  | 15,000  |
| 2. Office of the Legislative Fiscal Analyst | 130,000 | 130,000 |
| 3. Office of Budget and Program Planning    | 5,000   | 5,000   |

The Montana legislature recognizes the need to review the adequacy of the current method for funding the university system. The study shall be conducted by an eight-member legislative committee comprised of four members appointed by house leadership and four members appointed by the senate committee on committees.

The study shall be coordinated by the office of the legislative fiscal analyst in conjunction with the commissioner of higher education and active participation of the office of budget and program planning.

The scope of the study will encompass a review of higher education expenditures and funding, and an analysis of the adequacy and consistency of the university financing.

The study shall also address cost-effective methods of developing uniform personnel and class enrollment systems and consistent statewide budgeting and accounting system procedures and reports.

Items 1, 2, and 3 are biennial appropriations.

**MONTANA STATE UNIVERSITY**

|                                                                  |            |            |            |            |            |            |
|------------------------------------------------------------------|------------|------------|------------|------------|------------|------------|
| 1. Instruction                                                   |            |            |            |            |            |            |
| a. Instruction Program                                           | 24,235,408 |            | 24,235,408 | 23,869,704 |            | 23,869,704 |
| b. Architecture                                                  |            | 130,000    | 130,000    |            | 130,000    | 130,000    |
| c. Funding Level Increase                                        | 499,699    |            | 499,699    | 492,159    |            | 492,159    |
| 2. Research                                                      |            |            |            |            |            |            |
|                                                                  |            | 597,925    | 597,925    |            | 597,925    | 597,925    |
| 3. Public Service                                                |            |            |            |            |            |            |
|                                                                  |            | 10,300     | 10,300     |            | 10,300     | 10,300     |
| 4. Academic Support, Student Services, and Institutional Support |            |            |            |            |            |            |
| a. Support Program                                               | 1,385,215  | 10,485,747 | 11,870,962 | 1,454,267  | 10,221,100 | 11,675,367 |
| b. Funding Level Increase                                        | 131,900    |            | 131,900    | 259,453    |            | 259,453    |
| c. Museum of the Rockies                                         | 100,000    |            | 100,000    |            |            |            |
| 5. Audit                                                         |            |            |            |            |            |            |
|                                                                  | 23,021     | 20,800     | 43,821     |            |            |            |
| 6. Operation and Maintenance of Physical Plant                   |            |            |            |            |            |            |
|                                                                  | 1,494,031  | 4,009,054  | 5,503,085  | 1,544,589  | 4,151,733  | 5,696,322  |
| 7. Scholarships and Fellowships                                  |            |            |            |            |            |            |
|                                                                  |            | 1,125,273  | 1,125,273  |            | 1,106,723  | 1,106,723  |
| Total                                                            |            |            |            |            |            |            |
|                                                                  | 27,869,274 | 16,379,099 | 44,248,373 | 27,620,172 | 16,217,781 | 43,837,953 |

Total audit costs are estimated to be \$87,642 for the biennium. Fifty percent of these costs are to be paid from funds other than those appropriated in items 1 through 7.

If gross actual nonresident incidental fee revenues, reduced by 18.45 percent for nonresident waivers, are less than \$1,631,995 for fiscal 1988 and less than \$1,605,092 for fiscal 1989, Montana state university may request a supplemental for the difference.

General fund support of the museum of the Rockies does not extend beyond the 1989 biennium. It is expected that private funds will replace general fund support beginning in the 1991 biennium. Item 4c is a biennial appropriation.

**UNIVERSITY OF MONTANA**

|                           |            |            |            |         |            |
|---------------------------|------------|------------|------------|---------|------------|
| 1. Instruction            |            |            |            |         |            |
| a. Instruction Program    | 18,586,558 | 18,586,558 | 18,645,270 |         | 18,645,270 |
| b. Law/Pharmacy           |            | 174,000    | 174,000    | 174,000 | 174,000    |
| c. Funding Level Increase | 383,228    | 383,228    | 384,439    |         | 384,439    |

|                                                                  | <u>General<br/>Fund</u> | <u>Fiscal 1988<br/>Current<br/>Unrestricted</u> | <u>Total</u> | <u>General<br/>Fund</u> | <u>Fiscal 1989<br/>Current<br/>Unrestricted</u> | <u>Total</u> |
|------------------------------------------------------------------|-------------------------|-------------------------------------------------|--------------|-------------------------|-------------------------------------------------|--------------|
| 2. Research                                                      |                         | 445,254                                         | 445,254      |                         | 446,534                                         | 446,534      |
| 3. Public Service                                                |                         | 195,892                                         | 195,892      |                         | 195,904                                         | 195,904      |
| 4. Academic Support, Student Services, and Institutional Support |                         |                                                 |              |                         |                                                 |              |
| a. Support Program                                               | 1,883,300               | 8,254,019                                       | 10,137,319   | 1,860,880               | 8,291,820                                       | 10,152,700   |
| b. Funding Level Increase                                        | 112,637                 |                                                 | 112,637      | 225,615                 |                                                 | 225,615      |
| 5. Audit                                                         | 22,932                  | 19,600                                          | 42,532       |                         |                                                 |              |
| 6. Operation and Maintenance of Physical Plant                   | 1,860,505               | 3,628,478                                       | 5,388,983    | 1,996,637               | 3,534,186                                       | 5,530,823    |
| 7. Scholarships and Fellowships                                  |                         | 983,741                                         | 983,741      |                         | 985,218                                         | 985,218      |
|                                                                  | -----                   | -----                                           | -----        | -----                   | -----                                           | -----        |
| Total                                                            | 22,849,160              | 13,600,984                                      | 36,450,144   | 23,112,841              | 13,627,662                                      | 36,740,503   |

Total audit costs are estimated to be \$85,064 for the biennium. Fifty percent of these costs are to be paid from funds other than those appropriated in items 1 through 7.

If gross actual nonresident incidental fee revenues, reduced by 18.45 percent for nonresident waivers, are less than \$1,748,796 for fiscal 1988 and less than \$1,751,420 for fiscal 1989, the university of Montana may request a supplemental for the difference.

#### EASTERN MONTANA COLLEGE

|                                                                  |           |           |            |           |           |            |
|------------------------------------------------------------------|-----------|-----------|------------|-----------|-----------|------------|
| 1. Instruction                                                   |           |           |            |           |           |            |
| a. Instruction Program                                           | 6,468,676 |           | 6,468,676  | 6,478,550 |           | 6,478,550  |
| b. Funding Level Increase                                        | 133,375   |           | 133,375    | 133,579   |           | 133,579    |
| 2. Public Service                                                |           | 231,435   | 231,435    |           | 231,447   | 231,447    |
| 3. Academic Support, Student Services, and Institutional Support |           |           |            |           |           |            |
| a. Support Program                                               | 850,298   | 3,207,247 | 4,057,543  | 875,888   | 3,180,518 | 4,056,406  |
| b. Funding Level Increase                                        | 45,084    |           | 45,084     | 90,142    |           | 90,142     |
| 4. Audit                                                         | 22,932    | 19,600    | 42,532     |           |           |            |
| 5. Operation and Maintenance of Physical Plant                   | 882,641   | 1,147,702 | 2,030,343  | 886,232   | 1,198,562 | 2,084,794  |
| 6. Scholarships and Fellowships                                  |           | 353,209   | 353,209    |           | 353,099   | 353,099    |
|                                                                  | -----     | -----     | -----      | -----     | -----     | -----      |
| Total                                                            | 8,403,004 | 4,959,193 | 13,362,197 | 8,464,391 | 4,963,626 | 13,428,017 |

Total audit costs are estimated to be \$56,710 for the biennium. Twenty-five percent of these costs are to be paid from funds other than those appropriated in items 1 through 6.

#### NORTHERN MONTANA COLLEGE

|                                                                  |           |           |           |           |           |           |
|------------------------------------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| 1. Instruction                                                   |           |           |           |           |           |           |
| a. Instruction Program                                           | 4,190,393 |           | 4,190,393 | 4,266,713 |           | 4,266,713 |
| b. Funding Level Increase                                        | 86,399    |           | 86,399    | 87,973    |           | 87,973    |
| 2. Public Service                                                |           | 8,891     | 8,891     |           | 8,891     | 8,891     |
| 3. Academic Support, Student Services, and Institutional Support |           |           |           |           |           |           |
| a. Support Program                                               | 563,571   | 1,561,036 | 2,124,607 | 536,756   | 1,622,803 | 2,159,559 |
| b. Funding Level Increase                                        | 23,606    |           | 23,606    | 47,990    |           | 47,990    |
| 4. Audit                                                         | 22,399    | 12,400    | 34,799    |           |           |           |
| 5. Operation and Maintenance of Physical Plant                   | 624,651   | 496,793   | 1,121,444 | 667,837   | 478,740   | 1,146,577 |
| 6. Scholarships and Fellowships                                  |           | 274,815   | 274,815   |           | 271,722   | 271,722   |
|                                                                  | -----     | -----     | -----     | -----     | -----     | -----     |
| Total                                                            |           |           |           |           |           |           |



| <u>General Fund</u> | <u>Fiscal 1988<br/>Current Unrestricted</u> | <u>Total</u> | <u>General Fund</u> | <u>Fiscal 1989<br/>Current Unrestricted</u> | <u>Total</u> |
|---------------------|---------------------------------------------|--------------|---------------------|---------------------------------------------|--------------|
| 5,511,019           | 2,353,935                                   | 7,864,954    | 5,607,269           | 2,382,166                                   | 7,989,425    |

Total audit costs are estimated to be \$46,399 for the biennium. Twenty-five percent of these costs are to be paid from funds other than those appropriated in items 1 through 6.

#### WESTERN MONTANA COLLEGE

|                                                                  |           |           |           |           |           |
|------------------------------------------------------------------|-----------|-----------|-----------|-----------|-----------|
| 1. Instruction                                                   |           |           |           |           |           |
| a. Instruction Program                                           | 2,321,136 | 2,321,136 | 2,297,033 |           | 2,297,033 |
| b. Funding Level Increase                                        | 47,858    | 47,858    | 47,361    |           | 47,361    |
| 2. Academic Support, Student Services, and Institutional Support |           |           |           |           |           |
| a. Support Program                                               | 326,621   | 828,246   | 335,721   | 805,298   | 1,141,019 |
| b. Funding Level Increase                                        | 12,832    | 12,832    | 25,356    |           | 25,356    |
| 3. Audit                                                         | 22,332    | 11,500    | 33,832    |           |           |
| 4. Operation and Maintenance of Physical Plant                   | 353,701   | 381,476   | 342,802   | 407,728   | 750,530   |
| 5. Scholarships and Fellowships                                  |           | 83,472    |           | 82,469    | 82,469    |
|                                                                  | -----     | -----     | -----     | -----     | -----     |
| Total                                                            | 3,084,480 | 1,304,694 | 3,048,273 | 1,295,495 | 4,343,768 |

Total audit costs are estimated to be \$45,110 for the biennium. Twenty-five percent of these costs are to be paid from funds other than those appropriated in items 1 through 5.

#### MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY

|                                                                  |           |           |           |           |           |
|------------------------------------------------------------------|-----------|-----------|-----------|-----------|-----------|
| 1. Instruction                                                   |           |           |           |           |           |
| a. Instruction Program                                           | 3,995,761 | 3,995,761 | 4,002,548 |           | 4,002,548 |
| b. Funding Level Increase                                        | 82,387    | 82,387    | 82,526    |           | 82,526    |
| 2. Research                                                      |           | 43,718    |           | 43,747    | 43,747    |
| 3. Academic Support, Student Services, and Institutional Support |           |           |           |           |           |
| a. Support Program                                               | 574,728   | 1,755,233 | 588,412   | 1,741,604 | 2,330,016 |
| b. Funding Level Increase                                        | 25,889    | 25,889    | 51,778    |           | 51,778    |
| 4. Audit                                                         | 22,999    | 20,500    | 43,499    |           |           |
| 5. Operation and Maintenance of Physical Plant                   | 683,568   | 911,485   | 677,252   | 948,888   | 1,626,140 |
| 6. Scholarships and Fellowships                                  |           | 202,189   |           | 202,189   | 202,189   |
|                                                                  | -----     | -----     | -----     | -----     | -----     |
| Total                                                            | 5,385,332 | 2,933,125 | 5,402,516 | 2,936,428 | 8,338,944 |

Total audit costs are estimated to be \$57,999 for the biennium. Twenty-five percent of these costs are to be paid from funds other than those appropriated in items 1 through 6.

| <u>General Fund</u> | <u>State Special Revenue</u> | <u>Fiscal 1988<br/>Federal Special Revenue</u> | <u>Proprietary</u> | <u>Total</u> | <u>General Fund</u> | <u>State Special Revenue</u> | <u>Fiscal 1989<br/>Federal Special Revenue</u> | <u>Proprietary</u> | <u>Total</u> |
|---------------------|------------------------------|------------------------------------------------|--------------------|--------------|---------------------|------------------------------|------------------------------------------------|--------------------|--------------|
| 91,535,366          | 46,480,719                   | 3,824,685                                      | 8,739,609          | 150,580,379  | 91,858,826          | 45,944,002                   | 3,876,168                                      | 9,205,338          | 150,884,334  |

#### TOTAL SECTION F

91,535,366 46,480,719 3,824,685 8,739,609 150,580,379 91,858,826 45,944,002 3,876,168 9,205,338 150,884,334

NOTE: The total of state special revenues for section F includes the following amounts of current unrestricted funds:

Fiscal 1988 ——— \$45,797,555  
Fiscal 1989 ——— \$45,689,673

| <u>General<br/>Fund</u>    | <u>Fiscal 1988</u>                   |                                        | <u>Proprietary</u> | <u>Total</u>  | <u>General<br/>Fund</u> | <u>Fiscal 1989</u>                   |                                        | <u>Proprietary</u> | <u>Total</u>  |
|----------------------------|--------------------------------------|----------------------------------------|--------------------|---------------|-------------------------|--------------------------------------|----------------------------------------|--------------------|---------------|
|                            | <u>State<br/>Special<br/>Revenue</u> | <u>Federal<br/>Special<br/>Revenue</u> |                    |               |                         | <u>State<br/>Special<br/>Revenue</u> | <u>Federal<br/>Special<br/>Revenue</u> |                    |               |
| <b>TOTAL STATE FUNDING</b> |                                      |                                        |                    |               |                         |                                      |                                        |                    |               |
| 361,564,348                | 277,991,169                          | 412,728,361                            | 96,146,923         | 1,148,430,801 | 362,751,670             | 271,824,873                          | 422,168,651                            | 96,786,656         | 1,153,531,850 |

Section 18. **Effective dates.** (1) This act, except as provided in subsection (2), is effective July 1, 1987.

(2) Sections 15 and 18 are effective on passage and approval.

Approved May 22, 1987.

## HOUSE BILL NO. 3

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1987, THAT WOULD USUALLY BE MADE BY BUDGET AMENDMENT; PROVIDING FOR SOME APPROPRIATIONS TO CONTINUE FROM FISCAL YEAR 1987 TO FISCAL YEAR 1988; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Time limits.** The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the years for which the appropriations are made. The unspent balance of any appropriation must revert to the fund from which it was appropriated unless the appropriation is continued by this act.

Section 2. **Governor's power to reduce appropriations.** In the event of a shortfall in revenue, the governor may reduce any appropriation in this act by not more than 15%.

Section 3. **Totals not appropriations.** The totals shown in this act are for informational purposes only and are not appropriations.

Section 4. **Appropriations.** The following money is appropriated, subject to the terms and conditions of this act:

| <u>Agency and Program</u> | <u>FY</u> | <u>Amount</u> | <u>Fund</u> |
|---------------------------|-----------|---------------|-------------|
|---------------------------|-----------|---------------|-------------|

### A. GENERAL GOVERNMENT

#### GOVERNOR

Board of Visitors

|               |      |           |                 |
|---------------|------|-----------|-----------------|
| Mental Health | 1987 | \$ 75,000 | Federal Special |
|---------------|------|-----------|-----------------|

The unexpended June 30, 1987, balance in the mental health amendment is reappropriated in fiscal year 1988.

#### DEPARTMENT OF JUSTICE

| <u>Agency and Program</u> | <u>FY</u> | <u>Amount</u> | <u>Fund</u>     |
|---------------------------|-----------|---------------|-----------------|
| Driver Services           |           |               |                 |
| Commercial Drivers        | 1987      | 59,307        | Federal Special |
| Highway Patrol            |           |               |                 |
| 55 Squad                  | 1987      | 13,900        | Federal Special |

**BOARD OF CRIME CONTROL****Planning and Administration**

|                    |      |         |                 |
|--------------------|------|---------|-----------------|
| Drug Enforcement   | 1987 | 36,052  | Federal Special |
| Juvenile Justice   | 1987 | 142,500 | Federal Special |
| Victims Assistance | 1987 | 188,000 | Federal Special |

The unexpended June 30, 1987, balances of the juvenile justice amendment and the victims assistance amendment are reappropriated in fiscal year 1988.

**DEPARTMENT OF ADMINISTRATION****Personnel**

|                             |      |        |               |
|-----------------------------|------|--------|---------------|
| Group Benefits              | 1987 | 10,000 | Proprietary   |
| Workers' Compensation Judge |      |        |               |
| Termination Pay             | 1987 | 30,000 | State Special |

These funds may be used only for termination pay for the workers' compensation court if the court is eliminated by the 50th legislature.

|                 |      |        |               |
|-----------------|------|--------|---------------|
| Termination Pay | 1987 | 12,618 | State Special |
|-----------------|------|--------|---------------|

These funds may be used only for termination pay for the current workers' compensation judge if he is not reappointed to the position. This amendment does not take effect if the court is eliminated by the 50th legislature.

|                      |      |        |               |
|----------------------|------|--------|---------------|
| Teachers' Retirement | 1987 | 15,839 | Pension Trust |
|----------------------|------|--------|---------------|

**B. NATURAL RESOURCES****DEPARTMENT OF FISH, WILDLIFE, AND PARKS****Law Enforcement**

|                        |      |        |                 |
|------------------------|------|--------|-----------------|
| Boat Safety            | 1987 | 71,000 | Federal Special |
| Conservation Education |      |        |                 |
| Boat Safety            | 1987 | 30,400 | Federal Special |

**DEPARTMENT OF COMMERCE****Section 8 Housing**

|               |      |         |                 |
|---------------|------|---------|-----------------|
| Certification | 1987 | 400,000 | Federal Special |
|---------------|------|---------|-----------------|

**C. INSTITUTIONS AND CULTURAL AGENCIES****DEPARTMENT OF INSTITUTIONS****Montana State Prison**

|                |      |        |                 |
|----------------|------|--------|-----------------|
| Chapter I ECIA | 1987 | 10,379 | Federal Special |
|----------------|------|--------|-----------------|

**Pine Hills School**

|                 |      |       |                 |
|-----------------|------|-------|-----------------|
| Chapter II ECIA | 1987 | 8,253 | Federal Special |
|-----------------|------|-------|-----------------|

**Montana State Hospital**

|                |      |       |                 |
|----------------|------|-------|-----------------|
| Chapter I ECIA | 1987 | 5,648 | Federal Special |
|----------------|------|-------|-----------------|

| <u>Agency and Program</u>         | <u>FY</u> | <u>Amount</u> | <u>Fund</u>     |
|-----------------------------------|-----------|---------------|-----------------|
| <b>MONTANA STATE LIBRARY</b>      |           |               |                 |
| Library Development               |           |               |                 |
| LSCA Title I                      | 1987      | 13,185        | Federal Special |
| LSCA Title II                     | 1987      | 157,399       | Federal Special |
| LSCA Title III                    | 1987      | 93,149        | Federal Special |
| <b>MONTANA HISTORICAL SOCIETY</b> |           |               |                 |
| Publications                      |           |               |                 |
| Merchandise                       | 1987      | 30,000        | Proprietary     |
| Publications                      | 1987      | 20,000        | Proprietary     |

#### D. HUMAN SERVICES

##### DEPARTMENT OF MILITARY AFFAIRS

|               |      |         |                 |
|---------------|------|---------|-----------------|
| Army Guard    |      |         |                 |
| Training Site | 1987 | 245,000 | Federal Special |

##### DEPARTMENT OF LABOR AND INDUSTRY

|              |      |        |                 |
|--------------|------|--------|-----------------|
| Human Rights |      |        |                 |
| Fair Housing | 1987 | 98,923 | Federal Special |

The unexpended fiscal year 1987 fair housing amendment authority is reappropriated in fiscal years 1988 and 1989.

##### JPTA

|                       |      |         |                 |
|-----------------------|------|---------|-----------------|
| Summer Youth Training | 1987 | 889,693 | Federal Special |
|-----------------------|------|---------|-----------------|

##### DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

|                                        |      |         |                 |
|----------------------------------------|------|---------|-----------------|
| Health Services and Medical Facilities |      |         |                 |
| Child Nutrition                        | 1987 | 395,875 | Federal Special |
| WIC                                    | 1987 | 150,000 | Federal Special |

##### DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

|                     |      |         |                 |
|---------------------|------|---------|-----------------|
| Assistance Payments |      |         |                 |
| Food Stamp Training | 1987 | 20,805  | Federal Special |
| Job Search          | 1987 | 81,000  | Federal Special |
| Emergency Shelter   | 1987 | 23,000  | Federal Special |
| LIEAP               | 1987 | 485,795 | Federal Special |
| Social Services     |      |         |                 |
| Aging Services      | 1987 | 97,685  | Federal Special |
| Title IV-E Training | 1987 | 89,892  | Federal Special |

The unexpended fiscal year 1987 Title IV-E training authority is reappropriated for fiscal year 1988.

|                           |      |         |                 |
|---------------------------|------|---------|-----------------|
| Eligibility Determination |      |         |                 |
| Front-End Investment      | 1987 | 147,501 | Federal Special |
| Medical Assistance        |      |         |                 |
| DRG Payment System        | 1987 | 117,000 | Federal Special |
| On-line Inquiry           | 1987 | 7,500   | Federal Special |
|                           |      | 2,500   | Other Special   |

##### Vocational Rehabilitation

| <u>Agency and Program</u>          | <u>FY</u> | <u>Amount</u> | <u>Fund</u>     |
|------------------------------------|-----------|---------------|-----------------|
| Special Disabled                   | 1987      | 52,000        | Federal Special |
| Additional Rehabilitation Services | 1987      | 150,000       | Federal Special |

## E. EDUCATION

## OFFICE OF PUBLIC INSTRUCTION

|                     |      |        |                 |
|---------------------|------|--------|-----------------|
| Special Services    |      |        |                 |
| Drug/AIDS Education | 1987 | 70,685 | Federal Special |

## MONTANA ADVISORY COUNCIL FOR VOCATIONAL EDUCATION

|                   |      |        |                 |
|-------------------|------|--------|-----------------|
| Office Automation | 1987 | 23,500 | Federal Special |
|-------------------|------|--------|-----------------|

## MONTANA UNIVERSITY SYSTEM

|                         |      |        |                         |
|-------------------------|------|--------|-------------------------|
| Commissioner's Office   |      |        |                         |
| EESA Grants             | 1987 | 15,000 | Federal Special         |
| Western Montana College |      |        |                         |
| Tuition Revenue         | 1987 | 73,725 | Current<br>Unrestricted |

## STATEWIDE TOTAL

|               |      |               |
|---------------|------|---------------|
| Proprietary   | 1987 | \$ 60,000     |
| State Special | 1987 | 30,000        |
| Federal       | 1987 | 4,465,026     |
| Other         | 1987 | <u>92,064</u> |
| Total         |      | \$4,647,090   |

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 25, 1987.

## HOUSE BILL NO. 5

AN ACT TO APPROPRIATE MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1989; TO PROVIDE FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definitions.** For the purposes of this act, unless otherwise stated, the following definitions apply:

(1) "Agency" includes each state office, department, board, commission, council, committee, unit of the university system, or other entity or instrumentality of the executive branch, office of the legislative branch, or office of the judicial branch of state government.

(2) "Approved budget amendment" means approval by the budget director of a request submitted through the architecture and engineering division of the department of administration to transfer excess funds appropriated to a capital project within an agency in order to increase the appropriations of another capital project within that agency or to obtain financing to expand a project with funds which were not available for consideration by the legislature.

(3) "Capital project" means acquisition of land or improvements, planning, capital construction, renovation, furnishing, or major repair projects authorized in this act.

(4) "CPF" means the capital projects fund.

(5) "Major maintenance" means building maintenance or repair projects that are not needed on an annual or biennial basis or are not the function of the permanent maintenance staff of the agency.

(6) "Major maintenance plan" means a 6-year schedule of anticipated major maintenance requirements and costs for the first 2 years of the schedule, developed for each state building, as determined by the department of administration. The plan must include a record of major maintenance performed in the previous biennium.

(7) "Other appropriated funds" means money other than general fund money or capital projects fund money, including special revenue fund money, that accrues under the provisions of law to an agency.

**Section 2. Expansion required to be authorized.** No existing capital project may be expanded beyond the scope of the project as approved by the 50th legislature unless the capital project expansion is authorized by an approved budget amendment.

**Section 3. Federal funds for administration.** All federal funds received as a reimbursement for the cost of administering the federal funds when the cost was financed from the general fund revert to the general fund.

**Section 4. Reappropriation.** Notwithstanding any other provision of law, the remaining balances on capital projects previously appropriated are reappropriated until June 30, 1989, for the purposes for which originally appropriated.

**Section 5. Major maintenance requirements.** For all new construction proposals submitted to the legislature and for all existing applicable state buildings, as determined by the department of administration, each agency, in consultation with the architecture and engineering division of the department of administration, shall provide a major maintenance plan. This plan must be submitted by the agency to the department of administration by July 1 of each even-numbered year, along with the proposed long-range building program required under 17-7-202.

**Section 6. Capital projects appropriations.** The following money is appropriated for the indicated capital projects from the indicated sources to the department of administration:

| <u>Agency/Program</u>                                               | <u>CPF</u> | <u>Other Appropriated Funds</u>              |
|---------------------------------------------------------------------|------------|----------------------------------------------|
| <b>DEPARTMENT OF ADMINISTRATION</b>                                 |            |                                              |
| Asbestos Abatement, Phase II                                        | \$ 500,000 |                                              |
| Replace Roofs, Capitol Complex                                      | 103,500    |                                              |
| Handicapped Modifications, Capitol Complex                          | 235,700    |                                              |
| Fire Protection, Capitol Complex                                    | 50,000     |                                              |
| Energy Retrofit, Statewide                                          |            | \$ 200,000 Federal                           |
| <b>DEPARTMENT OF EDUCATION</b>                                      |            |                                              |
| Improve Handicapped Access, School for the Deaf and Blind           | 32,800     |                                              |
| <b>DEPARTMENT OF FISH, WILDLIFE, AND PARKS</b>                      |            |                                              |
| Boat Facilities Program                                             |            | 50,000 FW&P License Fees<br>140,000 Federal  |
| Develop Wildlife Management and Parks Property                      |            | 379,000 Real Estate Trust Earnings           |
| Fishing Access Site Protection                                      |            | 150,000 FW&P License Fees<br>150,000 Federal |
| Creston Hatchery Supplemental                                       |            | 225,000 FW&P License Fees                    |
| Miles City Cool/Warm Water Hatchery Supplemental                    |            | 81,750 FW&P License Fees<br>245,250 Federal  |
| Improve Regional Headquarters                                       |            | 41,000 FW&P License Fees                     |
| Helena Office Mechanical Supplemental                               |            | 65,000 FW&P License Fees                     |
| Construct Region 1 Headquarters, Kalispell                          |            | 1,400,000 FW&P License Fees                  |
| Construct Region 5 Headquarters, Billings                           |            | 1,200,000 FW&P License Fees                  |
| Improve Warehouse Complex                                           |            | 80,000 FW&P License Fees                     |
| Improve Waterfowl Habitat                                           |            | 425,000 Wildlife Earned Revenue              |
| Improve Bighorn Sheep Habitat                                       |            | 179,000 Wildlife Earned Revenue              |
| Centennial Projects                                                 |            | 50,000 Federal and Private Revenue           |
| Ashley Creek Headgate                                               |            | 31,500 FW&P License Fees                     |
| <b>DEPARTMENT OF HIGHWAYS</b>                                       |            |                                              |
| Miscellaneous Repairs and Improvements, Statewide                   |            | 750,000 Hwy. State Special Revenue           |
| Construct New Section Headquarters, Columbia Falls                  |            | 99,700 Hwy. State Special Revenue            |
| Construct Laboratory Addition, Great Falls                          |            | 34,000 Hwy. State Special Revenue            |
| Construct Steam Cleaning Buildings, Glendive and Miles City         |            | 80,000 Hwy. State Special Revenue            |
| Construct Combination Shop, Phase I, Wolf Point                     |            | 103,000 Hwy. State Special Revenue           |
| Construct Shop Addition, Kalispell                                  |            | 71,000 Hwy. State Special Revenue            |
| Construct Sandhouses, Statewide                                     |            | 156,000 Hwy. State Special Revenue           |
| Construct Equipment Storage Garages, Statewide                      |            | 228,300 Hwy. State Special Revenue           |
| <b>DEPARTMENT OF INSTITUTIONS</b>                                   |            |                                              |
| Correct Life Safety Code Deficiencies, Montana Developmental Center | 126,000    |                                              |

| <u>Agency/Program</u>                                             | <u>CPF</u> | <u>Other Appropriated Funds</u>                                                |
|-------------------------------------------------------------------|------------|--------------------------------------------------------------------------------|
| Correct Life Safety Code Deficiencies, Cottage II, Eastmont       | 95,245     |                                                                                |
| Repair Sewage Lagoon, Montana Developmental Center                | 20,000     |                                                                                |
| Install Smoke Detectors, Montana State Hospital                   | 10,300     |                                                                                |
| Replace Roofs                                                     | 309,500    |                                                                                |
| Improve Handicapped Access, Montana State Hospital                | 124,622    |                                                                                |
| Improve Handicapped Access and Install Fence, Center for the Aged | 21,000     |                                                                                |
| Install Drainage System and Upgrade Physical Plant, Eastmont      | 34,900     |                                                                                |
| Refurbish Water Towers                                            | 50,000     |                                                                                |
| Remodel Cottages 16A, B, and C, Montana Developmental Center      | 1,038,000  |                                                                                |
| Repair Projects, Montana State Hospital                           | 60,880     |                                                                                |
| Construct Yard Storage and Toilets, Prison                        | 62,000     |                                                                                |
| Remodel Dining Hall, Montana State Hospital                       | 100,000    |                                                                                |
| Legal Fees and Costs, Montana State Prison                        | 75,000     |                                                                                |
| DEPARTMENT OF JUSTICE                                             |            |                                                                                |
| Upgrade Registrar's Bureau, Deer Lodge                            | 75,000     |                                                                                |
| DEPARTMENT OF LABOR AND INDUSTRY                                  |            |                                                                                |
| Repair Cracking, Great Falls Job Service                          |            | 30,000 Federal                                                                 |
| Remodel and Weatherize Job Services, Statewide                    |            | 135,540 Federal                                                                |
| Helena Job Service Office Addition                                |            | 250,000 DOLI Bond Proceeds<br>67,000 Federal Reed Act Funds<br>103,000 Federal |
| DEPARTMENT OF STATE LANDS                                         |            |                                                                                |
| Repair Projects, Stillwater                                       | 28,200     |                                                                                |
| DEPARTMENT OF MILITARY AFFAIRS                                    |            |                                                                                |
| Replace Roof, Chinook Armory                                      | 45,000     |                                                                                |
| Federal Spending Authority                                        |            | 300,000 Federal                                                                |
| Armory Storage Additions, Statewide                               |            | 300,000 Federal                                                                |
| MONTANA UNIVERSITY SYSTEM                                         |            |                                                                                |
| Correct Health Safety and Fume Hood System Problems, Tech         | 124,000    |                                                                                |
| Renovate Fire Alarm Systems, MSU and WMC                          | 73,000     |                                                                                |
| Eliminate PCB, EMC                                                | 20,000     |                                                                                |
| Replace/Repair Roofs, Statewide                                   | 990,000    |                                                                                |
| Improve Handicapped Accessibility, EMC and WMC                    | 156,100    |                                                                                |
| Improve Electrical Distribution, Phase I, MSU                     | 1,229,300  | 623,900 Auxiliary                                                              |
| Install Exhaust System, NMC                                       | 50,000     |                                                                                |
| Repair Projects, WMC                                              | 78,100     |                                                                                |
| Major Maintenance, AES                                            | 160,000    |                                                                                |
| Water and Steam Mains, UM                                         | 168,400    | 15,600 Auxiliary                                                               |



| <u>Agency/Program</u>                    | <u>CPF</u> | <u>Other Appropriated Funds</u>         |
|------------------------------------------|------------|-----------------------------------------|
| Energy Management Control System,<br>MSU |            | 1,890,000 Plant, Auxiliary, and/or Loan |

The MSU energy management control system project will be financed under the authority of the board of regents with plant funds, auxiliary funds, or conventional lending, or a combination of such financing sources, on which the debt service will be retired with plant and auxiliary funds. The department of administration may not award a construction contract for this project until the board of regents has approved a financial plan that is based upon an engineering analysis and statement of projected energy savings. The annual conventional lending repayment requirement may not exceed the total estimated net annual savings contained in the MSU plant and auxiliary utility budget base.

Any debt incurred in financing the project does not constitute a liability or obligation or a pledge of the faith and credit of the state but is payable solely from revenues or funds of MSU generated or received for purposes of financing the project. An obligation issued under this part must contain on the face thereof a statement to the effect that the state of Montana is not liable on the obligation and the obligation is not a debt of the state and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the obligation.

**Section 7. Land acquisition appropriation.** The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for purposes of land acquisition:

| <u>Agency/Program</u>                            | <u>CPF</u> | <u>Other Appropriated Funds</u>              |
|--------------------------------------------------|------------|----------------------------------------------|
| Fishing Access Site Acquisitions                 |            | \$409,000 Fishing Licenses<br>50,000 Private |
| Land Transfer, Region 3 Headquarters,<br>Bozeman |            | 108,700 FW&P License Fees                    |

**Section 8. Gartside dam construction.** The following money is appropriated to the department of fish, wildlife, and parks in the amounts indicated for purposes of dam construction:

| <u>Agency/Program</u>     | <u>CPF</u> | <u>Other Appropriated Funds</u>                                                 |
|---------------------------|------------|---------------------------------------------------------------------------------|
| Gartside Dam Construction |            | \$ 93,000 Parks Federal Revenue<br>250,000 Land and Water Conservation<br>Funds |

In accordance with 85-1-101, the department of natural resources and conservation shall manage the construction of the project.

**Section 9. Authority to accept donation.** The department of fish, wildlife, and parks is authorized to accept the donation of labor and materials to reconstruct boating facilities at Finley Point on Flathead Lake.

**Section 10. Helena job service office addition.** Funding for the Helena job service office addition is appropriated from unspent 1980 and 1981 department of labor and industry bond proceeds and from Reed Act

funds and federal operating funds, which must be transferred to the capital projects fund by the department of labor and industry. Funds of \$67,000 must be requisitioned and used pursuant to funds available under Section 903 of the Social Security Act and 39-51-404, for administrative expenses of the unemployment insurance program. These funds must be expended within 2 years after the effective date of this act.

**Section 11. Recovery of uninsured losses.** The department of administration has the authority to pay fees and expenses, not to exceed the amount recovered, associated with litigation to recover damages incurred by the state as a result of the December 30, 1985, explosion at Montana state prison.

| <u>Agency/Program</u> | <u>CPF</u> | <u>Other Appropriated Funds</u>                                           |
|-----------------------|------------|---------------------------------------------------------------------------|
| Prison Loss Recovery  |            | \$200,000 Architecture and Engineering Construction State Special Revenue |

**Section 12. Building demolition or sale and removal.** (1) The department of administration may solicit bids for the demolition or for the sale and removal of the following buildings:

|                              | <u>Building Name</u>                                                                                                                                                                                                          |
|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Montana Developmental Center | Cottage No. 5<br>Old Administration Building<br>Old Laundry Storage<br>Tire/Rubber Storage<br>Garage<br>Hog House<br>Old Granary<br>Turkey House<br>Ranch House<br>Garage<br>Chicken House<br>Old Machine Shed<br>Root Cellar |
| Montana Veterans' Home       | Old Main & Annex<br>Old Dorm<br>Boiler Room<br>Superintendent's Residence                                                                                                                                                     |
| Montana State Hospital       | Bolton<br>Former Children's Unit<br>Apartment Building "A"<br>W.S. Superintendent's Residence<br>Old Butcher Shop<br>Byron Hall<br>Former Lighthouse<br>Maintenance Shop<br>Lumber Storage<br>Old Barn                        |
| Pine Hills School            | Lewis & Clark Lodge                                                                                                                                                                                                           |

(2) The director of the department of institutions shall certify to the department of administration that each of the buildings set forth in subsection (1) is surplus to the needs of the department and the state by reason

of the building's age, deteriorated physical condition, safety considerations, or license deficiencies and has no residual economic or useful life. If the cost of repairing the deficiencies would preclude reasonable restoration and refurbishing efforts, the director of the department of administration may grant an order to proceed with demolition if:

(a) a successful contractor or bidder agrees to demolish or remove the building and reclaim the building site based on the salvage value of the building itself; and

(b) the demolition or removal of the building does not violate the provisions of the state antiquities law, as provided in Title 22, chapter 3, part 4, relative to established heritage properties under state ownership.

(3) The director of the department of administration may permit the director of the department of institutions to use the prison industries program, established in 53-1-301 through 53-1-304, to demolish and remove selected institutional buildings listed in subsection (1). The proceeds from the sale of salvageable material obtained through the demolition process must be deposited in the prison industries proprietary account. Permission may only be granted after the office of budget and program planning and the legislative finance committee determine that the proceeds from the sale of salvageable material will support the cost of demolition and removal.

**Section 13. Sale of state land at Montana state prison.** Pursuant to the provisions of 77-2-302 requiring that the board of land commissioners consult with an appropriate legislative committee prior to the sale of buildings formerly used by a state institution, the board is hereby authorized to sell the following properties if it determines this sale to be in the best interest of the state. Sale proceeds must be deposited in the capital projects fund. The board is authorized to pay costs of necessary surveys, appraisals, and all other costs associated with the sale of land from the proceeds of the sale. The land that may be sold is:

(1) approximately 10 acres of land formerly known as the Bratten Ranch, with approximately 14 structures. This property borders on Main street in the city of Deer Lodge, a Montana power company substation, and department of highways garage.

(2) approximately 10 acres of land formerly known as the Valiton Ranch, located 1 mile south of the Deer Lodge city limits. Included on this property are seven outbuildings and a duplex residence.

(3) approximately one-half acre of land and a single-family residence with detached two-car garage. This property is commonly known as the Brickyard property, south of the city of Deer Lodge.

(4) approximately one-half acre of land and a single-family residence with detached garage, located on the prison ranch about 7 miles north of Deer Lodge on the frontage road; and

(5) approximately 5 acres of land commonly known as the Old Brickyard, located south of Deer Lodge on the Eastside Road.

**Section 14. Planning and design.** The department of administration may proceed with the planning and design of capital projects prior to the

receipt of other appropriated funds. The department may use interaccount loans in accordance with 17-2-107 to pay such planning and design costs incurred prior to the receipt of other appropriated funds.

**Section 15. Capital projects — contingent funds.** If any capital project is financed in whole or in part with appropriations contingent upon the receipt of other appropriated funds, the department of administration may not let such projects for bid until the agency has submitted a financial plan for approval by the director of the department of administration. No such financial plan may be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding levels provided in this act for that project; or

(2) the scope of the project must be substantially altered or revised from the preliminary plans presented for that project in the 1987-89 long-range building program presented to the 50th legislature.

**Section 16. Legislative consent.** The appropriations authorized in this act constitute legislative consent for the capital projects contained in this act within the meaning of 18-2-102.

**Section 17. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 18. Effective date.** This act is effective on passage and approval.

Approved April 16, 1987.

## HOUSE BILL NO. 6

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RESOURCE INDEMNITY TRUST GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; AND ESTABLISHING CONDITIONS FOR GRANTS.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriations for resource indemnity trust grants.**  
(1) There is appropriated to the department of natural resources and conservation from the grant program special revenue account all funds allocated for appropriation from the interest income of the resource indemnity trust fund set forth in Title 15, chapter 38, with the exception of those allocations made in 15-38-202 and 75-1-1101.

(2) There is appropriated to the department of natural resources and conservation the balance of the interest income of the resource indemnity trust fund, including any funds remaining unspent and unencumbered at the end of fiscal year 1987.

(3) The funds appropriated in this section must be awarded by the department of natural resources and conservation to the entities listed in section 2 for the prescribed purposes and in the prescribed grant amounts, subject to the conditions prescribed in sections 5 and 6.

**Section 2. Approved grant projects.** (1) The legislature approves the grants listed in subsection (2), to be made in the order of priority as indicated within the following list of projects and activities. If conditions in sections 5 and 6 are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted or used by higher ranked projects and activities must be provided for projects and activities lower on the priority list that would otherwise not receive funding. Descriptions of the various projects and activities and specific contingencies established for each project and activity are contained within the department of natural resources and conservation's Montana resource indemnity trust grants program status report for the 1988-89 biennium.

(2) The following are the grant program prioritized projects and activities:

| <u>Applicant/Project</u>                                                         | <u>Grant Amount</u> |
|----------------------------------------------------------------------------------|---------------------|
| <b>DEPARTMENT OF STATE LANDS</b>                                                 |                     |
| Upper Blackfoot River Streambank Reclamation                                     | \$107,000           |
| <b>DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES</b>                           |                     |
| Clark Fork Monitoring                                                            | 205,590             |
| <b>DEPARTMENT OF FISH, WILDLIFE, AND PARKS</b>                                   |                     |
| High Ore Creek Reclamation Project                                               | 198,600             |
| <b>DEPARTMENT OF STATE LANDS</b>                                                 |                     |
| Snowshoe Creek Streambank Reclamation                                            | 107,000             |
| <b>BOARD OF OIL AND GAS CONSERVATION</b>                                         |                     |
| Plug Wilkstrand Simero Well Number 1                                             | 19,951              |
| <b>DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES</b>                           |                     |
| Bannack State Park - Apex Mill Hazardous Waste Cleanup                           | 101,200             |
| <b>TOOLE COUNTY</b>                                                              |                     |
| Provide Reclamation for Past Oil and Gas Extraction, Exploration, and Processing | 150,000             |
| <b>DEPARTMENT OF STATE LANDS</b>                                                 |                     |
| Nellie Grant Mine Reclamation                                                    | 84,900              |
| <b>DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES</b>                           |                     |
| Solid and Hazardous Waste Bureau                                                 |                     |
| Abandoned Oil Refineries                                                         | 300,000             |

| <u>Applicant/Project</u>                                                                                                                                                                                  | <u>Grant Amount</u> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| DEPARTMENT OF FISH, WILDLIFE, AND PARKS<br>Cataract Creek Reclamation Project                                                                                                                             | 21,565              |
| SHERIDAN COUNTY CONSERVATION DISTRICT<br>Reserve Pit and Oil Field Brine Disposal Assessment                                                                                                              | 100,000             |
| BOARD OF OIL AND GAS CONSERVATION<br>Plug Sunburst Disotell Well Number 1                                                                                                                                 | 55,000              |
| BOARD OF OIL AND GAS CONSERVATION<br>Plug Well Leaking Gas—Gas City Field                                                                                                                                 | 46,330              |
| MONTANA STATE LIBRARY<br>Natural Resources Information System - Natural Heritage Program                                                                                                                  | 177,970             |
| MONTANA SALINITY CONTROL ASSOCIATION<br>Montana Salinity Control Program                                                                                                                                  | 300,000             |
| BUTTE-SILVER BOW GOVERNMENT<br>The Anselmo Mine Yard Reclamation Project                                                                                                                                  | 150,000             |
| LOWER MUSSELSHELL CONSERVATION DISTRICT<br>Ground Water From Abandoned Mine Workings for Irrigation and Instream Flows, Lower Musselshell River                                                           | 272,320             |
| BOARD OF OIL AND GAS CONSERVATION<br>Programmatic Environmental Impact Statement                                                                                                                          | 143,800             |
| DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION<br>Water Management Bureau<br>Sodium and Salinity Sources in the Powder River Basin:<br>A Chemical-Budget, Modeling Approach                             | 89,257              |
| DEPARTMENT OF STATE LANDS<br>Drill Hole Reclamation in Montana Hole Plugging Trials<br>Using Bentonite                                                                                                    | 100,000             |
| DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION<br>Conservation Districts Division<br>Montana's Accelerated Soil Survey Program                                                                          | 300,000             |
| GOVERNOR'S OFFICE<br>Headwaters Research, Conservation, and Development, Deer<br>Lodge County Conservation District<br>Clark Fork Reclamation Demonstration for Flood Plain<br>Systems Impacted by Mining | 130,000             |
| BUREAU OF MINES AND GEOLOGY<br>Ground Water Information Center Deep Aquifer Data<br>Bases                                                                                                                 | 155,950             |
| UNIVERSITY OF MONTANA                                                                                                                                                                                     |                     |

| <u>Applicant/Project</u>                                                                                              | <u>Grant Amount</u> |
|-----------------------------------------------------------------------------------------------------------------------|---------------------|
| Botany Department<br>Improving the Biotic Resources of the Upper Clark Fork River                                     | 26,638              |
| BUTTE-SILVER BOW GOVERNMENT<br>Urban Enhancement/Mitigation of Past Mining and Smelting Damage Through Urban Forestry | 100,000             |
| MONTANA BUREAU OF MINES AND GEOLOGY<br>Low Grade Bentonite for Shot Hole Plugging                                     | 45,890              |

**Section 3. Administrative expenses for resource indemnity trust grants program.** If enabling legislation for a resource indemnity trust grants program is passed by the 1987 legislature or if further projects are funded under this bill, there is appropriated \$140,000 from the interest income of the resource indemnity trust fund to the department of natural resources and conservation for administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, office space, and other expenses necessarily incurred in the administration of the grants program. If no enabling legislation is passed or if no further projects are approved by the 1987 legislature, there is appropriated \$70,000 from the interest income of the resource indemnity trust fund to the department of natural resources and conservation for the described administrative expenses. These funds will be used for administration of the 21 current grants that will be active under this program during fiscal years 1988 and 1989. Any other funds appropriated by the legislature for the administration of the resource indemnity trust grants program must reduce this appropriation in order not to exceed the amounts noted here.

**Section 4. Reauthorization of grant.** (1) A grant to the department of health and environmental sciences from the interest income of the resource indemnity trust fund in the amount of \$212,000 is authorized for research and public education activities to be conducted by the department to help affected businesses minimize or eliminate the amounts of hazardous waste which they generate. Such activities may include but are not limited to:

- (a) waste stream minimization studies;
- (b) coordination of a waste exchange;
- (c) dissemination of information through newsletters, training manuals, workshops pertaining to regulatory requirements, alternative technologies, and waste minimization efforts.

(2) If it is determined by the department that the need exists for the state to consider construction of a hazardous waste management collection and transfer facility, the department is authorized from amounts remaining from the sum of \$212,000 to prepare all necessary bid documents for a hazardous waste management collection program for presentation to and approval of the 1989 legislature.

**Section 5. Reauthorization of grant.** A grant to the governor's office for the Cabin Creek reference to the international joint commission is

reauthorized in the amount of \$40,000, to be used by the board of oil and gas conservation for a programmatic environmental impact statement.

**Section 6. Coordination of fund sources for grants program projects.** A sponsor of a grants program project who has applied for a grant for that project under both the resource indemnity trust grants program and the water development program or the renewable resource development program may not receive duplicative funding.

**Section 7. Conditions of grants.** Disbursement of grant funds under this act is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Reduction in a scope of work or budget may not affect priority activities or improvements.

(2) Other funds required for project completion must have been committed, and the commitment must be documented.

(3) A project sponsor shall show satisfactory completion of conditions described in the recommendations section of the project narrative of the resource indemnity trust grants program report for the 1988-89 biennium.

(4) An agreement between the department of natural resources and conservation and the grant applicant must be executed in a timely manner, taking into consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(5) Any other specific requirements must be accomplished as considered necessary by the department of natural resources and conservation to accomplish the purpose of the grant as evidenced from the application to the department of natural resources and conservation or as defined by the legislature.

**Section 8. Appropriations established.** For any entity of state government which receives a grant under this act, an appropriation is established for the amount of the grant upon award of the grant by the department.

**Section 9. Reversion of funds.** All funds allocated to the grant program special revenue account under this act that are unspent and unencumbered on June 30, 1989, revert to the grant program special revenue account created in 75-1-1102.

**Section 10. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 16, 1987.



**HOUSE BILL NO. 7**

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS AND GRANTS UNDER THE WATER DEVELOPMENT PROGRAM AND THE RENEWABLE RESOURCE PROGRAM; TO AUTHORIZE LOANS FROM WATER DEVELOPMENT BOND PROCEEDS AND APPROPRIATE FUNDS FOR DEBT SERVICE; TO REAUTHORIZE GRANTS AND LOANS APPROVED BY THE 1985 LEGISLATURE; TO APPROVE THE ISSUANCE OF STATE OF MONTANA COAL SEVERANCE TAX BONDS TO PROVIDE FUNDS FOR LOANS TO POLITICAL SUBDIVISIONS AND LOCAL GOVERNMENTS FOR CERTAIN APPROVED WATER DEVELOPMENT PROJECTS; TO REAUTHORIZE STATE OF MONTANA COAL SEVERANCE TAX BONDS FOR CERTAIN PROJECTS APPROVED BY THE 1985 LEGISLATURE; TO APPROPRIATE COAL SEVERANCE TAX INCOME FOR DEBT SERVICE; TO AUTHORIZE THE CREATION OF A STATE DEBT; TO REALLOCATE CERTAIN RESOURCE INDEMNITY TRUST ACCOUNT INTEREST INCOME FOR WATER DEVELOPMENT PROGRAM GRANTS DURING THE BIENNIUM ENDING JUNE 30, 1989; TO PLACE CERTAIN CONDITIONS UPON GRANTS AND LOANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriations from the water development state special revenue account.** (1) Because the legislature cannot appropriate individual grants to private entities, there is appropriated to the department of natural resources and conservation up to \$159,000 from the water development state special revenue account during the 1988-89 biennium for grants to private persons for water development projects and activities pursuant to the provisions of Title 85, chapter 1, part 6. This appropriation is from money available in the water development state special revenue account for grants for water development projects and activities under 85-1-604(3)(c) and according to priorities established in subsections (3) and (4).

(2) There are appropriated to the department the interest earnings from the proceeds of water development bonds and renewable resource development bonds issued to finance loans authorized by this act. Interest earnings must be deposited in the water development debt service fund and the renewable resource development debt service fund, respectively.

(3) There are appropriated to the department all other funds not appropriated under subsection (1) and available for grants to political subdivisions and local government entities from the water development state special revenue account during the 1988-89 biennium. This appropriation is from money available in the water development state special revenue account and renewable resource development account for grants and from the water development or renewable resource accounts for loans for water development projects and activities under 85-1-604(3)(c) and this act. The funds appropriated in this section must be awarded by the department to

the named entities for the described purposes and in the described grant amounts set out in subsection (4), subject to the conditions set forth in this act and the contingencies described in the renewable resource or water development programs January 1987 report. The legislature, pursuant to 85-1-605, approves the grants listed in subsection (4), with grants to be made in the order indicated in the prioritized list of projects and activities. Funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted or used by higher ranked projects and activities must be provided for projects and activities further down the priority list that would not otherwise receive funding. If the total expenditure of funds appropriated under this section results in a cutoff that ends at a point at which more than one project or activity is ranked equal in priority, the decision regarding which project or projects will receive funding must be made by the department with the advice of the water development advisory committee formed pursuant to 2-15-122. Any projects that are funded by the resource indemnity trust grants program must not be funded under this act. Actual rank and score of the various projects and activities are contained within the renewable resource and water development program project evaluations and recommendations report for the 1988-89 biennium.

(4) The following are the grant and loan prioritized projects and activities:

#### WATER DEVELOPMENT PROGRAM

G: Grant      L: Loan

| <u>Applicant/Project</u>                    | <u>Recommended Funding</u> |           |
|---------------------------------------------|----------------------------|-----------|
| MONTANA STATE LIBRARY                       |                            |           |
| Montana Water Resources Data Management     | G                          | \$ 97,712 |
| PRIVATE COMPANY                             |                            |           |
| Lima Dam Rehabilitation                     | G                          | 64,000    |
| MONTANA BUREAU OF MINES                     |                            |           |
| Mobility of Agricultural Chemicals          | G                          | 98,500    |
| HILL COUNTY                                 |                            |           |
| Lower Beaver Creek Dam Rehabilitation Study | G                          | 35,000    |
| TREASURE COUNTY CONSERVATION DISTRICT       |                            |           |
| Conservation Practice Loan Program          | G                          | 100,000   |
| PRIVATE COMPANY                             |                            |           |
| Edgar Canal Erosion Control                 | G                          | 10,000    |
| MONTANA STATE UNIVERSITY                    |                            |           |
| Plastic Irrigation Canal Lining             | G                          | 37,500    |
| FLATHEAD CONSERVATION DISTRICT              |                            |           |
| Rehabilitation of East Spring Creek         | G                          | 75,000    |

| <u>Applicant/Project</u>                                     | <u>Recommended Funding</u> |         |
|--------------------------------------------------------------|----------------------------|---------|
| <b>MINERAL COUNTY</b>                                        |                            |         |
| St. Regis Park Irrigation                                    | G                          | 35,000  |
| <b>CARBON COUNTY</b>                                         |                            |         |
| Roberts Water System Improvements                            | G                          | 47,500  |
|                                                              | L                          | 142,500 |
| <b>GREENFIELDS IRRIGATION DISTRICT</b>                       |                            |         |
| Willow Creek Measuring Device                                | G                          | 2,074   |
| <b>PRIVATE CORPORATION</b>                                   |                            |         |
| Nilan Canal Lining                                           | G                          | 25,000  |
| <b>EASTERN SANDERS CONSERVATION DISTRICT</b>                 |                            |         |
| Little Bitterroot Recharge Enhancement                       | G                          | 86,300  |
| <b>PRIVATE NONPROFIT CORPORATION</b>                         |                            |         |
| Technical Assistance Advisor                                 | G                          | 60,000  |
| <b>TOWN OF CASCADE</b>                                       |                            |         |
| Water Distribution and Supply Improvements                   | G                          | 50,000  |
|                                                              | L                          | 150,000 |
| <b>CITY OF SHELBY</b>                                        |                            |         |
| Shelby Water Rehabilitation                                  | G                          | 25,000  |
|                                                              | L                          | 75,000  |
| <b>SUN PRAIRIE VILLAGE WATER AND SEWER ASSO-<br/>CIATION</b> |                            |         |
| Wastewater Lagoon Dike Repair                                | L                          | 162,000 |
| <b>LAKESIDE WATER DISTRICT</b>                               |                            |         |
| Lakeside Water Well and Main Extension                       | L                          | 133,300 |
| <b>WIBAUX</b>                                                |                            |         |
| Water Storage and Distribution Improvements                  | L                          | 95,000  |
| <b>SAGE CREEK COUNTY WATER DISTRICT</b>                      |                            |         |
| Sage Creek Water District Expansion                          | L                          | 158,600 |
| <b>YELLOWSTONE COUNTY</b>                                    |                            |         |
| Hillcrest Water System                                       | L                          | 99,934  |
| <b>MONTANA STATE UNIVERSITY</b>                              |                            |         |
| Red Bluff Ranch Irrigation                                   | L                          | 129,387 |

**Section 2. Appropriations under the renewable resource development program.** (1) There are appropriated to the department of natural resources and conservation all available funds from the renewable resource development account during the 1988-89 biennium for projects under the renewable resource development program.

(2) The department shall award grants to the named entities for the described purposes and in the described amounts set out in subsection (3). The legislature, pursuant to 90-2-111, approves the listed grants, with

grants to be made in order of priority ranking within each renewable resource development category, except renewable resource development grants for water development projects and activities that must be made in the order of priority listed in section 1. The funds appropriated under this section must be divided among the categories and in the percentages as required by 90-2-113. Funds not accepted or used by higher ranked projects in each category must be provided for projects further down the priority list in each category that would not otherwise receive funding. If the total expenditure of funds appropriated under this section results in a cutoff that ends at a point at which more than one project is ranked equal in priority, the decision regarding which project or projects will receive funding must be made by the department of natural resources and conservation with the advice of the water development advisory committee formed pursuant to 2-15-122. If a project in the category of "other" is funded by the resource indemnity trust grants program, it must not be funded under this act. Actual rank and score of the various projects are contained within the department of natural resources and conservation's renewable resource and water development programs project evaluations and recommendations report for the 1988-89 biennium.

(3) The following are the grant and loan prioritized projects and activities listed by category:

#### RENEWABLE RESOURCE DEVELOPMENT PROGRAM

G: Grant      L: Loan

| <u>Applicant/Project</u> | <u>Recommended Funding</u> |
|--------------------------|----------------------------|
|--------------------------|----------------------------|

#### I. Agricultural Land Improvement Category

##### HILL COUNTY CONSERVATION DISTRICT

|                      |   |          |
|----------------------|---|----------|
| Grass Drill Purchase | G | \$ 8,000 |
|----------------------|---|----------|

##### DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

##### Conservation Districts Division

|                                      |   |       |
|--------------------------------------|---|-------|
| Electronic Survey Equipment Purchase | G | 9,300 |
|--------------------------------------|---|-------|

#### II. Timber Improvement Category

##### ANACONDA-DEER LODGE COUNTY

|                                        |   |        |
|----------------------------------------|---|--------|
| Soil Stabilization and Erosion Control | G | 63,650 |
|----------------------------------------|---|--------|

##### MADISON CONSERVATION DISTRICT

|                                       |   |        |
|---------------------------------------|---|--------|
| Mobile Saw for Forest Land Management | G | 23,850 |
|---------------------------------------|---|--------|

#### III. Water Reservation Development Category

##### DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

##### Conservation Districts Division

|                                        |   |        |
|----------------------------------------|---|--------|
| Water Reservations Development Program | G | 50,000 |
|----------------------------------------|---|--------|

**Section 3. Opportunity to receive loans for projects that do not receive grants.** Sponsors of recommended projects and activities on the prioritized lists in sections 1 and 2 that are not recipients of available grant funds must be offered the opportunity to receive loan funds for up to the total recommended project amount, subject to the conditions described in this act. The interest rate applicable to these loans must be the rate paid on bonds issued pursuant to this act.

**Section 4. Approval of loans from bond proceeds and completion of appropriation.** (1) The legislature, pursuant to 85-1-605, 85-1-606, and 90-2-107, hereby approves loans to private sponsors approved by the department of natural resources and conservation during the 1988-89 biennium and the loans for projects and activities identified and described in section 1 to public entities from water development bond proceeds, interest earnings on such proceeds deposited in the water development debt service fund, and loans from renewable resource development bond proceeds deposited in the renewable resource development account. Bond proceeds may be used for the payment of bond issuance costs. Funds are appropriated for these costs to a maximum of 4% of the amount of each bond sale.

(2) The approval of specific loans completes an appropriation of the coal severance tax proceeds allocated by 15-35-108 to the water development bond account for the purpose of paying, in the manner established by 85-1-619, principal of and interest and redemption premiums on any water development bonds issued to provide the proceeds for the loans to private and public entities for projects and activities approved in section 1, and it also completes an appropriation to the renewable resource debt service fund for the purpose of paying, in the manner established by 90-2-123, principal of and interest and redemption premiums on any renewable resource development bonds issued to provide the proceeds for the loans to political subdivisions and local government entities for projects and activities approved in sections 1 and 2.

**Section 5. Reauthorization of loans approved by 1985 legislature.** The 1985 legislature, in Chapter 717, Laws of 1985, approved loans from the water development and renewable resource development bond accounts for the Box Elder rural improvement district in the amount of \$142,000, Cascade County RID No. 26 in the amount of \$167,000, Custer County in the amount of \$92,380, Cut Bank North Glacier water and sewer district in the amount of \$125,000, Glen Lake irrigation district in the amount of \$123,000, City of Polson in the amount of \$158,000, and Sheridan County—Reserve sewer district in the amount of \$117,000. Loans for the entities described in this section are hereby reauthorized.

**Section 6. Coal severance tax bonds authorized.** (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved water resource development projects and activities as part of the state water development program. Available funds from previous sales of coal severance tax bonds may also be used for the projects approved in this act. The legislature finds that the water development projects in this act meet the provisions of 17-5-702. The board of examiners may issue coal severance tax bonds in an amount not to exceed \$57,243,531 for the purpose of making loans and financing

state projects, establishing a reserve for the bonds, and paying the costs of issuance. Funds are appropriated for these costs of issuance to a maximum of 4% of the amount of each bond sale.

(2) The board of examiners may issue coal severance tax bonds for loans to political subdivisions and local government entities not to exceed the loan amount listed for the project.

**GROUP A** Notwithstanding the conditions set forth in section 15, the interest rate for the project in this group must be 3% over a 30-year term.

Loan Amount

**MILL CREEK WATER AND SEWER DISTRICT**

|                                            |           |
|--------------------------------------------|-----------|
| Water Distribution and Supply Improvements | \$999,223 |
|--------------------------------------------|-----------|

**GROUP B** Notwithstanding the conditions set forth in section 15, the interest rate for projects in this group may be 2 percentage points below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

Loan Amount

**HARLEM**

|                           |           |
|---------------------------|-----------|
| Water System Improvements | \$403,125 |
|---------------------------|-----------|

**LIMA**

|                           |         |
|---------------------------|---------|
| Water System Improvements | 250,000 |
|---------------------------|---------|

**GROUP C** Notwithstanding the conditions set forth in section 15, the interest rate for the project in this group may be 1 percentage point below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

Loan Amount

**HELENA**

|                             |              |
|-----------------------------|--------------|
| Ten-Mile Water Improvements | \$10,202,600 |
|-----------------------------|--------------|

**GROUP D** Notwithstanding the conditions set forth in section 15, the interest rate for the project in this group may be 0.5 percentage point below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

Loan Amount

**BROWNING**

|                                             |             |
|---------------------------------------------|-------------|
| Water Treatment and Transmission Facilities | \$1,294,900 |
|---------------------------------------------|-------------|

**GROUP E** Notwithstanding the conditions set forth in section 15, the interest rate for projects in this group must be the rate at which the state bond is sold for 20 years.

Loan Amount

**DEPARTMENT OF FISH, WILDLIFE, AND PARKS**

Gartside Dam

\$ 257,000

## WEST YELLOWSTONE

Water System Improvements

1,500,000

(3) (a) The legislature finds that the following state water project for rehabilitation and repair for which coal severance tax bonds were authorized by the 1985 legislature in Chapter 717, Laws of 1985, has not been completed. Further, inflation or additional feasibility studies have precipitated revised cost estimates for this project. The board of examiners is authorized to issue coal severance tax bonds for this project to a maximum amount listed in this section. The state bond rate must be paid on this loan.

Loan Amount

## MIDDLE CREEK DAM REHABILITATION

\$5,100,000

(b) Bonds may be issued by the board of examiners after the water users for this project have entered into contractual agreements providing for the repayment of the cost of repair and rehabilitation at a rate of interest equal to that which must be paid on bonds issued pursuant to this section. The repayment money from this project is pledged, dedicated, and appropriated to the special debt service bond account established in the state treasury for the benefit of the bonds approved for such projects.

(c) There is reappropriated \$27,354 of available bond proceeds for the Martinsdale dam and reservoir project.

(4) The legislature finds that the following state hydroelectric project for which coal severance tax bonds were authorized by the 1985 legislature in Chapter 717, Laws of 1985, has not been completed; further, inflation and additional feasibility studies have precipitated revised cost estimates for this project:

(a) The board of examiners is authorized to issue coal severance tax bonds for this project up to the amount listed in this section.

Loan Amount

## BROADWATER DAM

\$26,000,000

(b) Bonds approved in this section may not be issued by the board of examiners until the board of natural resources and conservation has determined that a project is feasible and has otherwise complied with the requirements of Title 85, chapter 1, part 5, for the development of hydropower at water projects under the control of the department. The board of natural resources and conservation and the board of examiners must find that on the average, over the life of the project, revenues will be generated to repay a loan at the rate at which the state bond is sold. However, in some years the appropriation of funds from the coal severance tax bond account may be required.

(c) The board of examiners may allocate a portion of the bond proceeds for a specific project for the operation and maintenance of the hydropower facility.

(d) The maximum amount of bond proceeds for each project approved in this section must also include all relocation, reconstruction, rehabilitation, or other costs for which the department is legally liable that affect existing irrigation systems, private lands, utility lines, mines, roads, highways, and railroads that are subsequently affected by the development of a respective hydroelectric project.

(e) The hydropower revenues from each project are pledged, dedicated, and appropriated to a debt service account established in the state treasury for the benefit of bonds approved to finance the project. Revenues in excess of the amount required to meet the debt service requirements may be allocated to the water development special revenue account to operate, maintain, and rehabilitate state-owned projects.

**Section 7. Appropriation — creation of debt for coal severance tax bonds.** (1) The legislature, through the enactment of this section by a vote of three-fourths of the members of each house of the legislature as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond subfund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by this act to be issued pursuant to Title 17, chapter 5, part 7, and pursuant to the provisions of this act and the general resolution for this bond program which has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

(2) The legislature, through the enactment of this section, in accordance with Article VIII, section 8, of the Montana constitution, authorizes the creation of a state debt in an amount not to exceed \$26,000,000 for the development of the state hydroelectric projects approved in this act, in an amount not to exceed \$5,100,000 for the rehabilitation of state water projects approved in this act, and in an amount not to exceed \$26,143,531 for loans to political subdivisions and local government entities for water development projects approved in this act, all for the issuance of up to \$57,243,531 in coal severance tax bonds authorized by this act.

(3) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(4) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the water development state special revenue account and may be used for the purposes allowed under 85-1-604(3)(b).

(5) Notwithstanding provisions in section 6(4)(e), loan repayments from loans financed with coal severance tax bonds, loan principal, interest, and bond issuance fees borrowed from bond proceeds are pledged, dedicated,



and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

**Section 8. Projects not completing requirements — loans reauthorized.** The legislature finds that the following water development projects for which coal severance tax bonds were authorized to be issued by the 1985 legislature in Chapter 717, Laws of 1985, may not complete the requirements necessary for the loan transaction prior to June 30, 1987. Coal severance tax bonds for the projects described in this section are reauthorized in the amounts listed at the interest rates authorized by the 1985 legislature in Chapter 717, Laws of 1985, and described in this section to enable financing during the 1988-89 biennium, if necessary.

**GROUP A** Notwithstanding the conditions set forth in section 15, the interest rate for the project in this group may be 4 percentage points below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

Loan Amount

**DUTTON**

|                           |           |
|---------------------------|-----------|
| Water Supply Construction | \$150,000 |
|---------------------------|-----------|

**GROUP B** Notwithstanding the conditions set forth in section 15, the interest rate for projects in this group may be 3 percentage points below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

Loan Amount

**BOZEMAN**

|                                |            |
|--------------------------------|------------|
| Lyman Creek Water Improvements | \$ 726,079 |
|--------------------------------|------------|

**EAST HELENA**

|                          |         |
|--------------------------|---------|
| Water System Improvement | 434,434 |
|--------------------------|---------|

**EVERGREEN WATER AND SEWER DISTRICT**

|                       |           |
|-----------------------|-----------|
| Wastewater Facilities | 3,226,900 |
|-----------------------|-----------|

**GROUP C** Notwithstanding the conditions set forth in section 15, the interest rate for projects in this group may be 2 percentage points below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

Loan Amount

**DENTON**

|                     |            |
|---------------------|------------|
| Water Supply System | \$ 185,000 |
|---------------------|------------|

**EAST GLACIER**

|              |         |
|--------------|---------|
| Water System | 484,270 |
|--------------|---------|

**GLASGOW**

|              |           |
|--------------|-----------|
| Water System | 3,200,000 |
|--------------|-----------|

**PONDERA CONSERVATION DISTRICT**

Irrigation System Rehabilitation

750,000

**GROUP D** Notwithstanding the conditions set forth in section 15, the interest rate for projects in this group must be the rate at which the state bond is sold.

Loan Amount**HILL COUNTY WATER DISTRICT**

Rural Water Supply

\$ 1,410,000

**GROUP E****CITY OF BELGRADE**

Water Well Improvements

115,000

Interest rate 7% for 5 years, 10.26% for  
the remaining 15 years of the bond term

**PONDERA CONSERVATION DISTRICT**

555,000

6% for the term of 20 years

**Section 9. Extension of initial interest rate for Sage Creek water district.** The interest rate for the Sage Creek water district, which was approved at 7% for the first 5 years following bond issuance and at the full bond rate thereafter in Chapter 705, Laws of 1983, is approved at 7% for the first 10 years following bond issuance and at the full bond rate thereafter.

**Section 10. Reallocation of resource indemnity trust account interest income.** Except for special departmental appropriation and notwithstanding any provisions of 85-1-604 to the contrary, all remaining interest income allocated to the water development state special revenue account from the resource indemnity trust fund by 15-38-202(2) during the 1988-89 biennium may be used only for the purposes set out in 85-1-604(3)(c).

**Section 11. Emergency grants.** There is appropriated to the department of natural resources and conservation up to \$125,000 from the water development state special revenue account to be used for emergency projects. If these funds are not needed for emergencies, they may be used for grants approved in section 1 of this act.

**Section 12. Conditions of loans and grants.** Disbursement of funds under this act for both loans and grants is subject to the following conditions that must be met by project sponsors:

(1) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(2) documented commitment of other funds required for project completion;

(3) satisfactory completion of conditions described in the recommendation section of the project narrative in the renewable resource and water

development program project evaluations and recommendations report for the 1988-89 biennium or, in the case of emergency applications, conditions specified at the time of written notification of approved loan authority;

(4) execution of a loan or grant agreement with the department of natural resources and conservation; and

(5) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the loan or grant as evidenced from the application to the department or from the proposal to the legislature.

**Section 13. Conditions for grants.** Notwithstanding the conditions described in section 1, grant funds are disbursed in the order of priority listed in section 1 as coal tax revenues are received. No project approved by this act is entitled to receive grant funds not collected and allocated to the water development state special revenue account or the renewable resource development account.

**Section 14. Conditions for loans.** Each sponsor authorized for a loan from water development bond proceeds, renewable resource development bond proceeds, or coal severance tax bond proceeds may be required to pay to the department of natural resources and conservation a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

**Section 15. Interest rates on loans.** Loans made from proceeds of coal severance tax bonds must be at interest rates specified in section 6, except that when loan requests are reduced, interest rates must be recalculated based on the methodology described in the renewable resource and water development program project evaluations and recommendations report for the 1988-89 biennium. If the bonds or notes bear interest at an adjustable rate, the department of natural resources and conservation shall establish, at the time of the sale of the bond, an assured rate of interest thereon as if the bonds bore interest at a fixed rate. The assured rate of interest so established must be the rate of interest on the bonds for the purpose of calculating the interest rates on the loans pursuant to section 6.

**Section 16. Private and discount purchase of loans.** Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence thereof may be made and purchased by and sold to the department of natural resources and conservation at a discount and at private negotiated sale, notwithstanding the provisions of any other law applicable to such political subdivisions or local government entities.

**Section 17. Appropriations established.** For any entity of state government that receives a grant or loan under this act, an appropriation is established for the amount of the grant or loan upon award of the grant or loan by the department.

**Section 18. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this

act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 19. Effective date.** This act is effective on passage and approval.

Approved April 16, 1987.

## HOUSE BILL NO. 275

AN ACT APPROPRIATING MONEY TO REPLACE THE POTENTIAL EARNINGS LOST TO INVESTMENT FUNDS USED TO PURCHASE DISCOUNTED CERTIFICATES OF DEPOSIT UNDER THE AGRICULTURAL PRODUCTION LOAN LINKED DEPOSIT PROGRAM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriation.** There is appropriated from the general fund to the board of investments for the period ending June 30, 1989, an amount equal to 1% per annum of the value of each linked deposit made by the board under Title 80, chapter 14, not to exceed \$500,000 for the period ending June 30, 1989. Such amount must be credited by the board to the earnings of each investment fund used as a source of money for the purchase of linked deposits in a manner to be determined by the board.

**Section 2. Effective date.** This act is effective on passage and approval.

Approved April 23, 1987.

## HOUSE BILL NO. 434

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1987; TRANSFERRING \$35 MILLION FROM THE LOCAL IMPACT AND EDUCATION TRUST FUND ACCOUNT TO THE GENERAL FUND; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Time limits.** The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. The unspent balance of any appropriation must revert to the fund from which it was appropriated unless the appropriation is continued by this act.

**Section 2. Governor's power to reduce appropriations.** In the event of a shortfall in revenue, the governor may reduce any appropriation in this act by not more than 15%.

Section 3. **Totals not appropriations.** The totals shown in this act are for informational purposes only and are not appropriations.

Section 4. **Appropriations.** The following money is appropriated, subject to the terms and conditions of this act:

| <u>Agency and Program</u>                                                  | <u>FY</u> | <u>Amount</u> | <u>Fund</u>     |
|----------------------------------------------------------------------------|-----------|---------------|-----------------|
| <b>A. GENERAL GOVERNMENT</b>                                               |           |               |                 |
| <b>BOARD OF CRIME CONTROL</b>                                              |           |               |                 |
| Crime Reporting Enhance-<br>ment                                           | 1987      | \$ 57,698     | Federal Special |
| The unexpended balances are reappropriated for fiscal years 1988 and 1989. |           |               |                 |
| <b>DEPARTMENT OF MILITARY AFFAIRS</b>                                      |           |               |                 |
| Disaster and Emergency Ser-<br>vices                                       | 1987      | 42,404        | General Fund    |
| <b>SECRETARY OF STATE</b>                                                  |           |               |                 |
| Food Security Act                                                          | 1987      | 156,466       | State Special   |
| <b>STATE AUDITOR</b>                                                       |           |               |                 |
| Central Payroll                                                            | 1987      | 20,162        | State Special   |
| Central Payroll                                                            | 1987      | 35,000        | State Special   |
| Fiscal Management                                                          | 1987      | 11,400        | General Fund    |
| Insurance                                                                  | 1987      | 6,000         | State Special   |
| <b>DEPARTMENT OF JUSTICE</b>                                               |           |               |                 |
| County Attorney Payroll                                                    | 1987      | 57,200        | General Fund    |
| Forensic Science                                                           | 1987      | 56,520        | State Special   |
| Law Enforcement Academy                                                    | 1987      | 10,500        | State Special   |
| <b>DEPARTMENT OF REVENUE</b>                                               |           |               |                 |
| Beneficial Use Litigation                                                  | 1987      | 3,864         | General Fund    |

| <u>Agency and Program</u>           | <u>FY</u> | <u>Amount</u> | <u>Fund</u>  |
|-------------------------------------|-----------|---------------|--------------|
| <b>DEPARTMENT OF ADMINISTRATION</b> |           |               |              |
| Reappraisals                        | 1987      | 491,362       | General Fund |
| Manual Disparity                    | 1987      | 33,750        | General Fund |

|                               |      |        |               |
|-------------------------------|------|--------|---------------|
| <b>DEPARTMENT OF HIGHWAYS</b> |      |        |               |
| Maintenance                   | 1987 | 65,000 | State Special |

This appropriation is contingent upon legislation passing that would increase the speed limit on the interstate system to 65 miles per hour.

|                                      |      |       |              |
|--------------------------------------|------|-------|--------------|
| <b>ENVIRONMENTAL QUALITY COUNCIL</b> |      |       |              |
| Equipment and Related Items          | 1987 | 7,500 | General Fund |

## B. EDUCATION

|                                     |      |           |                 |
|-------------------------------------|------|-----------|-----------------|
| <b>OFFICE OF PUBLIC INSTRUCTION</b> |      |           |                 |
| Title IX Suit                       | 1987 | 100,609   | General Fund    |
| Foundation Suit                     | 1987 | 234,313   | General Fund    |
| Transportation                      | 1987 | 281,586   | General Fund    |
| School Foundation Program           | 1987 | 1,000,000 | General Fund    |
| Federal Discretionary               | 1987 | 807,474   | Federal Special |

|                                  |      |        |              |
|----------------------------------|------|--------|--------------|
| <b>BOARD OF PUBLIC EDUCATION</b> |      |        |              |
|                                  | 1987 | 17,525 | General Fund |

|                                  |      |         |              |
|----------------------------------|------|---------|--------------|
| <b>MONTANA UNIVERSITY SYSTEM</b> |      |         |              |
| Board of Regents                 | 1987 | 4,500   | General Fund |
| MSU - Fee Waiver                 | 1987 | 207,657 | General Fund |

|                             |      |        |                 |
|-----------------------------|------|--------|-----------------|
| <b>MONTANA ARTS COUNCIL</b> |      |        |                 |
|                             | 1987 | 10,800 | Federal Special |

| <u>Agency and Program</u>                                                                                                                           | <u>FY</u> | <u>Amount</u> | <u>Fund</u>   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|-----------|---------------|---------------|
| <b>C. NATURAL RESOURCES</b>                                                                                                                         |           |               |               |
| <b>DEPARTMENT OF STATE LANDS</b>                                                                                                                    |           |               |               |
| Central Administration                                                                                                                              | 1987      | 11,800        | General Fund  |
| Forestry                                                                                                                                            | 1987      | 557,462       | General Fund  |
| <b>DEPARTMENT OF AGRICULTURE</b>                                                                                                                    |           |               |               |
| Environmental Management Division                                                                                                                   | 1987      | 1,208         | Other Special |
| Weed Management Division                                                                                                                            | 1987      | 3,584         | Other Special |
| <b>DEPARTMENT OF COMMERCE</b>                                                                                                                       |           |               |               |
| Lewis and Clark County                                                                                                                              | 1987      | 1,814,822     | General Fund  |
| <p>This appropriation is to satisfy the court award in Lewis and Clark County vs. State of Montana, Montana Supreme Court docket number 86-289.</p> |           |               |               |
| <b>D. INSTITUTIONS</b>                                                                                                                              |           |               |               |
| <b>DEPARTMENT OF INSTITUTIONS</b>                                                                                                                   |           |               |               |
| Corrections Medical                                                                                                                                 | 1987      | 680,000       | General Fund  |
| Workers' Compensation                                                                                                                               | 1987      | 2,110,265     | General Fund  |
| <b>MOUNTAIN VIEW SCHOOL</b>                                                                                                                         |           |               |               |
| Care and Custody                                                                                                                                    | 1987      | 4,000         | State Special |
| <b>PINE HILLS SCHOOL</b>                                                                                                                            |           |               |               |
| Care and Custody                                                                                                                                    | 1987      | 15,000        | State Special |
| <b>MONTANA STATE PRISON</b>                                                                                                                         |           |               |               |
| Prison Lawsuit                                                                                                                                      | 1987      | 351,291       | General Fund  |
| MSP Canteen                                                                                                                                         | 1987      | 244,998       | State Special |
| <b>SWAN RIVER FOREST CAMP</b>                                                                                                                       |           |               |               |
| Canteen Fund                                                                                                                                        | 1987      | 15,000        | State Special |

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## MONTANA SESSION LAWS 1987

HB 434

| <u>Agency and Program</u>     | <u>FY</u> | <u>Amount</u> | <u>Fund</u>   |
|-------------------------------|-----------|---------------|---------------|
| <b>MONTANA STATE HOSPITAL</b> |           |               |               |
| Canteen Fund                  | 1987      | 12,162        | State Special |
| <b>YOUTH TREATMENT CENTER</b> |           |               |               |
| Treatment Services            | 1987      | 140,000       | General Fund  |

**E. HUMAN SERVICES**

|                                                        |      |         |                 |
|--------------------------------------------------------|------|---------|-----------------|
| <b>DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES</b> |      |         |                 |
| Certificate of Need                                    | 1987 | 35,713  | General Fund    |
| Water Quality Bureau                                   | 1987 | 103,718 | Federal Special |

**DEPARTMENT OF LABOR AND INDUSTRY****Workers' Compensation**

|                             |      |         |                 |
|-----------------------------|------|---------|-----------------|
| Social Security Offset      | 1987 | 20,702  | General Fund    |
| Workload Increase           | 1987 | 313,064 | State Special   |
|                             | 1987 | 23,223  | State Special   |
| Actuary Report              | 1987 | 6,114   | State Special   |
| Workers' Compensation Audit | 1987 | 60,536  | State Special   |
| Computer Terminal and Costs | 1987 | 11,109  | Federal Special |

**DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES**

|             |      |           |                 |
|-------------|------|-----------|-----------------|
| Foster Care | 1987 | 1,727,008 | General Fund    |
|             | 1987 | (107,922) | Federal Special |
|             | 1987 | 378,377   | Other Special   |
| AFDC        | 1987 | 2,378,109 | General Fund    |
|             | 1987 | 5,915,012 | Federal Special |
|             | 1987 | 196,745   | Other Special   |



| <u>Agency and Program</u> | <u>FY</u> | <u>Amount</u>  | <u>Fund</u>     |
|---------------------------|-----------|----------------|-----------------|
| Day Care                  | 1987      | 48,203         | General Fund    |
|                           | 1987      | 94,563         | Federal Special |
| General Assistance        | 1987      | 2,905,006      | General Fund    |
| Nonresident GA            | 1987      | 150,000        | General Fund    |
| Medical Assistance        |           |                |                 |
| Administration            | 1987      | 2,500          | General Fund    |
|                           | 1987      | 7,500          | Federal Special |
| State Medical             | 1987      | 2,547,951      | General Fund    |
| Medicaid Youth            | 1987      | 488,400        | General Fund    |
| Treatment Center          | 1987      | 1,011,600      | Federal Special |
| Medicaid Other            | 1987      | 7,045,153      | General Fund    |
|                           | 1987      | 13,698,532     | Federal Special |
| State Medical             | 1987      | 60,000         | General Fund    |
| Consultec Claims          | 1987      | (20,000)       | Federal Special |
| 12-Mill Levy Deficiency   | 1987      | 218,958        | General Fund    |
| <hr/>                     |           |                |                 |
| STATEWIDE TOTAL           |           |                |                 |
| General Fund              | 1987      | \$25,651,045   |                 |
| State Special Revenue     | 1987      | 1,043,745      |                 |
| Federal Special Revenue   | 1987      | 21,590,084     |                 |
| Other Special Revenue     | 1987      | <u>579,914</u> |                 |
| Total                     |           | \$48,864,788   |                 |

Section 5. **Transfer to general fund.** There is transferred \$35 million from the local impact and education trust fund account funded by 15-35-108(3)(b) to the general fund.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 14, 1987.

**HOUSE BILL NO. 599**

**AN ACT APPROPRIATING MONEY FROM THE GENERAL FUND AND THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO THE UNIVERSITY OF MONTANA FOR ACQUISITION OF EQUIPMENT AND HIRING OF SCIENTIFIC AND ADMINISTRATIVE PERSONNEL FOR THE UNIVERSITY OF MONTANA BIOLOGICAL STATION AT YELLOW BAY ON FLATHEAD LAKE.**

WHEREAS, the University of Montana biological station, located at Yellow Bay on Flathead Lake, is one of the nation's leading research and teaching facilities for the study of freshwater ecology; and

WHEREAS, research at the biological station has yielded major scientific advancements in freshwater ecology and important practical findings vital to maintaining the high quality and economic value of Flathead Lake and other Montana waters; and

WHEREAS, the biological station generates \$6 from grants, contracts, and other outside sources for each dollar of state support; and

WHEREAS, the land and facilities at Yellow Bay are valued at more than \$50 million (90% of which value was obtained without state funding) and will not be used fully without additional state funding; and

WHEREAS, the biological station faces a critical need for full-time administrative personnel to oversee grants and contracts and for scientific personnel to operate the facility, to maintain its high standards of research and community service, and to attract grant income to Montana.

THEREFORE, the Legislature appropriates needed funds so that the University of Montana biological station may operate existing facilities at a reasonable level and thus continue to attract new funds and national scientific recognition for the State of Montana.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriation.** There is appropriated to the university of Montana for the university of Montana biological station at Yellow Bay on Flathead Lake \$100,000 from the general fund and \$50,000 from the department of fish, wildlife, and parks for the biennium ending June 30, 1989. The department of fish, wildlife, and parks is appropriated \$50,000 of state special revenue from the account established by 87-1-601 to grant to the university of Montana biological station at Yellow Bay on Flathead Lake.

Approved April 23, 1987.

**HOUSE BILL NO. 607**

**AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR A STATEWIDE INVENTORY OF AND A COMPREHENSIVE PLAN FOR A SYSTEM OF HIGHWAY SIGNS; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriation.** There is appropriated to the department of commerce for the biennium beginning July 1, 1987, \$35,000 from the proceeds of a bill passed and approved by the 50th legislature that includes provisions for a tax on hotel, motel, or campground accommodations with a portion of the proceeds to be used for tourism promotion.

**Section 2. Purpose of appropriation.** The department of commerce shall use the money appropriated in section 1 to:

(1) conduct and complete, in cooperation with the department of highways, the department of fish, wildlife, and parks, and the Montana historical society, a statewide inventory of existing signs located on, adjacent to, or visible from the primary highway and interstate highway systems that:

- (a) direct or control traffic;
- (b) provide tourist information;
- (c) explain historic significance of points along the highway;
- (d) point out recreational sites;
- (e) call attention to scenic attractions; or
- (f) provide other information intended to enhance the experiences of visitors to Montana; and

(2) compile a comprehensive plan for location, design, style, construction, and text of a system of signs to be erected along Montana's primary highways and interstate highways for the purposes stated in subsection (1) and in conformance with the provisions of 23 U.S.C. 131.

**Section 3. Report and recommendations.** The department of commerce shall deliver its completed inventory of existing highway signs and comprehensive plan for a statewide signing project to the 51st legislature along with an estimate of the cost of completing the signing project.

**Section 4. Effective date — termination.** This act is effective July 1, 1987, and terminates February 28, 1989.

Approved April 9, 1987.

**HOUSE BILL NO. 621**

**AN ACT APPROPRIATING OIL OVERCHARGE MONEY FOR PROGRAMS ADMINISTERED BY THE STATE OF MONTANA; ESTABLISHING AN ENERGY CONSERVATION AND ENERGY ASSISTANCE ACCOUNT; AMENDING SECTION 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Policy.** As the result of overcharges on the sales of domestic crude oil, the federal courts have ordered or approved settlements requiring the repayment of the total amount of overcharges, plus interest, into an escrow account to be distributed by the U.S. treasury to the states, territories, and possessions of the United States. It is the policy of this state to use the oil overcharge money distributed to the state to supplement state and federal programs that the state administers in a manner consistent with federal court orders establishing or approving the payment of the funds to the state of Montana and in accordance with the precedent established by the U.S. congress in appropriating money to federal programs.

**Section 2. Definitions.** As used in [this act], the following definitions apply:

(1) "Amoco payment" means the oil overcharge payment made to the U.S. treasury for distribution to the state of Montana pursuant to the administrative decision and order entitled standard oil co. (Indiana)/Maryland, 13 DOE 85, 075 (1985).

(2) "Diamond shamrock payment" means the oil overcharge payment made to the U.S. treasury for distribution to the state of Montana pursuant to the order of the U.S. district court for the southern district of Ohio eastern division in Civil Action No. C2-84-14032.

(3) "Exxon payment" means the oil overcharge payment made by the Exxon corporation to the U.S. treasury for distribution to the state of Montana pursuant to the order of the U.S. district court for the District of Columbia in Civil Action No. 78-1035.

(4) "Stripper well payment" means the oil overcharge payment made to the U.S. treasury for distribution to the state of Montana as the result of the final settlement agreement in the U.S. district court for the District of Kansas, Cause No. M.D.L. 378.

**Section 3. Account established — use.** (1) There is created an energy conservation and energy assistance account within the federal special revenue fund established in 17-2-102.

(2) The amounts deposited in the account and interest and earnings on the account are statutorily appropriated as provided in 17-7-502 to the department of social and rehabilitation services to fund its low-income energy assistance and home weatherization programs created in 90-4-201. However, the department may use the principal of the account only if the federal grants for either of those programs is reduced below the federal

fiscal year 1987 level. The department may not use the principal to increase expenditures to either program above the level of the federal grant for that program for federal fiscal year 1987.

**Section 4. Transfer of funds.** (1) There is transferred to the energy conservation and energy assistance account \$1,650,000 from the Exxon payment contained in the federal special revenue fund.

(2) There is transferred to the energy conservation and energy assistance account \$850,000 from the stripper well payment in the federal special revenue fund.

(3) The remaining balance of the appropriation in House Bill No. 22 of the June 1986 special session is transferred to the energy conservation and energy assistance account.

(4) There is transferred to the Exxon weatherization account \$3,200,000 from the Exxon payment contained in the federal special revenue fund. These funds are appropriated to the department of social and rehabilitation services for use in the home weatherization program created in 90-4-201.

(5) (a) There is appropriated to the department of social and rehabilitation services \$100,000 from the stripper well payment contained in the federal special revenue account for each year in the biennium ending June 30, 1989, for the purpose described in subsection (5)(b).

(b) Matching funds for low-income energy assistance. The department of social and rehabilitation services shall match private contributions to energy share, inc., to be used to assist persons not eligible for federal low-income energy assistance whose income is less than 150% of the federal poverty threshold published by the U.S. bureau of the census in the most recent edition of its publication, Characteristics of the Population Below the Poverty Level (Current Population Reports, Series P-60). All of the funds appropriated to the department for this purpose under subsection (5)(a) must be used for clients' fuel bills or other energy needs.

(6) The department of social and rehabilitation services shall encourage human resource development councils and other public or nonprofit entities that receive weatherization funds to hire individuals who are eligible for general relief under Title 53, chapter 3, to work in home weatherization projects, to the maximum extent possible.

**Section 5. Transloading facility.** (1) The department of commerce is authorized to issue to a local government a grant for construction of a demonstration truck/train transloading facility. The department shall solicit and accept proposals for no less than 2 months following the issuance of requests for proposals and shall award the grant primarily on the basis of simple payback in energy savings. The department shall also consider impact on freight rates, job creation, geographic proximity to raw materials, and access to new markets for Montana producers and shippers.

(2) The department of natural resources and conservation is authorized to administratively transfer funds to the department of commerce for a demonstration truck/train transloading facility as provided in subsection (1).

**Section 6. Energy conservation in agriculture.** (1) The department of natural resources and conservation is authorized to make grants under its state energy conservation program, approved pursuant to 10 CFR 420.5, to conservation districts for projects that promote energy conservation in agriculture.

(2) The department of natural resources and conservation shall give public notice of opportunity for grants and the criteria to be used for the award of grants. The criteria must include but are not limited to energy savings and consistency with sound water and soil conservation practices.

**Section 7. State-owned building retrofitting.** (1) The department of natural resources and conservation is authorized, in consultation with the department of administration, to train employees in the operation and maintenance of energy saving equipment and in the implementation of energy conserving practices and to make grants to state agencies for energy efficiency analysis of state-owned buildings. The department of natural resources and conservation may also make loans to state agencies for retrofitting state-owned buildings.

(2) The department of natural resources and conservation shall consider simple payback, type of energy saved, results of similar projects, expected life of the retrofit, and use of the retrofit as a model for other buildings in making grants and loans under subsection (1).

**Section 8. Biological agents for weed control.** (1) The department of agriculture is authorized to expend funds for the collection and distribution of biological agents to control leafy spurge and spotted knapweed. The project will reduce energy consumption by reducing the need for repeated chemical application.

(2) The department of natural resources and conservation is authorized to administratively transfer funds to the department of agriculture for the project described in subsection (1).

**Section 9. Appropriations.** (1) There is appropriated from the Exxon payment contained in the federal special revenue account to the department of natural resources and conservation \$2,100,000 for use in the state energy conservation program, approved pursuant to 10 CFR 420.5, for a grant for a transloading facility pursuant to [section 5].

(2) There is appropriated \$305,439 from the Exxon payment and \$338,000 from the stripper well payment contained in the federal special revenue account to the department of natural resources and conservation for use in the state energy conservation program, approved pursuant to 10 CFR 420.5, to encourage cost-effective energy conservation practices by small energy consumers, to reduce the rate of growth of energy demand, and to analyze energy conservation practices and issues.

(3) There is appropriated \$500,000 from the Exxon payment contained in the federal special revenue fund to the department of natural resources and conservation for implementation of [section 6].

(4) There is appropriated \$1,985,000 from the stripper well payment contained in the federal special revenue fund to the department of natural resources and conservation for implementation of [section 7].

(5) There is appropriated \$900,000 from the Exxon payment contained in the federal special revenue fund to the department of natural resources and conservation for use in the institutional conservation program for schools and hospitals administered by the department pursuant to 10 CFR 455.

(6) There is appropriated \$235,000 from the Exxon payment contained in the federal special revenue fund to the department of natural resources and conservation to award a grant to a public or private entity to provide technical assistance to local government entities for the purpose of identifying energy conservation measures. The grant must be approved pursuant to 10 CFR 465.8.

(7) There is appropriated \$234,916 from the diamond shamrock payment contained in the federal special revenue fund to the department of natural resources and conservation to administer the programs authorized by [this act].

(8) There is appropriated \$87,000 from the stripper well payment and \$124,000 from the Amoco payment contained in the federal special revenue fund to the department of highways to replace energy inefficient mercury highway lights east of the continental divide with energy efficient low-pressure sodium vapor lights.

(9) There is appropriated from the stripper well payment contained in the federal special revenue fund to the department of natural resources and conservation \$139,042 for collection and distribution of biological agents to control leafy spurge and spotted knapweed.

(10) Interest earned on money transferred or appropriated in [this act] must be deposited in the account from which it was earned. This money is appropriated to the same program for which the principal was appropriated.

(11) The appropriations made in this section are biennial appropriations.

**Section 10. Appropriation.** There is appropriated from the stripper well payment contained in the federal special revenue fund to the department of commerce \$65,000 for repair of the roof at West Yellowstone airport. The department of commerce is directed to take the steps necessary to transfer ownership of the West Yellowstone airport to the city of West Yellowstone or another local public authority willing to own and operate the airport. If no public entity is willing to take over the airport, the department shall present a plan to the 51st legislature to close the airport.

**Section 11. Proration.** If overcharge money and interest are insufficient to meet any amount transferred or appropriated in [this act], the amount transferred or appropriated for each fund is reduced by the same proportion as the amount of the deficiency bears to the total amount transferred or appropriated in [this act] from that fund.

**Section 12.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by

permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations:

- (a) 2-9-202;
- (b) 2-17-105;
- (c) 2-18-812;
- (d) 10-3-203;
- (e) 10-3-312;
- (f) 10-3-314;
- (g) 10-4-301;
- (h) 13-37-304;
- (i) 15-31-702;
- (j) 15-36-112;
- (k) 15-70-101;
- (l) 16-1-404;
- (m) 16-1-410;
- (n) 16-1-411;
- (o) 17-3-212;
- (p) 17-5-404;
- (q) 17-5-424;
- (r) 17-5-804;
- (s) 19-8-504;
- (t) 19-9-702;
- (u) 19-9-1007;
- (v) 19-10-205;
- (w) 19-10-305;
- (x) 19-10-506;



- (y) 19-11-512;
- (z) 19-11-513;
- (aa) 19-11-606;
- (bb) 19-12-301;
- (cc) 19-13-604;
- (dd) 20-6-406;
- (ee) 20-8-111;
- (ff) 23-5-612;
- (gg) 37-51-501;
- (hh) 53-24-206;
- (ii) 75-1-1101;
- (jj) 75-7-305;
- (kk) 80-2-103;
- (ll) 80-2-228;
- (mm) 90-3-301;
- (nn) 90-3-302;
- (oo) 90-15-103;
- (pp) Sec. 13, HB 861, L. 1985; *and*
- (qq) *[section 3]*.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments."

**Section 13. Effective dates.** This act is effective July 1, 1987, except that section 5 and this section are effective upon passage and approval.

Approved April 24, 1987.

**HOUSE BILL NO. 787**

AN ACT APPROPRIATING MONEY TO EXTEND BY SATELLITE THE UNIVERSITY OF MONTANA MASTER OF BUSINESS ADMINISTRATION PROGRAM TO BILLINGS, TO BE OFFERED IN COOPERATION WITH PROGRAMS AT EASTERN MONTANA COLLEGE BUT WITH A DEGREE FROM THE UNIVERSITY OF MONTANA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appropriation.** There is appropriated from the state general fund \$163,000 to the board of regents of higher education for the extension by satellite of the university of Montana master of business administration to Billings, Montana, to be offered in cooperation with programs at eastern Montana college but with a degree from the university of Montana. This appropriation is effective for the fiscal year beginning July 1, 1987.

Approved April 20, 1987.

**HOUSE BILL NO. 867**

AN ACT APPROPRIATING FUNDS TO THE GOVERNOR'S OFFICE FOR ESTABLISHMENT OF THE SUPER COLLIDER TASK FORCE, DATA COLLECTION, PROPOSAL PREPARATION, AND RELATED PHYSICAL IMPROVEMENTS IN SUPPORT OF MONTANA AS THE LOCATION FOR THE SUPERCONDUCTING SUPER COLLIDER RESEARCH FACILITY PROPOSED BY THE U.S. DEPARTMENT OF ENERGY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, development and operation of the superconducting super collider research facility will directly result in the creation and support of approximately 3,000 scientific, engineering, and technical jobs for the state in which it is located; and

WHEREAS, the initial investment of over \$4 billion and ongoing expenses of the facility will inject millions of dollars annually into the economy of the state in which it is located; and

WHEREAS, Montana possesses all the required locational criteria such as open land, abundant power and water, transportation services, university research facilities, a quality labor force, and commitment to excellence necessary to ensure success of the project; and

WHEREAS, it is essential that Montana take full advantage of its many attributes to strengthen and diversify its economy to provide employment opportunities for all its workforce.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appropriation.** (1) There is appropriated to the governor's office \$300,000 from the general fund to be used by the governor's office for establishment of a 9-member super collider task force, information

gathering, research, proposal preparation, travel, and other expenses necessary for Montana's participation in the first phase of the federal site selection process for the superconducting super collider proposed by the U.S. department of energy. No expenditures from this appropriation may be made:

(a) after June 30, 1988, unless Montana is still in consideration for this site; and

(b) unless there has been at least a \$1 match from the public for every \$3 to be spent.

(2) If Montana is no longer in consideration for this site, any balance of the \$300,000 appropriation remaining after June 30, 1988, will revert to the general fund.

(3) The appropriation in subsection (1) includes additional spending authority for any amount of matching funds donated by the public.

**Section 2. Procurement of services.** The appropriation in section 1 may be expended for sole source procurement of necessary services whenever the time constraints imposed by the U.S. department of energy make such procurement necessary.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved April 27, 1987.

## HOUSE BILL NO. 868

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF AGRICULTURE FOR VERTEBRATE PEST MANAGEMENT PURPOSES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriation.** There are appropriated the following amounts from the rodenticide fund created by section 3 of Senate Bill No. 238 to the department of agriculture for the operation of a rodenticide and vertebrate pest research, evaluation, and educational program:

- |                                      |          |
|--------------------------------------|----------|
| (1) fiscal year ending June 30, 1988 | \$24,500 |
| (2) fiscal year ending June 30, 1989 | 24,500   |

Approved April 16, 1987.

**HOUSE BILL NO. 878**

AN ACT TO APPROPRIATE TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES \$50,000 FOR THE ESTABLISHMENT AND OPERATION OF AIR QUALITY MONITORING STATIONS IN YELLOWSTONE COUNTY, CONTINGENT UPON THE CONTRIBUTION OF MATCHING FUNDS FROM PRIVATE INDUSTRIES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriation.** (1) Subject to the conditions of subsection (2), there is appropriated \$50,000 from the general fund to the department of health and environmental sciences to establish and operate air quality monitoring stations in Yellowstone County during the 1988-89 biennium.

(2) The appropriation in subsection (1) is contingent upon the establishment and execution of contractual arrangements between the department and private industry representatives through which private industries will contribute to the department a total of no less than \$150,000 for the establishment and operation of air quality monitoring stations in Yellowstone County during the 1988-89 biennium.

(3) The department is authorized to spend any funds appropriated or contributed to it under the provisions of this act.

Approved April 21, 1987.

# **RESOLUTIONS**

ENACTED BY THE

**Fiftieth Legislature**

IN REGULAR

SESSION

STATE OF MONTANA

1987

1973



# **RESOLUTIONS**

## **SENATE JOINT RESOLUTION NO. 1**

**A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA OPPOSING THE PROPOSED INDIAN HEALTH SERVICE REGULATIONS LIMITING ELIGIBILITY FOR HEALTH CARE SERVICES.**

**WHEREAS, tribal governments are recognized as sovereign entities by Congress and the federal government and a unique relationship exists between federal agencies and tribal governments; and**

**WHEREAS, the State of Montana recognizes the existing trust relationship between federal agencies and tribal governments; and**

**WHEREAS, the Indian Health Service was established under federal law to provide a trust service to Montana's tribal governments and its Native American population; and**

**WHEREAS, the Indian Health Service has proposed regulations to restrict tribal service programs to those members of an Indian tribe who have one-fourth or more Indian blood and who satisfy certain residency requirements; and**

**WHEREAS, these proposed regulations infringe upon tribal self-government and tribal authority to determine tribal membership and conflict with the federal government's trust relationship with Indian tribes; and**

**WHEREAS, the trust relationship and the limits of tribal authority can be altered only by congressional action; and**

**WHEREAS, these proposed regulations will further limit health care to tribal communities at a time when the Congressional Office of Technology Assessment has reported that Indians have less access to adequate health care than any group in America today; and**

**WHEREAS, these proposed regulations will in part shift the responsibility for tribal health care from the Indian Health Service to state and county agencies that are generally less knowledgeable about tribal health concerns; and**

**WHEREAS, the State of Montana is not adequately funded to bear such an influx of new patients; and**

**WHEREAS, there may be many tribal members denied adequate health care, with consequent suffering and early death.**

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:**

**1975**

(1) That the Montana Legislature views the Indian Health Service's rulemaking activity as a violation of federal trust responsibility and federal law and beyond its authority as an administrative agency.

(2) That the Montana Legislature opposes the proposed Indian Health Service regulations limiting eligibility for health care services because such regulations inhibit the delivery of adequate health care to tribal members.

(3) That the Secretary of State transmit a copy of this resolution to each member of the Montana Congressional Delegation, to the Secretary of the United States Department of the Interior, and to the Secretary of the United States Department of Health and Human Services.

Passed March 23, 1987.

### SENATE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING OPERATION OF PORTS OF ENTRY BETWEEN THE PROVINCES OF ALBERTA, BRITISH COLUMBIA, AND SASKATCHEWAN, CANADA, AND MONTANA ON SUMMER-HOUR SCHEDULES DURING THE 1988 WINTER OLYMPICS.

WHEREAS, the travel industry is an important and vital part of Montana's economy; and

WHEREAS, the Montana Legislature recognizes that the 1988 Winter Olympics in Alberta, Canada, will provide a unique opportunity to promote the state's travel industry; and

WHEREAS, there exist 11 ports of entry between the State of Montana and the Provinces of Alberta, British Columbia, and Saskatchewan, Canada.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the United States government be strongly urged to operate ports of entry between Montana and the Provinces of Alberta, British Columbia, and Saskatchewan, Canada, on summer-hour schedules to assist travelers during the 1988 Winter Olympics.

(2) That the United States Congress be strongly urged to provide additional highway funding to keep the roads leading to ports of entry between Montana and the Provinces of Alberta, British Columbia, and Saskatchewan, Canada, in excellent driving condition during the 1988 Winter Olympics.

(3) That Montana state and county governments be strongly urged to keep highways leading to ports of entry between Montana and the Provinces of Alberta, British Columbia, and Saskatchewan, Canada, in excellent driving condition during the 1988 Winter Olympics.



(4) That the Montana Department of Highways be urged to budget its highway funds to provide that highways leading to ports of entry between Montana and the Provinces of Alberta, British Columbia, and Saskatchewan, Canada, be kept in excellent driving condition during the 1988 Winter Olympics.

(5) That the Secretary of State send copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate, all members of the Montana Congressional Delegation, the Montana Highway Department, the appropriate officials of the affected Montana counties, the chairpersons of the United States and Canadian Olympic Committees, and the Legislative Assemblies of the Provinces of Alberta, British Columbia, and Saskatchewan, Canada.

Passed March 5, 1987.

## SENATE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RATIFYING A PROPOSED AMENDMENT TO THE UNITED STATES CONSTITUTION CONCERNING PAY INCREASES FOR MEMBERS OF CONGRESS.

BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature of the State of Montana, pursuant to Article V of the United States Constitution, ratify an amendment to the Constitution of the United States proposed by resolution of the First Congress of the United States in New York, New York, on September 25, 1789, which reads as follows:

"RESOLVED by the Senate and House of Representatives of the United States of America in Congress assembled, two thirds of both Houses concurring, that the following [Article] be proposed to the Legislatures of the several States, . . . which [Article], when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution, viz.:

"[An ARTICLE] in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

"Article the second . . . No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened."

(2) That the Legislature of the State of Montana acknowledge that the above-quoted article of amendment to the United States Constitution has already been ratified by the legislatures of the following states on the dates indicated: "Maryland on December 19, 1789; North Carolina on December

22, 1789; South Carolina on January 19, 1790; Delaware on January 28, 1790; Vermont on November 3, 1791; Virginia on December 15, 1791; Ohio on May 6, 1873 [70 Ohio Laws 409-10]; Wyoming on March 3, 1878 [124 Cong. Rec. 7910]; Maine on April 27, 1883 [130 Cong. Rec. H9097, S11017]; Colorado on April 18, 1884 [131 Cong. Rec. S17687]; South Dakota on February 21, 1885 [131 Cong. Rec. H971, S3306]; New Hampshire on March 7, 1885 [131 Cong. Rec. H1378, S3597]; Arizona on April 3, 1885 [131 Cong. Rec. H2060, S4750]; Tennessee on May 23, 1885 [131 Cong. Rec. H6672, S10797, S13504]; Oklahoma on July 10, 1885 [131 Cong. Rec. H7263, S13504]; New Mexico on February 13, 1886 [132 Cong. Rec. H827, S2207-8, S2300]; Indiana on February 19, 1886 [132 Cong. Rec. H1634, S4663]; and Utah on February 25, 1886 [132 Cong. Rec. S6750]; as well as by the Senate of the State of Georgia on February 2, 1884 and on January 21, 1885."

(3) That the Legislature of the State of Montana acknowledge that the above-quoted amendment to the United States Constitution may still be ratified by states' legislatures as a result of Coleman v. Miller, 307 US 433 (1939), in which the United States Supreme Court ruled that Congress is the final arbiter on the question of whether too much time has elapsed between Congress' submission of the amendment and the most recent state legislature's ratification of the amendment if Congress failed to specify a consideration deadline.

(4) That the Secretary of State notify the Archivist of the United States (pursuant to 1 U.S.C. 106b) of the action of the 50th Legislature by sending him a copy of this resolution.

(5) That the Secretary of State send copies of this resolution to the Montana Congressional Delegation, the Secretary of the United States Senate, and the Clerk of the United States House of Representatives with a request that it be printed in full in the Congressional Record.

Passed March 11, 1987.

## SENATE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT JOINT RULES TO GOVERN THEIR PROCEEDINGS.

BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following joint rules be adopted:

### CHAPTER 1 Presiding Officer - Decorum, Order, and Debate

1-1. The presiding officer of the Senate is the President, and the presiding officer of the House of Representatives is the Speaker. The presiding officer of each house shall take the chair on every legislative day at the

hour to which that house adjourned at the last sitting. After call to order, prayer by the chaplain, and roll call, a report on the journal for the preceding legislative day shall be given in the presence of a quorum, and each house shall proceed with the regular order of business.

1-2. The presiding officer, or any member acting as presiding officer, of each house shall preserve order and decorum, and in case of disturbance or disorderly conduct, may order the galleries or lobbies to be cleared.

1-3. The presiding officer of each house has general control and direction of the hall, chamber, rooms, passages, and corridors of the house over which he presides. Reporters on assignment in either house are subject to placement by the presiding officer.

1-4. The presiding officer of each house shall decide all questions of order, subject to an appeal by any member seconded by two other members. No member may speak more than once on an appeal without the consent of a majority of the house of which he is a member.

1-5. When a member desires to speak, he shall rise and address the presiding officer and, being recognized, shall speak standing in his place unless the presiding officer grants permission to speak from some other place on the floor. When two or more members rise at the same time, the presiding officer shall name the member who is to speak first.

1-6. When a member has been called to order, he shall sit down until the presiding officer determines whether he is in order or not. If the member is called to order for words spoken in debate, the language excepted to shall be taken down in writing by the Chief Clerk of the House or the Secretary of the Senate.

1-7. Questions of privilege are: first, those affecting the collective rights, safety, dignity, or integrity of the proceedings of either house; and second, those affecting the rights, reputation, or conduct of individual members of either house in their capacity as members. A question of privilege affecting either house collectively takes precedence over a question of privilege affecting an individual member.

1-8. The presiding officer of each house shall sign all subpoenas approved or issued by the house over which he presides.

1-9. (1) A communication or paper shall be addressed to the presiding officer and shall bear the name of the person submitting it. When the reading of a paper is called for and a member objects, it shall be determined by a vote of the house without debate. This subsection does not apply to bills or to communications from the Governor or the other house.

(2) A paper for or against proposed legislation may not be placed on the desks of the members or circulated within the chamber unless the person responsible has signed it and has received permission from the presiding officer to distribute it in the house concerned.

1-10. When the presiding officer is presiding, he shall vote as any other member and may not vote a second time.

## CHAPTER 2

### Meetings, Quorums, and Attendance

**2-1.** The hour of meeting of the Senate and the House of Representatives may be as ordered by the Senate or House.

**2-2.** Lobbying on the floor of the Senate or the House of Representatives is prohibited during the session and within 1 hour prior to the commencement of a session and within one-half hour after recess or adjournment.

**2-3.** The sessions of the Legislature and of the Committee of the Whole, all committee meetings, and all hearings shall be open to the public (Montana Constitution, Art. V, Sec. 10(3)).

**2-4.** Neither house shall, without the consent of the other, adjourn or recess for more than 3 days or to any other place than that in which the two houses shall be sitting (Montana Constitution, Art. V, Sec. 10(5)).

**2-5.** A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members, in such manner and under such penalties as each house may prescribe (Montana Constitution, Art. V, Sec. 10(2)).

**2-6.** Unless he is excused, a member of the House or the Senate shall be present at every sitting of the house of which he is a member.

**2-7.** In the absence of a quorum, a majority of members present in either house may compel the attendance of absent members by ordering a call of the house of which they are members.

**2-8.** If a quorum is present, five members of the Senate may order a call of the Senate and fifteen members of the House of Representatives may order a call of the House.

**2-9.** On a call of either house, a member who refuses to attend may be arrested by the Sergeant-at-Arms or any other person, as the majority of such members present shall direct. When the attendance of an absent member is secured after a call of either house, if the house of which he is a member refuses to excuse his absence, he shall not be paid any expense payments during his absence and is liable for the expenses incurred in procuring his attendance.

**2-10.** During a call of either house, all business of that house shall be suspended. After a call has been ordered, no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote.

**2-11.** If either house is in session upon a given day, whether or not the other house is in session, that day shall constitute a legislative day.

## CHAPTER 3

### Legislative Employees

**3-1.** The Legislature shall prescribe the compensation of the employees of each house by joint resolution. Each house shall prescribe the duties of

its officers and employees, and no payment shall be made from the state treasury or be in any way authorized to any such person, except to an acting officer or employee elected or appointed in pursuance of law.

**3-2.** The Legislative Council shall be responsible for maintaining personnel files.

**3-3.** The Committee on Legislative Administration of each house shall appoint a secretary for a standing or special committee on recommendation of the committee chairman, subject to the approval of the respective house. A secretary for a standing or special committee is immediately responsible to the committee chairman, but when not occupied with the duties of a committee, shall work under the direction of the chief stenographer of each house. The Legislative Council shall hire all engrossing and enrolling staff, who are under the direction of the Bills Committee.

**3-4.** The presiding officer and the majority and minority floor leader of each house may each appoint a private secretary.

**3-5.** The Secretary of the Senate and the Chief Clerk of the House of Representatives are responsible to the presiding officers of their respective houses. Their duties are to:

- (1) have custody of all records, bills, documents, and other papers;
- (2) supervise the making and examination of the journal and the handling of bills and resolutions;
- (3) deliver to the Secretary of State at the close of each session the journal, bill books, and resolution books, and all copies of introduced bills and joint resolutions;
- (4) collect from the chairmen or secretaries of all standing committees, special committees, and conference committees the minutes of such committees and deliver them to the Montana Historical Society (see Rule 7-4).

**3-6.** Journal clerks, bill clerks, typists, and other employees responsible for legislative functions (except secretaries for standing or special committees, secretaries to presiding officers, and secretaries to majority and minority floor leaders) are immediately responsible to the Secretary of the Senate or the Chief Clerk of the House, subject to the general supervision of the presiding officer. All staff employed jointly shall be appointed by the Senate Committee on Legislative Administration and the House Committee on Legislative Administration/Bills and Journal, acting jointly.

**3-7. (1)** The duties of the engrossing and enrolling staff are:

- (a) to engross or enroll all bills delivered to them within 48 hours after they have been received, unless further time is granted in writing by the presiding officer of the house in which the bill originated; and
- (b) to correct clerical errors, absent the objection of the sponsor of a bill or amendment and the Secretary of the Senate or the Chief Clerk of the House of Representatives, in any bill or amendment originating in the house by which they are employed. Clerical errors such as the following may be corrected:

- (i) errors in spelling;
- (ii) errors in numbering sections;
- (iii) adding or deleting underlining or lines through matter to be stricken;  
and
- (iv) material copied incorrectly from the Montana Code Annotated.

(2) The Secretary of the Senate or the Chief Clerk of the House and the sponsor of the bill or amendment shall be notified in writing of the clerical correction. An objection to the correction may be registered by the Secretary of the Senate, Chief Clerk of the House, or sponsor by filing it in writing within 24 hours after receipt of the notice.

(3) When a committee is the sponsor of a bill, any member thereof so designated by the chairman may be the principal sponsor for the purpose of this section. When a committee has proposed an amendment, the chairman is the principal sponsor for the purpose of this section.

**3-8.** The Sergeants-at-Arms are responsible to the presiding officers of their respective houses. Their duties are to:

- (1) maintain order under the direction of the presiding officer;
- (2) execute commands and serve all processes;
- (3) receive, distribute, and have custody of supplies.

**3-9.** The Assistant Sergeants-at-Arms, doorkeepers, watchmen, janitors, pages, and other employees responsible for general housekeeping functions are immediately responsible to the Sergeant-at-Arms, subject to the general supervision of the presiding officer.

**3-10.** The duty of the chaplain of each house is to open each day's session with a prayer.

**3-11.** (1) A legislative aide is a person who has registered with the Chief Clerk of the House or the Secretary of the Senate and has been issued a distinctive identification form, such as a name tag. Such identification may be issued only upon receiving written verification from a member that the person is serving him as an aide. A person may not represent himself to be a legislative aide unless he carries such identification. The Sergeants-at-Arms and doorkeepers shall enforce this rule. Legislative aides must be of legal age unless otherwise approved by the presiding officer.

(2) No member may designate more than one aide without the approval of the Rules Committee of the house involved.

(3) Qualifications for legislative interns are specified in Title 5, chapter 6, MCA.

**3-12.** An employee, legislative aide, or legislative intern of either house is prohibited from lobbying as defined in section 5-7-102, MCA. However, such person may testify before a committee of either house on the request of the committee. Any person violating this rule shall be discharged.

**3-13.** Disputes or complaints involving the competency or decorum of a legislative employee shall be referred to the Committee on Legislative

Administration of the house by which the employee is employed. The committee, in its discretion, may dismiss, suspend, or retain the employee. The Committee on Legislative Administration shall periodically review the roster of employees and shall dismiss surplus employees.

**3-14.** (1) The offices of the Legislative Council shall serve both the Senate and the House of Representatives as required.

(2) The Council staff shall prepare payrolls for certification and signature by the presiding officer and prepare a monthly financial report and distribute the report to legislative leaders in each house and to members of the Senate Committee on Finance and Claims and the House Committee on Appropriations.

**3-15.** (1) Contracts for purchase or lease of equipment and supplies made during the legislative session shall be made on the approval of the Committee on Legislative Administration of each house, subject to the review of the presiding officer of the respective house. Purchase orders shall be issued by the Legislative Council staff and accounting records kept in that office.

(2) Long distance telephone calls made while legislators are in session or in travel status are considered official legislative business and include but are not limited to calls made to constituencies, places of business, and family. Session staff, including aides and interns, may use telephones for long distance calls only when specifically authorized to do so by their legislative sponsor or supervisor. Sponsoring legislators and supervisors are accountable for use of state telephones by their staff, including aides and interns. Members may not authorize others to use state phones. Permanent staff of the Legislature shall comply with executive branch rules applying to the use of state telephones.

#### **CHAPTER 4**

##### **Order of Business**

**4-1.** After prayer, roll call, and report on the journal, the order of business of the Senate and House of Representatives is as follows:

- (1) communications and petitions;
- (2) reports of standing committees;
- (3) reports of select committees;
- (4) messages from the Governor;
- (5) messages from the other house;
- (6) motions;
- (7) first reading and commitment of bills;
- (8) second reading of bills (Committee of the Whole);
- (9) third reading of bills and consent calendar bills;
- (10) unfinished business;

- (11) special orders of the day; and
- (12) announcement of committee meetings.

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the house involved shall revert to Order of Business No. 1 when reconvening after a recess.

## CHAPTER 5

### Motions

**5-1.** When a motion is made it shall be restated by the presiding officer and, if requested by the presiding officer or a member, shall be reduced to writing and read aloud. A motion may be withdrawn by the member making it at any time before it is amended or voted upon.

**5-2.** (1) When a question is under debate no motion may be made except the following privileged and subsidiary motions, which have precedence in the order listed:

- (a) to adjourn;
- (b) for a call of the house;
- (c) to recess;
- (d) question of privilege;
- (e) to lay on the table;
- (f) for the previous question;
- (g) to postpone to a certain day;
- (h) to refer or commit;
- (i) to amend; and
- (j) to postpone indefinitely.

(2) A question may be indefinitely postponed by a majority roll call vote of all members present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again during the biennium except upon a motion of reconsideration made pursuant to Rule 5-4.

**5-3.** No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment or substitute.

**5-4.** Any member may, on the day the vote was taken or on the next day the house in which the action was taken is in session, move to reconsider the question. A motion to reconsider may not be withdrawn after such next legislative day without the unanimous consent of the house concerned, and thereafter any member may call it up for consideration; however, a motion to reconsider made after the 54th day of the session shall be disposed of when made. A motion to recall a bill from the other house constitutes notice to reconsider and shall be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the other house may



be made only under Order of Business No. 6 and, under that order of business, takes precedence over all motions except motions to recess or adjourn.

**5-5.** When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

**5-6.** (1) Except as provided in subsection (2) of this rule, the effect of moving the previous question, if adopted, is to close debate immediately, to prevent the moving of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise.

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour, one-half of such time to be given to the proponents and one-half to the opponents.

**5-7.** A call of the house is not in order after the previous question is ordered unless it appears upon an actual count by the presiding officer that a quorum is not present.

**5-8.** The following motions are not debatable:

- (1) to adjourn;
- (2) for a call of the house;
- (3) to recess;
- (4) for parliamentary inquiry;
- (5) for suspension of the rules;
- (6) to lay on the table;
- (7) for the previous question;
- (8) to limit, extend the limits of, or to close debate;
- (9) to amend an undebatable motion;
- (10) to divide a question;
- (11) to pass business in Committee of the Whole;
- (12) to take from the table;
- (13) a decision of the presiding officer, unless appealed or unless he submits the question to the house for advice or decision;
- (14) all incidental motions, such as motions relating to voting or other questions of a general procedural nature.

**5-9.** A member may move to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain.

**5-10.** No more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

## CHAPTER 6 Bills and Resolutions

### A. Form of Bills — Definition of Resolutions — General Provisions

**6-1.** The only types of instruments other than bills which may be introduced in either house of the Legislature are as follows:

(1) (a) A simple resolution is a formalized motion passed by one house only and bears the heading "House Resolution" or "Senate Resolution". It may be used only to adopt or amend the rules of one house, to make recommendations concerning the districting and apportionment plan as provided by Article V, section 14, subsection (3), of the Montana Constitution, to provide for the internal affairs of the house adopting it, or by the Senate to express confirmation of appointments. When a simple resolution has been introduced, it shall be referred to a committee. Final action shall be taken on the Committee of the Whole report. The transmittal of copies of simple resolutions is the responsibility of the Chief Clerk or Secretary of the house of origin.

(b) A copy of every simple resolution is to be transmitted after adoption to the Secretary of State by the Secretary of the Senate or the Chief Clerk of the House.

(2) A joint resolution must be adopted by both houses and is not approved by the Governor. It may be used to:

- (a) express desire, opinion, sympathy, or request of the Legislature;
- (b) request an interim study by a legislative subcommittee;
- (c) adopt or amend the joint rules;
- (d) set salaries and other terms of employment for legislative employees;
- (e) approve construction of a state building under section 18-2-102 or 20-25-302, MCA;
- (f) deal with disasters and emergencies under Title 10, specifically as provided in sections 10-3-302(3), 10-3-303(3), 10-3-303(4), and 10-3-505(5), MCA;
- (g) submit a negotiated settlement under section 39-31-305(3), MCA;
- (h) declare or terminate an energy emergency under section 90-4-310, MCA;
- (i) ratify or propose amendments to the United States Constitution; or
- (j) advise or request the repeal, amendment, or adoption of a rule in the Administrative Rules of Montana.

(3) Except as otherwise provided in these rules or The Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

(4) A copy of every joint resolution is to be transmitted after adoption to the Secretary of State by the Secretary of the Senate or the Chief Clerk of the House.

**6-2.** All bill drafting requests shall require a legislative sponsor. Bills shall be printed on paper with numbered lines and shall be introduced in triplicate. Bills shall be numbered at the foot of each page (except page 1), and the original copy shall have a white cover of a substantial material. In sections amending existing statutes, matter to be stricken out shall be indicated with a line through the words or part to be deleted, and new matter shall be underlined. Sections of the Montana Code Annotated repealed or amended in a bill shall be stated in the title, except for general appropriation bills and bills for the codification and general revision of the laws. Introduced bills will be reproduced on white paper and distributed to legislators.

**6-3.** (1) No bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain more than one subject, which shall be clearly expressed in the title. The enacting clause of every law shall be as follows: "Be it enacted by the Legislature of the State of Montana".

(2) A bill shall be used to propose amendments to The Constitution of the State of Montana and shall not be subject to the veto of the Governor (Montana Constitution, Art. VI, Sec. 10(1)).

**6-4.** (1) All appropriation bills shall originate in the House of Representatives.

(2) The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the Legislative, Executive, and Judicial branches of state government, interest on public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject (Montana Constitution, Art. V, Sec. 11(4)). Appropriation bills for the operation of the Legislature shall be introduced by the chairman of the House Committee on Appropriations.

**6-5.** Every statute, unless a different time is prescribed therein, takes effect on October 1 following its passage and approval, except one that provides for appropriation by the Legislature of public funds for a public purpose, which takes effect on July 1 following its passage and approval unless a different time is prescribed therein. Every joint resolution, unless a different time is prescribed therein, takes effect on its passage (sections 1-2-201 and 1-2-202, MCA).

#### **B. Introduction — Bill Limit**

**6-6.** (1) A legislator may not request more than five bills from the Legislative Council, nor may a legislator introduce more than five bills. This limit does not apply to:

- (a) bills requested prior to the convening date of each session;
- (b) code commissioner bills;
- (c) resolutions;
- (d) standing committee bills;
- (e) appropriation bills; or

(f) revenue bills.

(2) Bills and joint resolutions will be checked by the staff of the Legislative Council prior to introduction for proper format, style, and legal form. Bills will be stored on the automated bill drafting equipment, printed, and delivered in triplicate to the requesting legislator. A stamp shall be affixed to the original bill cover and signed to indicate Council review. If such stamp is not affixed, the bill may not be introduced.

(3) During a session a bill may be introduced by endorsing it with the name of a member and presenting it to the Chief Clerk of the House of Representatives or the Secretary of the Senate in triplicate. Bills or joint resolutions may be sponsored jointly by Senate and House members. A jointly sponsored bill shall be introduced in the house in which the legislator whose name appears first on the bill is a member. The chief joint sponsor's name shall appear immediately to the right of the first sponsor's name. Bills, joint resolutions, and simple resolutions shall be numbered consecutively in each session of the Legislature in separate series in the order of their receipt.

(4) Any bill proposed by a legislative committee or introduced by request of an administrative or executive agency or department shall be so indicated following the names of the sponsors, "By Request of the ..... (Name of agency or committee)".

(5) Bills may be preintroduced, numbered, and reproduced prior to a legislative session by the staff of the Legislative Council. Actual signatures may appear on the face of the preintroduced bill, or signatures may be obtained on a consent form from the Legislative Council and the sponsor's name printed on the bill. Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill. These names will be forwarded to the Legislative Council to be included on the face of the bill following standing committee approval.

(6) All preintroduced bills will be made available to the public.

6-7. The following schedule must be followed for submission of drafting requests and introduction of bills and resolutions:

|                                                                          | Request<br>Deadline<br>5:00 P.M.<br>Legislative<br>Day | Introduction<br>Deadline<br>5:00 P.M.<br>Legislative<br>Day |
|--------------------------------------------------------------------------|--------------------------------------------------------|-------------------------------------------------------------|
| • General Bills and Resolutions                                          | 10                                                     | 14                                                          |
| • Revenue Bills                                                          | 17                                                     | 21                                                          |
| • Committee Bills and Resolutions                                        | 36                                                     | 40                                                          |
| • Committee Revenue Bills                                                | 62                                                     | 66                                                          |
| • Committee bills implementing provisions of a general appropriation act | 75                                                     | 78                                                          |

Bills and resolutions delivered after the applicable introduction deadline must be introduced within 2 legislative days after delivery.

|                                                                                                                                                                                                             | Request<br>Deadline<br>5:00 P.M.<br>Legislative<br>Day | Introduction<br>Deadline<br>5:00 P.M.<br>Legislative<br>Day |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|-------------------------------------------------------------|
| • Appropriation Bills                                                                                                                                                                                       | No<br>deadline                                         | No<br>deadline                                              |
| • Interim Study Resolutions                                                                                                                                                                                 | No<br>deadline                                         | No<br>deadline                                              |
| • Resolutions to express<br>confirmation of appointments                                                                                                                                                    | No<br>deadline                                         | No<br>deadline                                              |
| • Bills repealing or directing the<br>amendment or adoption of Adminis-<br>trative Rules and Joint Resolutions<br>advising or requesting the repeal,<br>amendment, or adoption of Adminis-<br>trative Rules | No<br>deadline                                         | No<br>deadline                                              |

**6-8.** (1) No bill may be introduced or received in a house after that house has finally rejected a bill during that session designed to accomplish the same purpose save upon approval by the Rules Committee of the house in which the bill is offered for introduction or reception.

(2) Failure to override a veto does not constitute final rejection.

**6-9.** At least three-fourths of a standing committee must consent to the introduction of a committee bill.

#### C. First Reading and Referral

**6-10.** (1) No motion affecting a bill is in order on its first reading except as provided in Joint Rule 6-6(5).

(2) Upon introduction or reception of a bill, the Chief Clerk of the House or the Secretary of the Senate shall publicly post upon a listing that bill by a summary of its title in the house of origin and by a summary of its title and by its history in the second house, together with a notation of the committee to which it has been assigned, and such posting shall constitute the first reading of the bill.

**6-11.** No bill shall be considered or become a law unless referred to a committee and returned therefrom.

**6-12.** Upon introduction or reception of a bill, it shall be referred to a committee by the presiding officer.

**6-13.** A bill may be rereferred at any time before its passage.

#### D. Amendments and Substitute Bills

**6-14.** No law shall be revised or amended or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended, or extended shall be reenacted and published at length.

**6-15.** No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

**6-16.** A committee may recommend that every clause in a bill be changed and that entirely new matter be substituted so long as the new matter is relevant to the title and subject of the original bill. A substitute bill shall be considered as an amendment and not as a new bill.

**6-17.** The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the bill following the enacting clause and to substitute the new bill, recommending also any necessary changes in the title. If a committee report recommending a substitute for a bill originating in the other house is adopted, the substitute bill shall be printed and reproduced.

**6-18.** Amendments to a bill by the second house shall not be further amended by the house in which the bill originated, but must either be accepted or rejected. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated. If the amendments are accepted and the bill is of a type requiring more than a majority vote for passage, the bill shall again be placed on third reading in the house of origin. The vote on third reading after concurrence in amendments is the vote of the house of origin that must be used to determine if the required number of votes has been cast.

**6-19.** If a majority of a house adopts a recommendation for the passage of a bill originating in that house after it has been returned from a committee with amendments, the bill shall be reproduced on yellow paper with all amendments incorporated into the copies. If the bill has been returned from a committee without amendments, only the first sheet need be reproduced on yellow paper, and the remainder of the text incorporated by reference to the preceding version of the entire bill. Bills referred to the Bills Committee of the house of origin for reproduction must be reported within 3 days unless further time is granted by that house.

#### E. Engrossing and Enrolling

**6-20.** (1) When a bill has been reported favorably by Committee of the Whole of the house of origin and the report has been adopted, the bill shall be engrossed under the direction of the Bills Committee, and when reported correctly engrossed by the committee shall be placed on the calendar for third reading on the succeeding legislative day. Committee of the Whole amendments shall be included in the engrossed bill. Copies of the engrossed bill to be distributed to legislators will be reproduced on blue paper. If a bill is unamended by the Committee of the Whole and contains no clerical errors, it may be engrossed without reprinting, and only the first sheet need be reproduced on blue paper, with the remainder of the text incorporated by reference to the preceding version of the entire bill.

(2) If a bill is amended by the standing committee or Committee of the Whole in the second house, the amendments will be included in a salmon-colored reference bill and distributed in the second house for third reading consideration. The amendments will also be reproduced and attached to the

reference bill. If the bill passes on third reading, copies of the reference bill and second house amendments will be distributed in the original house.

**6-21.** (1) When a bill has passed both houses, it shall be enrolled under the direction of the Bills Committee of the house of origin. An original and two duplicate printed copies of the bill shall be enrolled, free from all corrections and errors, with a margin of two inches at the top and one inch on each side. In sections amending existing statutes, new matter shall be underlined and stricken matter shall be omitted. The original and two copies of the bill shall be red lined. The history of the bill shall also be enrolled and placed with the bill in a white manuscript cover, upon which is written the number of the bill and the title. The Legislative Council staff shall file a copy of the history with the law library.

(2) When the enrolling has been completed, the bill shall be examined by the sponsor and the Bills Committee and reported correctly enrolled.

(3) The correctly enrolled bill shall be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall sign the original and two copies of each bill delivered to him not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the last legislative day, in which event it shall be signed that day. The fact of signing shall be announced by the presiding officer and entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies his desire to examine the bill, he shall be permitted to do so. The bill shall then be transmitted to the other house where the same procedure shall be followed.

(4) A bill that has passed both houses of the Legislature by the 90th day may be enrolled; clerically corrected by the presiding officers, if necessary; signed by the presiding officers; and delivered to the Governor not later than 5 days after the 90th legislative day. All journal entries authorized under this rule will be entered on the journal for the 90th day.

(5) The original and two copies signed by the presiding officer of each house shall be presented by the Bills Committee to the Governor. The Bills Committee shall take a receipt from the Governor and shall report to the house the day and hour of such presentation, which shall be entered in the journal. The original shall be filed with the Secretary of State. Signed copies with chapter numbers assigned pursuant to section 5-11-204, MCA, shall be filed with the Clerk of the Supreme Court and the Legislative Council.

#### F. Second Reading — Committee of the Whole

**6-22.** All bills, except consent calendar bills, which have been reported by a committee, accepted by the house concerned, and reproduced shall be posted on the calendar for consideration by Committee of the Whole. The Secretary of the Senate or the Chief Clerk of the House shall record the time each bill is received and the time the bill is placed on members' desks. Until the 50th legislative day, one day must elapse between the time a committee-approved bill is placed on the members' desks and consideration by the Committee of the Whole. Bills shall be arranged on the calendar in

numerical order unless they are companion bills or are otherwise ordered by the house or Committee of the Whole of the house concerned.

**6-23.** (1) Every bill considered in Committee of the Whole shall be read by a summary of its title. Proposed amendments shall be considered; then the bill shall be considered in its entirety.

(2) All Committee of the Whole amendments shall be prepared and delivered to the clerk for reading before the amendment is voted on. The amendment form will include the date and time of the amendment. Each rejected proposed amendment shall be identified and kept in the office of the Chief Clerk of the House or the Secretary of the Senate. Upon adjournment, the text of such amendments shall be delivered to the state archives.

**6-24.** Prior to adoption of a Committee of the Whole report, a member may move to segregate a bill. If the motion prevails, the bill remains on second reading.

**6-25.** When a Committee of the Whole report on a bill is rejected, the bill shall remain on second reading.

**6-26.** Either house may resolve itself into a Committee of the Whole by approval of a motion for that purpose. So far as may be applicable, the rules governing each house shall be observed when that house resolves itself into a Committee of the Whole, except as follows:

- (1) The only motions in order are to:
  - (a) amend;
  - (b) recommend passage or nonpassage;
  - (c) recommend concurrence or nonconcurrence;
  - (d) indefinitely postpone;
  - (e) pass consideration;
  - (f) rise;
  - (g) rise and report; or
  - (h) rise and report progress and ask leave to sit again.
- (2) The committee may not appoint subcommittees.
- (3) The committee may not punish its members for misconduct, but may report disorder to the house concerned.
- (4) Unless otherwise prescribed by either house before going into Committee of the Whole, a member may speak as often as he is recognized and for as long each time as is allowed in debate in the particular house.

**6-27.** After a Committee of the Whole has been formed, the presiding officer shall appoint a chairman to preside. Upon resuming the chair, the presiding officer shall receive the report of the chairman of the committee and the house shall take action on the report.

**G. Third Reading — Consent Calendar — Governor's Veto**



**6-28.** (1) No bill shall become a law except by vote of a majority of all the members present and voting in each house. On final passage the vote shall be taken by ayes and noes, and the names of those voting entered on the journal (Montana Constitution, Art. V, Sec. 11(1) and (2)).

(2) Any vote in one house on a bill proposing an amendment to the Montana Constitution where the mathematical possibility exists of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

**6-29.** Except for consent calendar bills, every bill shall be read three times prior to passage, either by title or by summary of title as provided in these rules. The first reading shall be as prescribed in Joint Rule 6-10; the second prior to debate in Committee of the Whole; and the third prior to final passage. No bill shall receive more than one reading on the same day except on the last legislative day. No amendment may be offered on the third reading.

**6-30.** (1) Each bill passed by the Legislature, except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions, or referendum measures of the Legislature, shall be submitted to the Governor for his signature. If he does not sign or veto the bill within 5 days after its delivery to him if the Legislature is in session or within 25 days if the Legislature is adjourned, it shall become law. The Governor shall return a vetoed bill to the Legislature with a statement of his reasons therefor.

(2) The Governor may return any bill to the Legislature with his recommendation for amendment. If the Legislature passes the bill in accordance with the Governor's recommendation, it shall again return the bill to the Governor for his reconsideration. The Governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it shall become law.

(4) If the Legislature is not in session when the Governor vetoes a bill, he shall return the bill with his reasons therefor to the Legislature as provided by law. The Legislature may be polled on a bill approved by two-thirds of the members present or reconvened to reconsider any bill so vetoed (Montana Constitution, Art. VI, Sec. 10).

(5) The Governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

**6-31.** Upon receipt of a veto message the presiding officer shall read the message. After the reading a member may move that the Governor's veto shall be overridden. A vote on the motion shall be determined by roll call. If two-thirds of the members present vote "aye", the veto is overridden. If two-thirds of the members present do not vote "aye", the veto is sustained.

**6-32.** If the Governor returns a bill to the originating house with his recommendations for amendment, such house shall reconsider the bill under its rules relating to amendment offered in Committee of the Whole. The bill is then subject to the following procedures:

(1) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in Committee of the Whole, the bill and the originating house's approval or disapproval of the Governor's recommendations.

(2) If both houses approve the Governor's recommendations, the bill shall be returned to the Governor for his reconsideration.

(3) If both houses disapprove the Governor's recommendations, the bill shall be returned to the Governor for his reconsideration.

(4) If one house disapproves the Governor's recommendations and the other house approves, then either house may request a conference committee which may be a free conference committee.

(a) If both houses adopt a conference committee report, the bill in accordance with the report shall be returned to the Governor for his reconsideration.

(b) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the Governor's recommendations shall be considered not approved and the bill shall be returned to the Governor for further consideration.

#### H. Transmittal of Bills — Revenue and Appropriation Bills

**6-33.** Each house shall transmit to the other with any bill all relevant papers. When a House bill is transmitted from the House of Representatives to the Senate, the Secretary of the Senate shall give a dated receipt for the bill to the Chief Clerk of the House. When a Senate bill is transmitted to the House of Representatives, the Chief Clerk of the House shall give a dated receipt to the Secretary of the Senate.

**6-34.** (1) No bill, except for appropriation bills, revenue bills, or amendments considered by joint committee, need be acted upon (save for reference to a committee by the presiding officer) if transmitted from one house to the other after the 45th legislative day, but shall be held pending in the house to which it is transmitted unless two-thirds of the members present and voting determine that the bill shall be acted upon. Amendments, except to appropriation bills and revenue bills, shall likewise be deferred for consideration if transmitted after the 70th legislative day.

(2) A revenue bill is one which would either increase or decrease tax collections.

(3) Revenue bills originating in the Senate shall be transmitted to the House on or before the 58th day, unless two-thirds of the members present and voting in the House determine that the bill may be transmitted after the 58th day. House amendments to such bills shall be transmitted by the House to the Senate on or before the 83rd day unless two-thirds of the members present and voting in the Senate determine that such an amendment may be transmitted after the 83rd day. Revenue bills originating in the House shall be transmitted to the Senate on or before the 65th day unless two-thirds of the members present and voting in the Senate determine that the bill may be transmitted after the 65th day. Senate amendments to House revenue bills shall be transmitted by the Senate to the

House on or before the 83rd day unless two-thirds of the members present and voting in the House determine that such amendments may be transmitted after the 83rd day.

(4) Appropriation bills and any bill implementing provisions of a general appropriation bill shall be transmitted to the Senate on or before the 72nd day unless two-thirds of the members present and voting in the Senate determine that the bill may be transmitted after the 72nd day. Senate amendments to such bills shall be transmitted by the Senate to the House on or before the 83rd legislative day unless two-thirds of the members present and voting in the House determine that such an amendment may be transmitted after the 83rd day.

(5) Interim study resolutions, bills repealing or directing the amendment or adoption of administrative rules, and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules may be transmitted at any time during a session.

(6) A joint resolution introduced for the purpose of estimating revenue available for appropriation by the Legislature shall be transmitted not later than the 67th day. Amendments to such resolutions shall be transmitted to the house of origin not later than the 83rd day.

**6-35.** When a bill has received its third reading or has been rejected, the house that considered the bill shall as soon as possible transmit it to the other house with notice of its action.

#### I. Fiscal Notes

**6-36.** (1) All bills reported out of a committee of the Legislature having an effect on the revenues, expenditures, or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect. The Legislative Council staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes shall be requested by the presiding officer of either house, who at the time of introduction shall determine the need for the note, based on the Legislative Council staff recommendation.

(2) Unless the requestor directs otherwise, the Legislative Council shall deliver three copies of any bill for which it has been determined a fiscal note may be necessary to the Budget Director immediately after the bill has been delivered to the requestor prepared for introduction. The Budget Director may proceed with the preparation of a fiscal note in anticipation of a subsequent formal request.

(3) The state Budget Director, in cooperation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note and shall return the same within 6 days, unless further time is granted by the presiding officer or committee making the request, based upon a written statement from the Budget Director that additional time is necessary to properly prepare the note.

(4) A completed fiscal note shall be submitted by the Budget Director to the presiding officer who requested it, who shall refer it to the committee considering the bill. All fiscal notes shall be reproduced and placed on the members' desks.

(5) Fiscal notes shall, where possible, show in dollar amounts the estimated increase or decrease in revenues or expenditures, costs which may be absorbed without additional funds, and long-range financial implications. No comment or opinion relative to merits of the bill shall be included; however, technical or mechanical defects may be noted.

(6) A fiscal note also may be requested on a bill and on an amendment by:

- (a) a committee considering the bill; or
- (b) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or
- (c) the chief sponsor through the presiding officer.

(7) The Budget Director shall make available on request to any member of the Legislature all background information used in developing a fiscal note (Title 5, chapter 4, part 2, MCA).

**6-37.** (1) If a sponsor elects to prepare a sponsor's fiscal note pursuant to 5-4-204, MCA, he shall make the election as provided in 5-4-204(1)(c), MCA, and return the completed sponsor's fiscal note to the presiding officer within 4 days of such election.

(2) The presiding officer may grant additional time to the sponsor to prepare the sponsor's fiscal note.

(3) Upon receipt of the completed sponsor's fiscal note, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the note must be identified as a sponsor's fiscal note, reproduced, and placed on the members' desks.

(4) The Legislative Council shall provide forms for preparation of sponsors' fiscal notes and shall print the completed sponsors' fiscal notes on a different color paper than the fiscal notes prepared by the Budget Director.

## CHAPTER 7

### Committees

**7-1.** The Committee on Legislative Administration of each house shall consider all matters concerned with seating, mileage and expenses, legislative employees, the control of the legislative property, and the budgeting for and expenditure of appropriations for the operation of the Legislature, in cooperation with the Legislative Council staff.

**7-2.** Upon request of any member of the house in which a bill is pending, a standing committee shall submit a written report in triplicate on any bill or matter referred to it within 7 days after the request, unless, at the request of the committee and for good cause shown, further time is granted by the house concerned.

**7-3.** If the members of a committee cannot agree on a report, the majority and minority of the committee present at a committee meeting may submit separate reports. Only one minority report may be submitted. Such reports shall be entered at length on the journal, unless otherwise ordered by the house concerned.

**7-4.** All committees, joint committees, and subcommittees shall keep minutes of their meetings. The chairman of each such committee must designate a secretary to take and transcribe minutes. The chairman must authenticate the minutes by his signature. At the close of the session, the chairman shall turn the original and two complete copies of the minutes over to the Chief Clerk of the House or the Secretary of the Senate. The original minutes shall be delivered to the Montana Historical Society. The Legislative Council and the Montana State Law Library shall each be given one copy of the minutes.

**7-5.** The Committee on Bills and Journal, the Rules Committee, and conference committees may report at any time, except during a call of the house or when a vote is being taken. Reports from the Bills and Journal Committee shall stand approved without formal action.

**7-6. (1)** All bills providing for an appropriation of public money may first be considered by a joint committee composed of the members of the Senate Committee on Finance and Claims and the House Committee on Appropriations, and then by each separately. Meetings of the joint committee shall be held upon call of the chairman of the House Committee on Appropriations, who shall be chairman of the joint committee.

**(2)** There shall be a joint committee composed of members of the House and Senate Committees on Taxation. The joint committee shall consider any resolution introduced for the purpose of estimating revenue that may be available for appropriation by the Legislature. The joint committee shall be composed of three members from each political party in each house appointed by the chairmen of the respective Committees on Taxation. Meetings of the joint committee shall be held upon the call of the chairman of the joint committee, who shall be a member of the House. The joint committee shall issue periodic reports to each of the houses, indicating the committee's current revenue projections. Such reports shall be issued on the 40th and the 60th day.

**7-7.** The chairman of each committee has general control and direction of the hall and committee room of the committee over which he presides, subject to the control of the presiding officer under Rule 1-3. Except as provided in Joint Rule 7-6, the chairman of the Senate committee shall be chairman of all joint committees.

**7-8. (1)** If either house requests a conference and appoints a committee for the purpose of discussing an amendment on which the Senate and the House of Representatives cannot agree, the other house shall appoint a committee for the same purpose. The time and place of all conference committee meetings shall be agreed upon by their chairmen and be announced from the rostrum. This announcement is in order at any time. Failure to make this announcement shall not affect the validity of the legislation. The conference committees, having conferred, shall report to their respective houses the result of their conference. A conference committee shall confine itself to accepting or rejecting each disputed amendment in its entirety.

**(2)** If either house requests a free conference committee and the other house concurs, appointments will be made the same as above. A free conference committee may discuss a bill in its entirety and is not confined to a particular amendment.

**7-9.** In joint committees other than the Rules and conference committees, members vote individually and not by houses. Because the rules and conference committees are joint meetings of separate committees, in such committees the committees from each house vote separately. A majority of each committee must agree before any action may be taken unless otherwise specified by individual house rules.

**7-10.** (1) Conference committee reports must give clerical instructions for enrolling by referring to the reference bill version.

(2) When a conference committee report is filed with the Secretary of the Senate or the Chief Clerk of the House, the same shall be read under Order of Business No. 3, select committees, and placed on the calendar for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the same legislative day. On the final legislative day a conference committee report shall be placed on the calendar for immediate consideration on second reading and shall be further considered on third reading the same legislative day. If a conference committee report is adopted on third reading and the bill is of a type requiring more than a majority vote for passage, the bill shall again be placed on third reading in each house. This third reading vote must be used to determine if the required number of votes has been cast.

**7-11.** Accredited press representatives may not be excluded from any public legislative meeting or hearing and may not be prohibited from taking photographs, televising, or recording the committee or house hearings, subject to the discretion of the presiding officer in all matters of decorum and order.

**7-12.** A committee block scheduling system will be implemented in the Senate and the House of Representatives. The schedule will be coordinated between houses and will be adjusted according to the Legislature's workload.

## CHAPTER 8 Rules and Journal

**8-1.** Each house shall keep a journal of its proceedings and may, in its discretion, from time to time, publish the same, and the ayes and noes on any question shall, at the request of any two members, be entered on the journal.

**8-2.** (1) The proceedings of each house which shall be entered on its journal include:

- (a) the number of each bill when it is introduced and subsequently considered;
- (b) every motion and the name of the member making it;
- (c) proposed constitutional amendments which have been voted for by two-thirds of the members (Montana Constitution, Art. XIV, Sec. 8);
- (d) committee reports;
- (e) roll call votes;

- (f) messages from the Governor and the other house;
- (g) an entry of the oath taken by the members (section 5-2-214, MCA).

(2) The title of each bill shall be listed in the index of the permanent journals.

**8-3.** The Bills and Journal Committee of each house shall supply the Legislative Council with the contents of the daily journal to be stored on an automated system. The committee shall examine its journal, distribute a daily journal to all legislators, order correction of any errors, and report each legislative day immediately after roll call.

**8-4.** The journal of the Senate must be authenticated by the signature of the President, and the journal of the House of Representatives, by the signature of the Speaker. The distribution of the completed journals shall be made by the Legislative Council (sections 5-11-201 through 5-11-203, MCA).

**8-5.** (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any Rules Committee report recommending a change in joint rules shall be referred to the other house for concurrent action. Any new rule or any change in the rules of either house shall be transmitted to the other house for informational purposes.

**8-6.** Mason's Manual of Legislative Procedure governs the proceedings of the Senate and the House of Representatives in all cases not covered by these rules.

**8-7.** The Legislative Council shall codify and publish in one volume the rules of the Senate, the rules of the House of Representatives, and the joint rules of the Senate and the House of Representatives. Upon adoption, the Secretary of the Senate and the Chief Clerk of the House of Representatives shall provide the office of the Legislative Council with one copy of all motions or resolutions amending Senate, House, or joint rules, and with copies of all minutes and reports of the Rules Committees. After the rules have been published, the Legislative Council shall distribute copies as directed by the Senate and the House of Representatives.

**8-8.** Pursuant to the authority established in sections 5-11-211 through 5-11-214, MCA, the following fee schedule is established for the legislative proceedings:

(1) One complete set of the proceedings of any regular session, \$475; an additional \$150 is required for mailing.

(2) One complete set of the proceedings of any special session, \$25.

(3) Single copies of bills, resolutions, amendments, status sheets, or other documents may be purchased according to the length of the document as follows:

|                               |                       |
|-------------------------------|-----------------------|
| 1-5 pages.....                | \$ .25                |
| 6-15 pages.....               | \$ .50                |
| 16-40 pages.....              | \$1.00                |
| 41-100 pages.....             | \$1.50                |
| 101-200 pages.....            | \$2.00                |
| Over 200 pages.....           | \$4.00                |
| Copies of enacted bills ..... | cost of reproduction. |

## CHAPTER 9 Voting Procedure

**9-1.** Except as provided in Joint Rule 9-2, every member present when a question is put shall vote unless the house of which he is a member excuses him.

**9-2.** A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose the fact to the house of which he is a member.

**9-3.** Amendments to the Montana Constitution may be proposed by any member of the Legislature. If adopted by an affirmative roll call vote of two-thirds of all the members of the Legislature, the amendment shall be deemed approved by the Legislature (Montana Constitution, Art. XIV, Sec. 8).

**9-4.** When a measure requiring the concurrence of two-thirds of the members is under consideration, a majority vote is sufficient to decide any question relating to the measure short of third reading.

**9-5.** A roll call vote shall be taken on the request of two members, if the request occurs before the vote is taken.

**9-6.** On a roll call vote the names of the members shall be called alphabetically, unless an electronic voting system is used. A member may not vote or change his vote after the decision is announced from the chair. A member may not explain his vote until after the decision is announced from the chair.

**9-7.** (1) On third reading the question shall be stated as follows: "Senate (or House) bill number ..... having been read three several times, the question is, shall the bill pass (or be concurred in)."

(2) If an electronic voting system is used, the signal shall be sounded after the question is stated and then the presiding officer shall state "Those in favor vote yes and those opposed vote no." After a reasonable pause the presiding officer asks "Has every member voted?" (reasonable pause), "Does any member wish to change his or her vote?" (reasonable pause), "The Clerk (Secretary) will now record the vote."

**9-8.** Two members may pair on a measure that will be determined by a majority vote. On a measure requiring a two-thirds vote for adoption,



three members may pair, with two members for the measure and one member against. Pairing is permitted only when one of the paired members is excused when the vote is taken.

**9-9.** An agreement to pair must be in writing and dated and signed by the members agreeing to be bound, and must specify the duration of the pair. When an agreement to pair is filed with the Secretary of the Senate or the Chief Clerk of the House of Representatives, it shall bind the members signing until the expiration of time for which it was signed, unless the paired members sooner appear and ask that the agreement be cancelled.

**9-10.** Every vote of each member of the Legislature on each substantive question in the Legislature, in any committee, or in Committee of the Whole shall be recorded and made public. On final passage of any bill or joint resolution the vote shall be taken by ayes and noes and the names entered on the journal. Roll call votes shall be taken by ayes and noes and the names entered on the journal on adopting an adverse committee report and on those motions made in Committee of the Whole referred to in Joint Rule 6-26(1)(a) through (d). A roll call vote shall be taken on nonsubstantive questions on the request of two members, who may likewise on any vote, request that the ayes and noes be spread upon the journal. Roll call votes and other votes which are to be made public but are not specifically required to be spread upon the journal shall be entered in the minutes of the appropriate committee or of the appropriate house and a copy of such minutes shall be filed with the Montana Historical Society (Montana Constitution, Art. V, Sec. 11(2)).

## CHAPTER 10 Consent Calendar

**10-1.** Noncontroversial bills and simple and joint resolutions qualifying for the consent calendar may be processed by a standing committee according to the following provisions:

(1) To be eligible for the consent calendar, the legislation must receive unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition, a motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report. No appropriation or revenue bills may be recommended for the consent calendar.

(2) The legislation is then sent to be processed and reproduced as a third reading version and specifically marked as a "consent calendar" item.

(3) Legislation shall be immediately posted (as soon as it is received as a third reading version) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the presiding officer will announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate will be allowed.

(4) Any three members may submit written objections, and the legislation must then be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be voted on following third reading.

(6) Legislation on the consent calendar will be voted on individually with the roll call vote spread on the journal as the final vote on those bills and resolutions.

(7) Legislation passed on the consent calendar will then be transmitted to the second house.

## CHAPTER 11

### Statement of Legislative Intent

**11-1. Definition.** For the purpose of compliance with the Legislative History Act (Title 5, chapter 4, part 4, MCA), a statement of legislative intent regarding a bill will express the common understanding of those components of the Legislature voting on the bill. This statement differs from a purpose clause, which is used in general to describe the broad overall objectives of a bill, while a statement of intent is used to guide the details of interpretation by those charged with implementation of the bill and is phrased in terms of contingencies, examples, or other matter inappropriate for expression as statutory language.

**11-2. Limitation.** A statement of intent may not accompany any bill that does not statutorily require one unless a committee (standing committee, Committee of the Whole or conference committee) agrees by a two-thirds vote to attach the statement.

**11-3. Statement of intent to accompany bill — when — how.** A statement shall accompany a bill as follows:

(1) Statements of intent are required for bills delegating new rule-making or licensing authority.

(2) The standing committee of the house in which the bill originates is responsible for authoring a statement of intent for a bill requiring one.

(3) The statement shall be stored on ALTER, printed, and reproduced on paper of the same color and in the same manner as the bill, and shall be attached to the bill. The statement shall be reproduced on paper of the same color as the bill and attached to the bill on all subsequent reproductions of the bill.

**11-4. Modification.** Any committee subsequently considering the bill may amend a previous statement. The statement of intent will be reflected in the history of the bill.

**11-5. Conference committee on intent only.** (1) When the second house concurs in a bill without amendments but amends or supersedes a previous statement of intent, the bill may not be enrolled until both houses have agreed on a statement of intent. If the statement is attached to a bill that does not statutorily require one, the conference committee can delete the statement in its entirety.

(2) A new statement of intent written by the second house will be processed in the same manner as a second house amendment.

(3) A regular conference committee may be appointed solely to resolve differences of intent if the second house's statement of intent is not so accepted.

Passed March 6, 1987.

## **SENATE JOINT RESOLUTION NO. 8**

**A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENDORSING THE RECOMMENDATIONS OF THE DEVELOPMENTAL PLANNING TASK FORCE RELATING TO PROVISION OF SERVICES TO PERSONS WITH DEVELOPMENTAL DISABILITIES.**

WHEREAS, the Developmental Planning Task Force was appointed by the Developmental Disabilities Planning and Advisory Council and jointly funded by the Council, the Department of Social and Rehabilitation Services, the Department of Institutions, and the Office of Public Instruction to study and prepare recommendations for meeting the needs of Montana's unserved and underserved citizens with developmental disabilities; and

WHEREAS, the Task Force solicited advice and testimony from consumers, legislators, and professionals; and

WHEREAS, Montana law provides that each person who may be developmentally disabled will be afforded such treatment and habilitation as is suited to his needs and that such treatment and habilitation will be skillfully and humanely administered with full respect for the person's dignity and personal integrity; and

WHEREAS, Montana law provides that the state will accomplish this goal whenever possible in a community-based setting or in an institutionalized setting only if less restrictive alternatives are unavailable or inadequate and only if a person is so severely disabled as to require institutionalized care; and

WHEREAS, Montana law assures that due process of law is accorded any person with developmental disabilities.

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:**

That the following Task Force recommendations concerning the provision of services to Montanans with developmental disabilities be endorsed:

(1) that supported work services be developed for Montana's citizens with severe disabilities;

(2) that, when necessary, new programs be planned to bridge gaps that exist in the array of services;

(3) that programs at the Eastmont Human Services Center be modified to meet the specific needs of Montana's senior citizens with developmental disabilities;

(4) that programs at the Montana Developmental Center be modified to meet the specific needs of Montanans with developmental disabilities who have severe behavior problems or severe medical or care needs or who have been identified as naive offenders (individuals with developmental disabilities who come into contact with the criminal justice system because they have disobeyed the law);

(5) that improvements be made in community services in the areas of case management, respite care, and staff training and that independent reviews of placement and treatment, by the board of visitors or a similar body appointed for the purpose, be established;

(6) that the Developmental Disabilities Division of the Department of Social and Rehabilitation Services be designated as the lead agency for a federally funded state grant program for handicapped infants and toddlers;

(7) that concerned Montanans increase their awareness of problems faced by the naive offender, an individual with developmental disabilities who comes in contact with the criminal justice system because he has disobeyed a law, and the need for policies and procedures to identify and treat those individuals;

(8) that existing services be extended when necessary to meet the needs of all Montana citizens with developmental disabilities; and

(9) that the highest priority with regard to the provision of programs for the developmentally disabled is to appropriately serve all the developmentally disabled in the state, especially the unserved and underserved citizens.

BE IT FURTHER RESOLVED, that these recommendations be adopted as guidelines for state agencies but not implemented unless adequate funding is available.

Passed April 21, 1987.

## SENATE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO GIVE EQUAL CONSIDERATION TO HYDROPOWER PROJECTS ASSOCIATED WITH AGRICULTURE AND AGRICULTURAL PROJECTS FOR PRIVATE GRANTS AND LOANS UNDER THE WATER DEVELOPMENT PROGRAM.

WHEREAS, the Montana Legislature has authorized private grants and loans for water development under Title 85, chapter 1, part 6, MCA; and

WHEREAS, hydropower development qualifies as an eligible project or activity for consideration by the Department of Natural Resources and Conservation under this program; and

WHEREAS, hydropower development grants and loans have been authorized but the Department of Natural Resources and Conservation currently emphasizes agricultural projects; and

WHEREAS, the Montana Water Development Association and the Water Development Advisory Council have recognized that hydropower developments can benefit agriculture and have approved resolutions supporting funding for these developments; and

WHEREAS, the Montana Legislature recognizes hydropower developments may be directly related to agricultural development in Montana; and

WHEREAS, "directly related to agriculture" means that the sale of electricity from the hydropower project benefits an existing agricultural operation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Natural Resources and Conservation consider hydropower developments associated with agriculture equally with agricultural projects in administering the private grant and loan water development program established in Title 85, chapter 1, part 6, MCA.

Passed March 14, 1987.

## **SENATE JOINT RESOLUTION NO. 11**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO NAME THE ADMINISTRATION BUILDING AT THE MONTANA STATE PRISON AT DEER LODGE THE "RICHARD C. WALLACE BUILDING" IN RECOGNITION OF THE LONG SERVICE AND VARIED CONTRIBUTIONS OF RICHARD C. WALLACE, WHO DIED IN AN EXPLOSION AT THE MONTANA STATE PRISON.

WHEREAS, after the 48th Legislature appropriated money for the project, a headquarters building at the Montana State Prison at Deer Lodge was constructed and occupied; and

WHEREAS, the administration building at the Montana State Prison should be appropriately named to remind us of the dedication to public service of the employees and staff of the Montana State Prison; and

WHEREAS, Richard C. Wallace began his employment at Montana State Prison in April 1963 and continued that employment until his death while on duty at the Montana State Prison; and

WHEREAS, Richard C. Wallace was initially employed as a correctional officer, a position he held until November 1965, when he became a mechanic in the vehicle maintenance center, and he was later promoted to supervisor of the vehicle maintenance center; and

WHEREAS, Richard C. Wallace returned to the security department in September 1984 as a correctional officer, a position he held until he was

killed, while on duty, on December 30, 1985, in an explosion that occurred in the tunnel connecting the administration building to tower 1; and

WHEREAS, in 1974 Richard C. Wallace was commended by the warden for outstanding performance above and beyond that expected of him during a strike by employees at the prison; and

WHEREAS, in 1975 Richard C. Wallace was commended by the warden for his performance in efforts to extinguish a fire at the theater at the prison; and

WHEREAS, in 1979 Richard C. Wallace was commended by the warden for working during an employees' strike; and

WHEREAS, Richard C. Wallace was frequently complimented by his supervisors at Montana State Prison for his industriousness, conscientiousness, and pride in his work; and

WHEREAS, in September 1986 Richard C. Wallace posthumously became the first recipient of the Correctional Employee of the Year Award from the Montana Correctional Association and was nominated for recognition as the Correctional Officer of the Year of the American Association of Correctional Officers.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Institutions name the administration building at the Montana State Prison the "Richard C. Wallace Building".

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Department of Institutions for the preparation of appropriate plaques or signs designating the administration building as the "Richard C. Wallace Building".

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Governor, to Mrs. June Wallace, and to the publisher of each newspaper in the state.

Passed March 16, 1987.

## **SENATE JOINT RESOLUTION NO. 12**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING CONGRESS TO CLARIFY ELIGIBILITY REQUIREMENTS FOR GENERAL PARTNERS RECEIVING FARM COMMODITY PROGRAM PAYMENTS.

WHEREAS, in the Food Security Act of 1985, Congress established a general limit of \$50,000 on payments that could be made to any person under one or more federal programs for wheat and feed grains; and

WHEREAS, the intent of such payment limitations was to provide incentives to well-managed owner-operated family farms as the best means

of promoting wise land-use practices and enhancing commodity price stability through limiting production; and

WHEREAS, Congress provided that the Secretary of the United States Department of Agriculture define the term "person" and assure fair application of the limitations in regulations issued to implement the Act; and

WHEREAS, current regulations do not adequately define payment eligibility of general partners or limit payments as intended by Congress; and

WHEREAS, large institutional farming enterprises are being structured wherein investors with minimal investment and no operational involvement are each eligible to receive payments under the Act; and

WHEREAS, with no effective limit on program payments to owners of such an enterprise, the farm program:

(1) encourages large-scale block farming with little incentive for practicing good farming or soil conservation techniques;

(2) results in certain entities engaging in farming solely for program benefits; and

(3) enables institutional enterprises to hold the land for speculative purposes, thereby denying entry of new owner-operators into farming at an opportune time; and

WHEREAS, owner-operated family farms are more conducive to a strong rural social structure and local economy than the institutional nonowner-operated farm.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That Congress is urged to clarify the eligibility requirements for general partners receiving federal commodity payments by requiring that such persons provide material input and bear a substantial portion of risk in the farming operation upon which eligibility is based.

(2) That Congress is urged to take any necessary action to ensure that its intent in establishing program eligibility and imposing payment limitations is properly implemented by the United States Department of Agriculture.

(3) That a copy of this resolution be sent by the Secretary of State to each member of the Montana Congressional Delegation, the chairman of the Senate Committee on Agriculture, Nutrition, and Forestry, the chairman of the House Committee on Agriculture, and the Secretary of the United States Department of Agriculture.

Passed March 16, 1987.

**SENATE JOINT RESOLUTION NO. 13**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE CONSOLIDATION OF ALL SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES UNDER A SINGLE ADMINISTRATIVE AUTHORITY; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 51ST LEGISLATURE.

WHEREAS, community-based services for Montanans with developmental disabilities have historically been provided by the Department of Social and Rehabilitation Services, while institutional services have been provided by the Department of Institutions; and

WHEREAS, support services and other coordinated activities for Montanans with developmental disabilities are provided by the Department of Labor, the Department of Health and Environmental Sciences, and the Office of Public Instruction; and

WHEREAS, administering institutional and community-based programs through separate agencies fosters difficulties in communication, cooperation, and coordination of service delivery; and

WHEREAS, the developmental disabilities service system is needlessly complex, with confusion over lines of authority and uncertainty for the public about access to the system; and

WHEREAS, the desirability of administrative consolidation of developmental disability services has been recommended by both the House Bill 909 Advisory Council required by Chapter 687, Laws of 1983, and the Disability Task Force of the Department of Social and Rehabilitation Services. NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study:

- (1) the need for consolidation of all services for persons with developmental disabilities under a single administrative authority; and
- (2) the various alternative methods for achieving that consolidation.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 51st Legislature and, if necessary, draft legislation to implement its recommendations.

Passed April 23, 1987.

**SENATE JOINT RESOLUTION NO. 15**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO RESTORE FINANCIAL STABILITY TO THE FARM CREDIT SYSTEM.

WHEREAS, the ongoing crisis in the Farm Credit System has created great hardship for farm and ranch producers throughout the nation and especially in Montana, where borrowers have suffered loss of credit, delays



and red tape, and exorbitant interest rates in excess of 13% for Federal Land Bank loans; and

WHEREAS, this crisis' most cruel manifestation has been the loss of borrower stock in four failed Production Credit Associations (PCA) in the 12th Farm Credit District, three of which were the Glendive, Milk River, and Western Montana PCAs in Montana; and

WHEREAS, this loss of members' stock in Montana, a total of \$13 million, has not only shaken and in many cases destroyed producer confidence in the Farm Credit System but has had a profound ripple effect on the entire economy of Montana, a state whose largest industry is agriculture; and

WHEREAS, the restoration of a sound, viable Farm Credit System of Land Banks and Production Credit Associations is absolutely vital to any recovery of the agricultural economy; and

WHEREAS, the Farm Credit System's regulator, the Farm Credit Administration in Washington, D.C., has proven itself incapable of or unwilling to take any action to alleviate these problems but has contributed to the problem by tying the system banks in red tape and burdening the system with onerous and unnecessary regulations.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States is urged to pass legislation to restore confidence and competence in the Farm Credit System by providing the necessary assistance to restore its financial stability, provide lower, competitive interest rates, restore the borrower stock lost in the failed PCAs, and institute a guaranty of borrower stock in the future so that this tragedy will never occur again.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to each member of Montana's Congressional Delegation and to the Director of the Farm Credit Administration.

Passed April 3, 1987.

## HOUSE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING FULL COOPERATION BETWEEN THE UNITED STATES GOVERNMENT AND THE GOVERNMENTS OF VIETNAM AND LAOS IN RESOLVING THE STATUS OF AMERICANS STILL MISSING AND UNACCOUNTED FOR IN SOUTHEAST ASIA; AND DIRECTING THAT THE PRISONER OF WAR FLAG BE FLOWN AT THE STATE CAPITOL ON SEPTEMBER 19 EACH YEAR.

WHEREAS, there are over 2,400 Americans still missing or otherwise unaccounted for in Indochina, and their families still suffer untold grief due to uncertainty about their fate; and

WHEREAS, the President of the United States has declared resolution of the POW/MIA issue a matter of highest national priority and has initiated high level dialogues with the governments of Vietnam and Laos on this issue; and

WHEREAS, the Legislature fully understands and agrees that the fullest possible accounting can be achieved only through government-to-government cooperation; and

WHEREAS, the government of Vietnam has agreed in principle to the United States proposal for joint excavation of United States aircraft crash sites in line with their pledge to accelerate cooperation with the United States to resolve the issue within a 2-year timeframe; and

WHEREAS, the government of Laos has agreed to continue and increase cooperation with the United States.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature support the President's pledge of highest national priority to resolve the status of Americans still missing and unaccounted for in Indochina.

(2) That the Legislature urge the United States government to accelerate efforts in every possible way to obtain the immediate release of any Americans who may still be held captive in Indochina and the return of American servicemen and servicewomen and civilians who died in Southeast Asia whose remains have not been repatriated.

(3) That the Legislature strongly urge the governments of the Socialist Republic of Vietnam and the Lao People's Democratic Republic to fully cooperate with the United States government in the humanitarian effort to resolve the fates of over 2,400 American servicemen and servicewomen and civilians still missing in Southeast Asia.

(4) That the Montana Legislature direct that the POW flag be flown at the Montana State Capitol on September 19 each year (National MIA-POW Recognition Day) to demonstrate the commitment that the citizens of the State of Montana have to our brave men and women who served our country.

(5) That the Secretary of State send copies of this resolution to the Montana Congressional Delegation.

Passed March 6, 1987.

## HOUSE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONCERNING THE CLASSIFICATION, PAY, AND OTHER CONDITIONS OF EMPLOYMENT OF LEGISLATIVE EMPLOYEES; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE; AND PROVIDING FOR RETROACTIVE APPLICABILITY.

WHEREAS, it is necessary to establish a pay plan for legislative employees that compensates those employees on a basis similar to other state employees; and

WHEREAS, it is necessary that legislative employees know of their conditions of employment and that such conditions be uniform for the House of Representatives and Senate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) (a) That the following legislative employee positions be classified in the grades indicated and be entitled to be paid according to the 1986-1987 hourly pay matrix, which does not include insurance, issued by the Department of Administration on May 3, 1985. Because legislative employees receive no additional benefits, 20 cents an hour must be added to the hourly compensation as shown on the pay matrix.

(b) That an employee with no qualifying legislative experience be classified at step 2 of the appropriate grade. A person who has served as a legislator or an employee of the Montana House of Representatives or Senate for at least one-half of a regular session is entitled to be advanced one step for each session so served.

Grade 20

Chief Clerk of the House  
Secretary of the Senate

Grade 17

Sergeant-at-arms

Grade 14

Chaplain

Grade 13

Assistant Chief Clerk of the House  
Assistant Secretary of the Senate  
Aide to the Senate Republican Leader  
Aide to the Senate President

Grade 11

Legislative Assistant  
Chief Stenographer  
Bills Clerk  
Journal Clerk  
Assistant Sergeant-at-arms  
Secretary to the following:

President, Speaker, Secretary of the Senate, Chief Clerk, Senate Democratic and Republican Floor Leaders, House Majority and Minority Leaders

Grade 10

Bills Coordinator  
Assistant Chief Stenographer  
Assistant Journal Clerk  
Assistant Bills Clerk

Committee Secretary  
Bills Distributor  
Amendments Coordinator  
Legislative Telephone Operator  
Status Input Technician

Grade 9

Assistant Bills Coordinator  
Assistant Bills Distributor  
Assistant Amendments Coordinator

Grade 8

Stenographer

Grade 7

Assistant Status Input Technician  
Reading Clerk  
Supply Clerk  
Posting Clerk  
Typist  
Security Guard  
Doorman

Grade 6

Proofreader  
Clerk-typist  
Steno Aide

Grade 5

Distribution Clerk  
Parking Attendant  
Page Supervisor

Grade 3

Committee Aide

Grade 1

Permanent Page

\$3.50 an hour

Page

(2) (a) That each employee record the number of hours worked each day on a timesheet provided. A completed timesheet must be turned in each Friday that ends a pay period. Each chamber shall adopt a procedure for review, approval, and collection of the timesheets and for timely filing with the Legislative Council.

(b) That the Sergeants-at-arms review and approve the timesheets for the following employees: Assistant Sergeants-at-arms, Doormen, Security Guards, Distribution Clerks, and Pages.

(c) That the Speaker and Minority Leader of the House review and approve the timesheets for their employees.

(d) That the Chief Clerk of the House and the Secretary of the Senate review all timesheets and approve those not otherwise provided for.

(3) That the positions classified at Grade 17 and above be exempt from overtime pay. During a regular legislative session, employees in such positions must be paid for 48 hours a week regardless of the number of hours worked. Whenever such employees are preparing for or closing a regular or special session or otherwise working at the direction of their respective presiding officers during an interim, they must be paid for each hour worked at the hourly compensation determined under subsection (1) and their timesheets reviewed and approved by their presiding officers.

(4) That the positions classified below Grade 17 be subject to overtime pay. Hours over 40 a week worked by an employee so classified must be compensated at the rate of 1 ½ times the employee's regular hourly wage. Legislative Assistants to the Majority and Minority Leaders may work up to 48 hours a week.

(5) That the legislative employees listed above be considered temporary employees and not entitled to any additional benefits, such as sick leave, vacation leave, holiday pay, time off with pay, health insurance, or longevity allowances. Section 2-18-617(3), MCA, relating to assumption of liability for accrued vacation credits, does not apply to the Legislature and its employees.

(6) That a Chaplain be entitled to be paid for 2 hours for each legislative day served.

(7) That membership in the Public Employees' Retirement System be available but in accordance with 19-3-403(5), MCA, not be mandatory.

(8) That the Legislature intends this Joint Resolution to apply to the employees hired to prepare for the 51st Legislature by the leadership elected at the November 1988 caucuses.

(9) (a) That this resolution be effective upon passage and be effective until January 2, 1989.

(b) That this resolution apply retroactively to all employees of the 50th Legislature.

Passed January 10, 1987.

## HOUSE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO TAKE IMMEDIATE ACTION ON THE PASSAGE OF THE FEDERAL SURFACE TRANSPORTATION PROGRAM REAUTHORIZATION ACT.

WHEREAS, the 99th Congress of the United States failed to reauthorize the Federal Surface Transportation Program Reauthorization Act; and

WHEREAS, this failure to take action will bring the federal-aid transportation program to a standstill early in 1987; and

WHEREAS, highway users have continued to pay taxes into the highway trust fund but have not received any benefit from these taxes in fiscal 1987; and

WHEREAS, the lack of reauthorization will adversely affect the quality of Montana's highway transportation system; and

WHEREAS, the failure has adversely impacted the economic strength and viability of Montana's construction industry; and

WHEREAS, the continued failure to act could have the effect of eliminating thousands of construction-related jobs in Montana in 1987; and

WHEREAS, Montana has created and funded solely with state money a reconstruction trust fund to provide badly needed dollars for its deteriorating roads; and

WHEREAS, low asphalt and concrete prices now make highway construction an excellent investment.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the 100th Congress of the United States be urged to take immediate action to approve the Federal Surface Transportation Program Reauthorization Act for fiscal 1987 and beyond.

(2) That the Secretary of State send copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate, and all members of the Montana Congressional Delegation.

Passed February 21, 1987.

## HOUSE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION VIII, TO REVISE ITS POLICY CONCERNING UNDERGROUND SALT WATER INJECTION INTO THE JUDITH RIVER FORMATION ON THE FORT PECK RESERVATION AND TO ESTABLISH A MONITORING AND DATA COLLECTION PROGRAM.

WHEREAS, the Environmental Protection Agency (EPA) administers the Underground Injection Control (UIC) Program and has issued permits for a number of salt water disposal wells on the Fort Peck Reservation; and

WHEREAS, under present policy EPA is allowing continued injection of salt water within certain limits for a number of wells that existed prior to the UIC Program's inception in the portion of the Judith River Formation west of a line running north-south between Range 48E and 49E; and

WHEREAS, under present policy EPA will permit new salt water injection wells in the portion of the Judith River Formation east of the line between Range 48E and 49E; and

WHEREAS, the Judith River Formation is a relatively shallow aquifer, and water in the western portion of the formation qualifies as an underground source of drinking water as defined by EPA regulations; and

WHEREAS, persons living on and near the Fort Peck Reservation are presently using water from the western portion of the Judith River Formation for livestock and domestic purposes, and technological advances may make other beneficial uses economically feasible in the future; and

WHEREAS, EPA policy concerning continued salt water injection in the Judith River Formation is based primarily on theoretical calculations and on limited or no empirical data concerning ambient water quality, hydrology and fracture gradients in the formation, the containment of injected salt water within approved limits in the vicinity of each well, and the cumulative effects of all wells injecting into the formation on beneficial use of the aquifer; and

WHEREAS, available data indicate that a number of wells have exceeded or are likely to exceed the carrying capacity of their approved disposal areas within the Judith River Formation; and

WHEREAS, pressure buildup from salt water disposal wells could cause lower quality formation water to be displaced toward portions of the formation where beneficial use of higher quality water is occurring; and

WHEREAS, EPA has not begun regulatory review of a number of existing wells disposing salt water into the Judith River Formation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That EPA establish a comprehensive monitoring and data collection program on the Fort Peck Reservation to obtain reliable information concerning the ambient water quality, hydrology, and fracture gradients of the Judith River Formation and the individual and cumulative effects of salt water disposal wells on the formation's water quality.

(2) That EPA revise its policy to postpone approval of new salt water disposal wells in the eastern portion of the Judith River Formation until there is sufficient data to prove that there will be no adverse effect on existing and potential future beneficial use of formation water.

(3) That EPA revise its policy concerning existing salt water disposal wells in the western portion of the Judith River Formation to reflect the primary objectives of returning the water quality of the formation to prior ambient levels and promoting beneficial use of formation water.

(4) That EPA develop a schedule for phasing out the existing wells in the western portion of the Judith River Formation within a reasonable time.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Regional Administrator, U.S. Environmental Protection Agency, Region VIII, and the Montana Congressional Delegation.

Passed March 30, 1987.

## HOUSE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AUTHORIZING THE PERMANENT DISPLAY OF A MEMORIAL PAINTING IN THE LOBBY OF THE MONTANA JUSTICE/STATE LIBRARY BUILDING HONORING MR. BARRY R. ROWE, THE PRINCIPAL ARCHITECT OF THE BUILDING.

WHEREAS, Mr. Barry R. Rowe graduated from the Montana State University School of Architecture in 1973 and designed many public buildings in the State of Montana; and

WHEREAS, Mr. Barry R. Rowe was the principal architect of the jail complex in Fort Benton, Montana, which has been selected as a model jail by the United States Penal Commission; and

WHEREAS, Mr. Barry R. Rowe was the principal architect for the Montana Justice/State Library Building; and

WHEREAS, since Mr. Barry R. Rowe's untimely death on December 9, 1985, it seems right and proper that his contribution to Montana and his fellow man be memorialized as a token of recognition and appreciation; and

WHEREAS, Mr. Charles Rowe has offered to create a memorial painting symbolizing the Montana Justice/State Library Building and donate the painting in Mr. Barry R. Rowe's memory.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature give its authorization to permanently display a memorial painting honoring Mr. Barry R. Rowe in the lobby of the Montana Justice/State Library Building.

Passed March 11, 1987.

## HOUSE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING ADOPTION BY THE COURTS OF "GUIDELINES FOR THE FAIR TREATMENT OF CHILD WITNESSES IN CASES WHERE CHILD ABUSE IS ALLEGED".

WHEREAS, the incidence of sexual abuse against young children has increased dramatically in recent years; and

WHEREAS, a crime against a child is usually nonviolent and committed in secrecy, with the child often the only witness; and



WHEREAS, detecting the abuse and convicting the offender are difficult due to the lack of witnesses, lack of physical evidence, and inability, in many cases, of the child to testify against the defendant; and

WHEREAS, in cases where the child victim does testify, direct examination and cross-examination in the presence of the defendant lead to intimidation or confusion of the child, often resulting in the jury disbelieving the child's testimony; and

WHEREAS, there is a verified need to modify court procedures and evidentiary rules to accommodate the needs of the child witness.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That courts in Montana be urged to follow the American Bar Association in approval and adoption of "Guidelines for the Fair Treatment of Child Witnesses in Cases Where Child Abuse Is Alleged" in order to achieve procedural reform to improve the handling of child abuse cases and minimize the trauma suffered by child victims.

(2) That if passed, the Secretary of State shall send a copy of this joint resolution to each Supreme Court Justice and District Court Judge.

Passed March 20, 1987.

## HOUSE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE MONTANA CONGRESSIONAL DELEGATION TO INITIATE AN AMENDMENT TO THE RECLAMATION REFORM ACT OF 1982 TO PROVIDE A MORE EQUITABLE ACREAGE LIMITATION FOR MONTANA LAND SERVED BY A FEDERAL WATER PROJECT.

WHEREAS, the Reclamation Reform Act of 1982, Public Law 97-293, was passed by the Congress of the United States; and

WHEREAS, under that act an increased acreage limitation of 960 acres is available for federal water projects, with an equivalency factor to increase acreages on land with lower productive and economic potential due to topography, soil characteristics, length of growing season, elevation, adequacy of water supply, and crop adaptability; and

WHEREAS, the House-Senate Conference Committee addressed development of an equivalency factor by the Secretary of the Interior not limited to an existing land classification system; and

WHEREAS, land in Montana, with its short growing seasons, long distance to markets, and limited crop choices has dramatically less economic potential per acre than land in some other areas served by federal water projects; and

WHEREAS, the equivalency factor was intended to equalize this difference by increasing the acreage limit for lands with less productive and economic potential; and

WHEREAS, the Secretary of the Interior has adopted a method that determines equivalency within a district based on land classification; and

WHEREAS, this determination does not address Montana's limitations due to topography, soil characteristics, length of growing season, elevation, adequacy of water supply, and crop adaptability; and

WHEREAS, the proposed equivalency determination would be expensive for a Montana federal water project user on a per-acre basis with no relief from the acreage limitation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Montana Congressional Delegation be urged to initiate an amendment to the Reclamation Reform Act of 1982 to provide a more equitable acreage limitation recognizing an equivalency factor based on topography, soil characteristics, length of growing season, elevation, adequacy of water supply, and crop adaptability.

(2) That the equivalency factor for Montana be:

(a) 2 acres allowed for each class I acre;

(b) 3 acres allowed for each class II acre; and

(c) 4 acres allowed for each class III acre.

(3) That copies of this resolution be sent by the Secretary of State to each member of the Montana Congressional Delegation.

Passed March 14, 1987.

## HOUSE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT APPROPRIATE LEGISLATIVE COMMITTEES AND THE BOARD OF PUBLIC EDUCATION WORK TOGETHER TO ESTABLISH A DEFINITION OF BASIC EDUCATION FOR MONTANA PUBLIC SCHOOLS AND TO DETERMINE THE COST OF PROVIDING A BASIC EDUCATION; TO DEVELOP A FISCAL NOTE PROCEDURE THAT LINKS EDUCATION POLICIES TO THE STATE BUDGET PROCESS; AND REQUIRING A REPORT OF THE FINDINGS OF THE COORDINATED STUDY TO THE 51ST LEGISLATURE.

WHEREAS, a number of Montana school districts have filed suit against the state on the grounds that the state has failed to meet a constitutional obligation to fund its share of a basic quality education for the public

school children in the state and has therefore denied an equal educational opportunity to the children;

WHEREAS, the Montana Legislature, through a subcommittee of the Legislative Finance Committee, made a diligent effort to address the definition of basic education and its funding and formulate public policies that would address the issues of this litigation;

WHEREAS, the Legislative Finance Committee formed a subcommittee with the objectives of reviewing the definition of basic education and determining the cost of basic education in Montana;

WHEREAS, the Subcommittee on School Funding defined basic education as the Board of Public Education's school accreditation standards and, with the assistance of the State Office of Public Instruction, attempted to determine a preliminary cost of these standards and, based on available fiscal data, determined the state is paying for the cost of the accreditation standards in a manner not related to the ability or willingness of the school district to supplement the state support;

WHEREAS, the subcommittee determined there is a need to continually review whether accreditation standards adequately define basic education; if so, it is now necessary to further articulate what performance factors are expected from the accreditation standards; review more fiscal data from the schools on the cost of implementing the standards; and provide an understandable method of coordination and articulation among the accreditation standard requirements, student performance expectations, and state funding levels; and

WHEREAS, this further analysis needs to be done with significant opportunity for participation by all groups and individuals concerned about public education and public tax dollars.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

- (1) That there should be a thorough interim study regarding:
  - (a) the adequacy of the accreditation standards;
  - (b) the cost of providing services to meet the accreditation standards;
  - (c) a procedure for presenting information to the Legislature on the cost of existing and proposed accreditation standards; and
  - (d) methods of funding basic education.
- (2) That to accomplish this goal, the Legislature requests that:
  - (a) the Board of Public Education administer and coordinate a review of the adequacy of accreditation standards, with appropriate assistance from the Office of Public Instruction;
  - (b) the Legislative Finance Committee further develop the cost components of the existing and proposed accreditation standards and evaluate the state financing method for providing a basic education in the public schools; and

(c) a legislative interim committee be assigned to monitor and evaluate the Board of Public Education's accreditation standard review and to consider any student performance expectations that may be linked to the accreditation standards and school funding.

(3) That the Board of Public Education and the two legislative committees coordinate their work to develop a fiscal note and budgeting system that provides articulation between the education policymakers and those responsible for balancing the state budget.

(4) That the Board of Public Education and the Legislative Finance Committee and a legislative interim committee recommend to the 51st Legislature their definition of a basic education and how such a basic education may be equitably funded.

Passed April 8, 1987.

## HOUSE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE OFFICE OF PUBLIC INSTRUCTION AND THE BOARD OF PUBLIC EDUCATION TO INVESTIGATE THE SAFETY OF SCHOOL BUSES.

WHEREAS, on January 21, 1984, a 65-passenger school bus returning members of the Whitefish wrestling team from a meet in Browning crashed on Montana Highway 2 between Essex and West Glacier; and

WHEREAS, nine persons aboard the bus, including four students, the head wrestling coach, the assistant coach and his wife and child, and the bus driver died upon impact in that accident; and

WHEREAS, the nine persons killed in this 1984 accident were riding in a school bus that was not equipped with seatbelts; and

WHEREAS, the tragic loss of these nine lives served to focus the public's attention on the need to ensure the safety of other students, faculty members, and individuals who depend on school buses to travel to school-related extracurricular activities across Montana; and

WHEREAS, studies completed in an attempt to determine whether the use of seatbelts by school bus passengers reduces injury or saves lives have resulted in inconclusive evidence.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Office of Public Instruction and the Board of Public Education be directed to investigate the safety of school buses in Montana to seek ways to ensure passenger safety.

(2) That the Office of Public Instruction and the Board of Public Education be urged to take steps necessary to ensure that all new and existing school buses in Montana meet minimum federal safety regulations.

Passed March 23, 1987.

## **HOUSE JOINT RESOLUTION NO. 19**

**A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ACKNOWLEDGING AND SUPPORTING THE GOVERNOR'S CUP SLED DOG RACE.**

WHEREAS, Montana is the home of the longest sled dog race in the lower 48 states; and

WHEREAS, in addition to the Montana Mountain Mushers Club, competitors from all over the United States and Canada will race in the Governor's Cup sled dog event; and

WHEREAS, between 200 and 300 volunteers and numerous local businesses are active in making the Governor's Cup race a unique source of winter recreation in Montana; and

WHEREAS, the Governor's Cup race draws approximately 4,000 spectators as well as national press coverage.

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:**

That the Legislature encourages and supports the Governor's Cup 500-mile sled dog race as a source of winter entertainment that benefits Montana economically, enhances its tourist appeal, and is in keeping with the true pioneer spirit of Montanans.

Passed March 21, 1987.

## **HOUSE JOINT RESOLUTION NO. 21**

**A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE SUPREME COURT TO LIMIT EACH PARTY TO ONE PEREMPTORY CHALLENGE FOR SUBSTITUTION OF JUDGES.**

WHEREAS, the disqualification and substitution of judges is a time-consuming and costly procedure; and

WHEREAS, the Supreme Court has, by an order dated June 29, 1981, allowed for two peremptory challenges by each party in a civil case; and

WHEREAS, peremptory challenges for substitution of judges are in addition to disqualifications of judges for cause; and

WHEREAS, only one peremptory challenge per party for substitution of a judge is allowed in a criminal case; and

WHEREAS, the time has passed for legislative disapproval of the court order.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Supreme Court be urged to amend the rule on peremptory challenges for the substitution of a judge in a civil proceeding by limiting each party in a civil case to one peremptory challenge.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to each Justice of the Supreme Court.

Passed March 24, 1987.

## HOUSE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO SEND DELEGATES TO THE WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE.

WHEREAS, the forests of the Western States play a vital role in the economic development of these states; and

WHEREAS, there is an obvious need for developing means to protect and foster these forests to maximize yield while protecting the resource for future generations; and

WHEREAS, proper forest management and use are necessary for the protection and conservation of other important resources, such as wildlife, recreation, and scenic beauty; and

WHEREAS, the subjects that require interstate cooperation include but are not limited to insect infestations, conservation, production, and marketing, all of which know no state boundaries.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Committees of the Senate and the Speaker of the House of Representatives appoint two Senators and two Representatives, one from each party, to represent Montana on the Western States Legislative Forestry Task Force, which operates as a clearinghouse for opinions from all the various interests involved in the Western States forests and which includes among its duties a report to the Legislatures of the

participating states and to the state delegations in the United States Congress concerning means of protecting and fostering the forests of the participating states.

BE IT FURTHER RESOLVED, that the Chief Clerk of the House of Representatives send copies of this resolution to the presiding officers of the Legislatures of Washington, Idaho, Oregon, Wyoming, Alaska, and California and to the Executive Director of the Western States Legislative Forestry Task Force.

Passed March 30, 1987.

## HOUSE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING AND SUPPORTING THE BIG SKY STATE GAMES.

WHEREAS, in July 1986 Montana became the 19th state to join a nationwide movement by hosting a 3-day amateur multisport festival known as the Big Sky State Games; and

WHEREAS, the Big Sky State Games were established in an effort to promote participation in a statewide event and to work in cooperation with the United States Olympic Committee in fostering an appreciation for and awareness of amateur athletics; and

WHEREAS, the Big Sky State Games provide a unique opportunity to encourage and develop the talents of Olympic hopefuls, while providing an arena for the "weekend warrior"; and

WHEREAS, the first Big Sky State Games included a cross-state torch run, carrying of the 1984 Olympic torch to over 20 Montana cities on horseback, a parade of athletes in the Olympic tradition, and competition by over 3,500 amateur athletes, from ages 6 to 80, in 14 athletic events; and

WHEREAS, over 5,000 amateur athletes from across Montana are expected to participate in 17 events during the July 1987 Big Sky State Games; and

WHEREAS, the Honorable Ted Schwinden, Governor of Montana, and the Honorable James Van Arnsdale, Mayor of Billings, have each recognized the importance of the Big Sky State Games in promoting physical fitness and fostering positive community spirit through athletic competition.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature recognize and support the Big Sky State Games, held July 17 through July 19 in Billings, as an opportunity for all Montanans to participate both on and off the field in the state's most comprehensive amateur sporting event.

Passed March 30, 1987.

## HOUSE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO EXPRESS SUPPORT FOR THE SITING OF THE MIDGETMAN MISSILE SYSTEM WITHIN MONTANA SHOULD THE FEDERAL ADMINISTRATION AND THE UNITED STATES CONGRESS DETERMINE THAT DEVELOPMENT AND DEPLOYMENT OF THE MIDGETMAN MISSILE SYSTEM IS IN THE NATIONAL INTEREST.

WHEREAS, the federal Administration and the United States Congress will determine whether the Midgetman missile system is needed to meet the long-term defense requirement of the nation; and

WHEREAS, the State of Montana is proud that its citizens have patriotically rallied to defend freedom and democracy in every war since 1889 in numbers far greater per capita than those of other states; and

WHEREAS, the Montana Legislature recognizes that the federal government is mandated by the United States Constitution to provide for a common defense that is critical to ensure world peace and maintain democratic ideals; and

WHEREAS, the state is proud that deployment of the first Minuteman missiles in Montana more than 25 years ago provided President Kennedy with negotiating strength necessary to peacefully resolve the Cuban missile crisis; and

WHEREAS, the state is now home to and proudly supports the men and women of the 341st Strategic Missile Wing, the nation's finest Strategic Missile Wing.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That if the federal Administration and the United States Congress conclude that deployment of the Midgetman missile system is in the national interest and select the State of Montana as the optimal deployment site, the Legislature will cooperate fully with the United States Government and the Department of Defense.

(2) That copies of this resolution be sent to the Secretary of Defense, Secretary of the Air Force, Chief of Staff of the United States Air Force, and the Commander of the Strategic Air Command.

Passed March 11, 1987.



**HOUSE JOINT RESOLUTION NO. 28**

**A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA IN SUPPORT OF THE NATIONAL EFFORT TO ADVANCE THE DEVELOPMENT OF MAGNETOHYDRODYNAMICS TECHNOLOGY TO A COMMERCIALLY VIABLE STAGE.**

**WHEREAS, Montana possesses the largest known recoverable deposits of coal within the United States; and**

**WHEREAS, the wise, efficient, and environmentally acceptable use of our national coal reserves is within the long-term best interests of Montana and the nation; and**

**WHEREAS, the use of coal in Montana and the United States will be essential to meet electrical energy needs; and**

**WHEREAS, it is within the long-term best interests of Montana and the nation to vigorously pursue the development of all highly promising, energy-efficient, and environmentally acceptable coal-fired electric generating technologies; and**

**WHEREAS, there exists a national effort, led by the Federal Government and supported by private industry, to provide for the development of a coal-fired electrical generation technology known as magnetohydrodynamics (MHD); and**

**WHEREAS, MHD is a significant new technology that promises more efficient generation of electricity from coal, substantial benefits to the nation through the conservation of the nation's coal resources, substantial reduction of the adverse environmental impacts associated with the conversion of coal to electricity, and the potential reduction of transportation requirements.**

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:**

**(1) That MHD is a technology worthy of further development in order to provide for the conversion of coal to electrical power in the cleanest and most efficient manner possible, with minimal water use.**

**(2) That the 50th Montana Legislature strongly urges Congress to continue to support the research and development efforts of the Department of Energy to advance MHD technology to a commercially viable stage.**

**(3) That the 50th Montana Legislature strongly supports a near-commercial MHD retrofit of the Corette power plant as proposed by the Montana-based MHD Development Corporation.**

**(4) That the 50th Montana Legislature strongly supports the Federal Emerging Clean Coal Technologies initiative and urges Congress to support any cost-shared MHD retrofit proposal submitted to the Department of Energy.**

(5) That the Secretary of State send copies of this resolution to the President of the United States, the Office of Management and Budget, the Secretary of the Department of Energy, the members of the United States House of Representatives Appropriations and Science and Technology Committees, the members of the United States Senate Appropriations and Energy and Natural Resources Committees, the Montana Congressional Delegation, and the Governor of the State of Montana.

Passed March 25, 1987.

## HOUSE JOINT RESOLUTION NO. 32

A JOINT RESOLUTION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE STATE OF MONTANA WELCOMING DELTA AIR LINES AND ENCOURAGING COOPERATION BETWEEN DELTA AIR LINES AND MONTANA BUSINESSES AND GOVERNMENT TO STRENGTHEN AIRLINE SCHEDULES, MAINTAIN AND EXPAND SERVICES, AND REDUCE AIRFARES.

WHEREAS, Montana's economy is now reflecting the national trend toward high technology that requires greater reliance on air travel for continued growth; and

WHEREAS, in order to increase growth and profitability by conducting business in the larger population centers, new and expanding businesses and industries in Montana are forced to rely exclusively on an airline's existing schedules, services, and ticket prices; and

WHEREAS, new and expanding businesses and industries within Montana depend on the certainty of airline schedules, uninterrupted service, and stable ticket prices; and

WHEREAS, Montana has witnessed an increase of more than 50% in the cost of airline tickets since 1984; and

WHEREAS, maintaining or increasing airline schedules while containing costs and ticket prices in states with small populations such as Montana is paradoxical in a free enterprise economy; and

WHEREAS, airline deregulation has unfairly shifted the burden for maintaining the profitability of airlines upon the rural American business traveler; and

WHEREAS, chief executives of an airline, who see markets eroding as a result of decreasing populations in states such as Montana, should make decisions based on the favorable national business climate, rather than reducing airline schedules and increasing ticket prices based solely on a local economy; and

WHEREAS, the possibility of Montana incentives for new and expanding businesses and industries may create additional market opportunity for airline services.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE STATE OF MONTANA:

(1) That the Montana Legislature welcomes Delta Air Lines to Montana and to Montana's business communities and encourages Delta Air Lines, with the assistance and support of Montana businesses and governmental entities, to strengthen airline schedules, maintain and expand service, and reduce airfares.

(2) That, with the assistance and support of Montana businesses and governmental entities, Delta Air Lines is encouraged to improve the support necessary to encourage businesses and industries to locate in Montana.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to officials of Delta Air Lines and its subsidiary, Western Airlines, as a gesture of welcome and good will on behalf of the House of Representatives and the Senate.

Passed March 30, 1987.

## HOUSE JOINT RESOLUTION NO. 34

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING SUPPORT FOR THE DEVELOPMENT AND COMPLETION OF THE PUBLIC SCULPTURE PROJECT ENTITLED "MONTANA PRIDE" BY BOZEMAN ARTIST JIM DOLAN.

WHEREAS, the State of Montana has a colorful and unique heritage of which all Montanans can be proud; and

WHEREAS, the works of such Montana artists as Charlie Russell have demonstrated that art can influence how the nation views Montana; and

WHEREAS, existing public sculptures, such as "Our Lady of the Rockies" in Butte, have resulted in civic pride and fostered an increase in tourism; and

WHEREAS, as an ambassador for Montana, Bozeman artist Jim Dolan has achieved national recognition for his public sculptures and architecture, including a national award presented by the Federal Aviation Agency for Art and Architecture in Airports in America for his sculpture entitled "Flight of Canadian Geese" and election in 1979 into the Society of Animal Artists; and

WHEREAS, Jim Dolan has expressed his desire to sculpt the "Montana Pride" project, consisting of 36 outdoor sculptures that will be sited along the major highways in Montana, each sculpture representing the heritage of Montana through its people and their dreams; and

WHEREAS, the 36 sculptures in the "Montana Pride" project will be built with private donations at no cost to the State of Montana; and

WHEREAS, the "Montana Pride" project is intended to symbolize to the state and the nation that Montana is beginning a new era with the celebration of its centennial in 1989.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature recognizes the importance of Bozeman artist Jim Dolan as an ambassador for Montana and supports the "Montana Pride" public sculptures.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent by the Secretary of State to Jim Dolan.

Passed March 30, 1987.

## HOUSE JOINT RESOLUTION NO. 36

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ENCOURAGE THE SECRETARY OF THE UNITED STATES DEPARTMENT OF AGRICULTURE TO AMEND RULES CONCERNING ELIGIBILITY FOR CROP BENEFITS OF PRODUCERS OF AGRICULTURAL COMMODITIES DERIVED FROM HIGHLY ERODIBLE LAND OR CONVERTED WETLAND.

WHEREAS, the United States Congress has enacted the Food Security Act of 1985 that includes, among other things, a policy discouraging the breaking of highly erodible land and the conversion of wetlands; and

WHEREAS, the United States Department of Agriculture has adopted federal regulations concerning the eligibility for crop benefits of producers of agricultural commodities derived from highly erodible land or converted wetland (51 Fed. Reg. 23,502, et seq. (1986) (to be codified at 7 CFR 12.1, et seq.)); and

WHEREAS, federal crop benefits received by the State of Montana comprise a significant amount of financial support for Montana public schools; and

WHEREAS, the Food Security Act of 1985 does not deny to the State of Montana such crop benefits; and

WHEREAS, the United States Department of Agriculture has misinterpreted the applicable statutes and has interpreted the regulations so as to totally deny the State of Montana all of its federal crop benefits, resulting in a possible loss of from \$1 million to \$2.5 million to Montana public schools; and

WHEREAS, the State of Montana has requested the Secretary of the United States Department of Agriculture, pursuant to 5 U.S.C. 553, to amend these rules so as to clarify the eligibility of the State of Montana to continue to receive its federal crop benefits.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Secretary of the United States Department of Agriculture be encouraged to amend the federal rules that implement the provisions of subtitles B and C of Title XII of the Food Security Act of 1985 (Pub. L. No. 99-198), pertaining to highly erodible land conservation, so as to clarify the right of the State of Montana to receive federal crop benefits.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the members of Montana's Congressional Delegation and to the Secretary of the United States Department of Agriculture.

Passed March 20, 1987.

### HOUSE JOINT RESOLUTION NO. 37

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING PHYSICIANS TO ENROLL IN THE PARTICIPATING PHYSICIAN PROGRAM AND ASKING THE CONGRESS OF THE UNITED STATES TO EXAMINE THE APPROPRIATENESS OF MEDICAL RATES.

WHEREAS, the Medicare program was created as an insurance program that would protect the older person from high out-of-pocket health care expenses; and

WHEREAS, the cost of health care is escalating; and

WHEREAS, the charges by physicians have increased; and

WHEREAS, a significant portion of Montana's population foregoes medical care because of its high costs; and

WHEREAS, the federal government has created the Participating Physician Program that provides incentives for physicians to charge no more than Medicare's approved rates; and

WHEREAS, less than 14% of Montana physicians currently are enrolled in the Participating Physician Program.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the physicians of Montana be urged to enroll in the Participating Physician Program during the 1987 enrollment period as a means of demonstrating their concern and commitment to affordable and accessible health care.

BE IT FURTHER RESOLVED, that the State of Montana urge the Congress of the United States to direct the Health Care Financing Administration of the federal Department of Health and Human Services, which administers Medicare, to examine the appropriateness of Medicare rates, especially the differential between generalists and specialists.

BE IT FURTHER RESOLVED, that the Congress of the United States be urged to establish a system of affordable and accessible health care for all citizens.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Medical Association for circulation to its members, the Speaker of the United States House of Representatives, the Majority Leader of the United States Senate, the President of the United States, each member of the Montana Congressional Delegation, and the Governor of the State of Montana.

Passed April 8, 1987.

### HOUSE JOINT RESOLUTION NO. 39

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO STUDY THE FEASIBILITY OF SELF-INSURANCE FOR SCHOOL DISTRICTS.

WHEREAS, the cost of insurance for public entities has escalated steadily for several years; and

WHEREAS, taxable values have declined in many school districts; and

WHEREAS, a statewide insurance pool would contribute to an equalization of insurance costs among school districts and therefore would decrease property taxes.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Superintendent of Public Instruction be directed to study the feasibility of the statewide deductible self-insurance plan for Montana school districts described in House Bill 382 and to report his findings and recommendations to the 51st Legislature.

Passed March 30, 1987.

### HOUSE JOINT RESOLUTION NO. 40

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DEDICATING THE SECOND WEEK OF OCTOBER AS BUSINESS-EDUCATION PARTNERSHIP WEEK IN MONTANA SCHOOLS.

WHEREAS, there is a need to upgrade the quality of education in this country; and

WHEREAS, partnerships involving private citizens, corporate executives, small business owners, and civic club members have been formed throughout the country to improve the educational systems in local communities; and

WHEREAS, these citizens have volunteered time, money, equipment, and talent to upgrade the quality of education and to enrich students' experiences during and after school; and

WHEREAS, these partnerships foster a better understanding of the community's school system, strengthen and improve school programs and curricula, and create a climate of involvement and interaction between businesses and schools; and

WHEREAS, partnerships have been formed through the Adopt-A-School Program, through loaned executive programs, through vocational and technical education councils, and through the donation of both equipment and funding.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the second week of October is declared to be Business-Education Partnership Week and is dedicated to recognizing the outstanding success of the business-education partnership programs.

BE IT FURTHER RESOLVED, that an awards program be encouraged within local communities to honor active private sector participants in the business-education partnership programs.

BE IT FURTHER RESOLVED, that local education personnel and private industry officials be encouraged to meet and work together to maintain and improve business-education partnership programs.

Passed March 30, 1987.

## HOUSE JOINT RESOLUTION NO. 42

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE EFFECTS OF THE BUSINESS IMPROVEMENT DISTRICT ACT AND OF MONTANA'S TAX INCENTIVES FOR SMALL BUSINESSES; AND REQUIRING A REPORT TO THE 51ST LEGISLATURE.

WHEREAS, the Business Improvement District Act, Title 7, chapter 12, part 11, MCA, provides for the creation of business improvement districts to promote the health, safety, prosperity, security, and general welfare of the inhabitants thereof and of the people of the state and to be of special benefit to the property within a district created pursuant to the Act; and

WHEREAS, sections 15-31-124 through 15-31-127, MCA, provide incentives for economic development in the form of tax credits for new or expanding industry that offers additional job opportunities in Montana; and

WHEREAS, sections 15-30-162 and 15-31-123, MCA, allow credits against individual income tax and corporate license tax for investment in

certain depreciable property to stimulate capital investment by small businesses; and

WHEREAS, section 15-33-106, MCA, exempts from individual income tax and corporation license tax any capital gains or dividend income realized from an investment in a small business investment company; and

WHEREAS, carefully designed and targeted tax incentives have been shown to be significant considerations in business location decisions when used in conjunction with other elements of sound economic development strategies; and

WHEREAS, Montana's business tax incentives must be assessed objectively to evaluate their significance in decisions to create new businesses and new jobs through economic expansions and in attracting businesses to Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study the effectiveness of:

- (1) the Business Improvement District Act, with particular attention to:
  - (a) determining the extent of use of the Act;
  - (b) assessing the degree of success of the Act in achieving its objectives where used; and
  - (c) proposing modifications to improve the effectiveness of the Act to increase its influence in a comprehensive economic development effort; and
- (2) Montana's economic development tax incentives to determine if they are:
  - (a) useful as economic development tools;
  - (b) job intensive and properly targeted; and
  - (c) in need of modifications or improvements that will enhance their value in encouraging growth of economic opportunity in Montana.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 51st Legislature and, if necessary, draft legislation to implement its recommendations.

Passed April 6, 1987.

## HOUSE JOINT RESOLUTION NO. 43

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE FEASIBILITY OF REQUESTING INSURERS TO OFFER LONG-TERM CARE INSURANCE; AND REQUIRING A REPORT OF THE FINDINGS TO THE 51ST LEGISLATURE.

WHEREAS, the cost of long-term care in Montana increased by 270% between 1975 and 1983; and

WHEREAS, the portion of long-term care financed by Medicaid increased from \$7 million to \$46.3 million during the same period; and



WHEREAS, the number of elderly persons in Montana is expected to increase by 50% during the next 20 years, to an estimated 150,000 persons; and

WHEREAS, the cost of long-term care is not covered by most insurance programs other than Medicaid and is beyond the means of most elderly Montanans; and

WHEREAS, the Montana Health Care Cost Containment Advisory Council recommended in its 1987 report that the Legislature study the issue of long-term care insurance.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study:

(1) ways in which the state can promote the development of a range of services to infirm elderly persons, including independent living with home services, respite care, adult day care, full-time in-home care, personal care facilities, and other alternatives to skilled nursing care;

(2) sources of revenue that could be used to subsidize the cost of nursing homes and other long-term care options in order to make them available to low- and middle-income families that are not eligible for Medicaid;

(3) the effect of requiring the Montana Comprehensive Health Association, established by 33-22-1503, to include as a minimum benefit under the Association plan all or part of the expenses of long-term care;

(4) appropriate standards for long-term care insurance;

(5) incentives that the state could offer private insurers to develop and offer long-term care insurance to Montana citizens; and

(6) incentives the state could offer to individuals and families for the purchase of the long-term care insurance.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 51st Legislature and, if necessary, draft legislation to implement its recommendations.

Passed April 1, 1987.

## HOUSE JOINT RESOLUTION NO. 44

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE PROBLEMS ASSOCIATED WITH HAZARDOUS MATERIALS INCIDENTS, INCLUDING PLANNING, RESPONSE, MITIGATION, AND RECOVERY; REQUIRING A REPORT OF FINDINGS AND RECOMMENDATIONS TO THE 51ST LEGISLATURE.

WHEREAS, local governments are poorly prepared for incidents involving hazardous materials that are occurring more frequently and creating situations of enormous risk to health, life, property, and environment; and

WHEREAS, local governments have the fiscal responsibility for dealing with hazardous materials incidents but have no authority to control or reduce the risk; and

WHEREAS, the transportation of hazardous materials poses particularly difficult problems for local government because, while regulation of transportation is primarily a federal responsibility, local governments are responsible for emergency response to hazardous materials transportation incidents; and

WHEREAS, clear delineation of responsibility for identification and prevention of hazardous materials risks and response to and mitigation of hazardous materials incidents is necessary; and

WHEREAS, reporting and documentation of all hazardous materials incidents is essential to effective management of risks; and

WHEREAS, coordination among all levels and agencies of government is essential to control hazardous materials incidents.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study:

(1) the designation of a state agency to bear the responsibility for identification of hazardous materials risks, including risks posed by the transportation of hazardous materials through Montana communities, and for planning for response to, mitigation of, and recovery from hazardous materials incidents, including incidents involving transportation of hazardous materials;

(2) assistance for local governments in bearing the costs resulting from a hazardous materials incident;

(3) recording and documenting hazardous materials incidents;

(4) coordination of efforts of all levels and agencies of government; and

(5) clarification of the responsibility and liability of local governments in hazardous materials incidents.

BE IT FURTHER RESOLVED, that the interim committee report its findings and recommendations to the 51st Legislature and submit legislation to address the problems it identifies.

Passed April 13, 1987.

## HOUSE JOINT RESOLUTION NO. 45

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE COST EFFECTIVENESS OF MANDATED HEALTH INSURANCE BENEFITS; AND REQUIRING A REPORT OF THE FINDINGS TO THE 51ST LEGISLATURE.

WHEREAS, existing Montana laws require disability insurers and health service corporations to include coverage of certain expenses as minimum benefits for an insured; and

WHEREAS, proponents of mandated benefits argue that such benefits decrease the cost of health insurance, and opponents argue that such benefits increase the cost of health insurance; and

WHEREAS, objective evidence to support either position is lacking; and

WHEREAS, the Montana Health Care Cost Containment Council recommended in its 1987 report that a study of the cost effectiveness of existing and proposed mandated benefits be conducted.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to:

(1) assess the effect of mandated benefits on the cost of health insurance and health service corporation plans in Montana and in other states; and

(2) estimate the effects on the cost of health insurance of mandating new benefits or eliminating existing mandated benefits.

BE IT FURTHER RESOLVED, that the committee report to the 51st Legislature and, if necessary, draft legislation to implement its recommendations.

Passed April 15, 1987.

## HOUSE JOINT RESOLUTION NO. 46

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF MONTANA'S AGRICULTURAL LIEN LAWS AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 51ST LEGISLATURE.

WHEREAS, Montana adopted its basic lien laws from the "Field Code" shortly after becoming a state; and

WHEREAS, the Legislature has added to and amended the agricultural lien laws of Montana without comprehensive analysis of the various statutes that provide for agricultural liens; and

WHEREAS, there have been introduced in several recent legislative sessions many bills dealing with delayed recording, lien priorities, place of filing, centralized filing, purchase free of lien, and other subjects which indicate that Montana's agricultural lien laws are confusing and that relative lien priorities are possibly unfair; and

WHEREAS, it is essential to the economic stability of the State of Montana that agricultural lien laws not hinder or obstruct the free flow of credit; and

WHEREAS, there is insufficient time during a regular legislative session to provide a comprehensive, careful study of the existing agricultural lien

laws, after considering all relevant factors, and there is insufficient time to receive information from the public, from those concerned with agricultural lien laws, and from those obtaining and providing credit.

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:**

That an appropriate interim committee be assigned to:

- (1) examine Montana laws relating to agricultural liens;
- (2) study the problems of lien priorities, conflicting lien priorities, purchase free of lien, and other related subjects;
- (3) study the problems with place of filing and delayed recording and the possibility of centralized lien filing;
- (4) obtain testimony and information relevant to Montana's agricultural lien laws as they may affect those who obtain or grant credit, including:
  - (a) testimony and information addressing the positions of persons who provide agricultural credit;
  - (b) the apparent conflict of present laws covering agricultural lien priorities; and
  - (c) any other matters pertinent to the effects of agricultural lien laws on persons who provide or obtain agricultural credit;
- (5) study the laws of other states relating to agricultural liens and lien priorities, recordation, and other relevant matters;
- (6) draft legislation to implement its recommendations; and
- (7) report its findings and recommendations to the 51st Legislature.

Passed April 17, 1987.

## **HOUSE JOINT RESOLUTION NO. 47**

**A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE MONTANA HIGH SCHOOL ASSOCIATION; REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 51ST LEGISLATURE.**

**WHEREAS, the Montana High School Association supervises, controls, and regulates interscholastic activities of high schools in Montana; and**

**WHEREAS, the Montana High School Association is a private, independent corporation that receives public money but is not subject to regulation by the Board of Education, the Office of Public Instruction, or any other state educational agency; and**

WHEREAS, there is no statutory basis for delegating the administration of interscholastic activities to the Montana High School Association; and

WHEREAS, Article X, section 8, of the Montana Constitution provides that the supervision and control of the schools must be vested in the school district trustees; and

WHEREAS, there has been public concern regarding the governance of high school interscholastic activities by the Montana High School Association; and

WHEREAS, soundly conducted interscholastic activities aid young people in the development of sportsmanship, physical and mental ability, self-discipline, and other worthy traits; and

WHEREAS, interscholastic activities are an integral part of the educational process for the children of this state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study the operation, objectives, and financing of the Montana High School Association.

BE IT FURTHER RESOLVED, that the study committee:

(1) examine the financial structure of the Montana High School Association;

(2) analyze the current system of fees that is used to finance Montana High School Association activities;

(3) review the bylaws of the Montana High School Association;

(4) study the rules and regulations of the Montana High School Association governing interscholastic activities of high schools in Montana;

(5) evaluate issues of equity concerning operation of the Montana High School Association and the conduct of interscholastic activities;

(6) hold hearings to identify problems in the policies and administration of the Montana High School Association;

(7) explore alternatives for the regulation of high school interscholastic activities in Montana;

(8) consider the possibility of requiring state supervision of the Montana High School Association; and

(9) assess the feasibility of curtailing activities sponsored by the Montana High School Association and transferring control of interscholastic activities to the local school boards.

BE IT FURTHER RESOLVED, that the committee report the findings of its study to the 51st Legislature and, if necessary, make recommendations for legislation.

Passed April 22, 1987.

## HOUSE JOINT RESOLUTION NO. 48

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE PROPERTY REVALUATION PROCEDURES IN THE PROPERTY TAX LAWS; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 51ST LEGISLATURE.

WHEREAS, the property revaluation procedures employed in the revaluation cycle ending January 1, 1986, and the resulting property valuation changes have drawn widespread criticism and contributed to the public dissatisfaction with property taxation in Montana, as evidenced by the response of the electors to Constitutional Initiative No. 27 and Initiative No. 105; and

WHEREAS, the 50th Legislature has been faced with numerous bills proposing changes in the property revaluation procedures; and

WHEREAS, it has been suggested that part of the problem with property revaluation is inadequate funding; and

WHEREAS, the citizens of the State of Montana expect and deserve a fair and accurate procedure for revaluation of property and believe that there may be deficiencies in the existing procedures.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Revenue Oversight Committee be assigned to study:

- (1) the present property revaluation procedures;
- (2) the successful property revaluation procedures used by other states;
- (3) alternative procedures and recommendations for improving Montana's property revaluation procedures; and
- (4) the level of staffing and funding necessary to successfully accomplish property revaluation.

BE IT FURTHER RESOLVED, that the Committee report the findings of the study to the 51st Legislature and, if necessary, draft legislation to implement its recommendations.

Passed April 15, 1987.

**HOUSE JOINT RESOLUTION NO. 49**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE ENVIRONMENTAL QUALITY COUNCIL CONDUCT AN INTERIM STUDY ON THE RELATIONSHIP BETWEEN FOREST MANAGEMENT AND WATERSHED EFFECTS AND ON THE USE OF BEST MANAGEMENT PRACTICES FOR FORESTRY PRACTICES IN MONTANA; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 51ST LEGISLATURE.

WHEREAS, the forest products industry is a mainstay of the Montana economy; and

WHEREAS, the forest watersheds of Montana provide an irreplaceable supply of clean water for domestic use, agriculture, recreation, and industry; and

WHEREAS, the harvest of timber may affect the quality and quantity of water from forest watersheds; and

WHEREAS, there is a need to assess available information on the relationship between timber harvesting and watershed effects in Montana to reach informed judgments about the management relationship of these crucial natural resources; and

WHEREAS, the timber industry has demonstrated a working commitment to best management practices through efforts such as the Cumulative Watershed Effects Cooperative administered by the Department of State Lands, the tree farm program conducted by private forest landowners, and utilization of soil and streambed conservation techniques developed by local conservation districts; and

WHEREAS, use of best management practices may offer a range of benefits in relation to water quality, sustained-yield timber harvest, long-term employment opportunities, and resource conservation; and

WHEREAS, recent initiatives in Washington and Idaho have shown innovative ways to reach a consensus among interest groups on how to attain timber and watershed objectives while meeting the needs of forest landowners, timber operators, and citizens relying on forest watersheds; and

WHEREAS, it is desirable to draw together relevant information to assess whether administrative or legislative direction is necessary to further the use of best management practices for forestry in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Environmental Quality Council be assigned to study:

(1) how current forest management practices are affecting watersheds in Montana;

(2) the range of management practices that have proven effective in conserving watersheds while maintaining the economic viability of timber harvest operations;

(3) the existing administrative framework, including regulatory and voluntary efforts, promoting the use of best management practices in Montana and other states; and

(4) if areas for potential improvement are indicated, the actions that would be most conducive to achieving both watershed and timber goals.

BE IT FURTHER RESOLVED, that the Council work closely throughout the study with persons and organizations with technical expertise in timber harvest techniques and effects.

BE IT FURTHER RESOLVED, that the Council report the findings of the study to the 51st Legislature and, if necessary, draft legislation to implement its recommendations.

Passed April 17, 1987.

## HOUSE JOINT RESOLUTION NO. 50

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF SPECIAL EDUCATION, INCLUDING THE FEDERAL AND STATE SPECIAL EDUCATION MANDATES, SERVICES, COSTS, REVENUE SOURCES, AND FUNDING FORMULAS; REQUIRING A REPORT OF THE FINDINGS TO THE 51ST LEGISLATURE.

WHEREAS, special education is a major expenditure for the State of Montana; and

WHEREAS, the current special education model is based on a 1973 legislative interim study; and

WHEREAS, federal mandates in special education have caused piecemeal but significant changes in Montana's special education law since 1974; and

WHEREAS, current proposed legislation includes changes in special education funding and the provision of special education programs on a regional basis; and

WHEREAS, a comprehensive and complete study of special education mandates, services, costs, revenue sources, and funding formulas is now essential to develop appropriate and cost-effective special education services for Montana's handicapped children; and

WHEREAS, a study of special education would serve as a resource and guide for the provision of more appropriate and timely special education services; and

WHEREAS, a study of special education may result in cost-saving measures through the expansion or reduction of certain services or programs and modification of service patterns.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:



That an appropriate interim committee be assigned to study:

- (1) federal and state special education mandates and services;
- (2) special education service patterns;
- (3) special education funding sources and funding formulas; and
- (4) the necessity for a comprehensive revision of the laws governing special education.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 51st Legislature and, if necessary, draft legislation to implement its recommendations.

Passed April 22, 1987.

## HOUSE JOINT RESOLUTION NO. 51

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE JOB TRAINING COORDINATING COUNCIL TO DEVELOP STATEWIDE GOALS WHICH WILL GIVE A HIGH PRIORITY TO CHRONICALLY UNEMPLOYED WORKERS THROUGH THE JOB TRAINING PARTNERSHIP ACT."

WHEREAS, the Job Training Coordinating Council, established in accordance with the provisions of Public Law 97-300, has been granted authority to recommend a Governor's coordination and special services plan; and

WHEREAS, the Legislature has constitutional authority in the appropriation process to establish the purposes for the expenditure of state money; and

WHEREAS, the Legislature has designated the training and job placement of low-income Montana residents and the chronically unemployed as a high priority objective for expenditure of Job Training Partnership Act funds; and

WHEREAS, the Legislature has approved the expenditure of Job Training Partnership Act money to address the needs of the long-term unemployed; and

WHEREAS, the Legislature recognizes the need for local participation through use of the resources of county government, county agencies, and local work task forces.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

Beginning with the fiscal year 1989 planning cycle, the Job Training Coordinating Council shall develop a Governor's coordination and special services plan for purposes of ensuring:

- (1) that service to chronically unemployed workers be given a high priority in each service delivery area's job training plan;

(2) that targeted populations are identified in each service delivery area's job training plan developed in coordination with chief elected officials;

(3) that each service delivery area's job training plan includes clear goals and measurable objectives;

(4) that each service delivery area gives proper consideration to awarding funds to program operators based on performance success, recognizing quality and not quantity placement; and

(5) that each service delivery area be assessed on the criteria of retention in employment with the long-term goal of using retention in employment as part of the basis for awarding incentive funds to service delivery areas.

Passed April 23, 1987.

## HOUSE JOINT RESOLUTION NO. 52

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONCERNING THE PRINTING OF DOCUMENTS BY AND FOR STATE GOVERNMENT; ESTABLISHING A PRINTING ADVISORY COUNCIL; REQUESTING AN INTERIM STUDY OF STATE PRINTING AND DUPLICATING PROCEDURES; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 51ST LEGISLATURE.

WHEREAS, the efficient functioning of state government relies upon the rapid, unimpeded flow of information to and between agencies and the public; and

WHEREAS, the printed document is a singularly important instrument in the information process; and

WHEREAS, the expanding use of computer technology has obscured the differentiations between the various elements of or crafts involved in the production of printed documents; and

WHEREAS, the Legislature intends that the state obtain printing services at the lowest possible cost that will assure expeditious and timely delivery of printed products; and

WHEREAS, the Legislature intends that printing for state government be performed by private industry whenever it is cost effective to do so; and

WHEREAS, state government agencies have acquired printing equipment and recruited and trained personnel to operate the equipment; and

WHEREAS, the taxpayers of Montana have borne the cost of the investment in publicly owned, nontaxable printing equipment and the costs of operation and production; and

WHEREAS, it has been asserted that the publicly owned printing equipment is used to produce printing and other work that was formerly produced or is now capable of being produced by private industry and that the business thus denied to private industry has reduced the income of tax-paying businesses and reduced employment in the private sector; and

WHEREAS, the Legislature intends that specifications for the bidding of printing provide for the most efficient operation of government and be written in terms that will allow Montana printers ample opportunity to bid successfully; and

WHEREAS, the Legislature intends that the internal printing activities of government operate in the most cost-effective manner possible; and

WHEREAS, it has been argued that in many cases the cost of printing produced on publicly owned equipment is equal to or exceeds the cost of producing the same printing by private industry.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That a Printing Advisory Council be established by the Department of Administration to promote cooperation and understanding between state government officials and private printers of Montana, to assist in the formulation and implementation of printing specifications, and to assure that state printing is performed by private industry in all instances in which it is beneficial to the public interest. The Legislature intends that this council be composed of:

- (1) at least four representatives of Montana's printing industry;
  - (2) at least one representative of the Department of Administration;
- and
- (3) at least three representatives of other state agencies operating internal printing facilities.

BE IT FURTHER RESOLVED, that an appropriate interim committee be assigned to study:

- (1) the cost efficiency of the printing procurement procedures of state government;
- (2) all internal printing and printing-related operations and the cost effectiveness of each organization;
- (3) the definition of printing and the clarification of the elements of the printing process that normally and inextricably fall within the operations of government, the identification of public documents, and the establishment of criteria for operations, processes, and functions that for reasons of internal efficiency, timeliness, or economy do not lend themselves to bidding by private printers;
- (4) the formulation of legislative policy and administrative procedures to require state government to contract with private printers to the maximum extent possible consistent with the demands of economy and timely service; and

(5) specifications for state printing contracts that will encourage Montana printers to submit bids with reasonable expectation of selection to perform the work within the competitive process.

BE IT FURTHER RESOLVED, that state agencies and private printers cooperate fully with the interim committee and the Department of Administration.

BE IT FURTHER RESOLVED, that the interim committee report the findings of the study to the 51st Legislature and, if necessary, draft legislation to implement its recommendations.

Passed April 21, 1987.

## HOUSE JOINT RESOLUTION NO. 53

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF MONTANA'S WELFARE, MEDICAID, AND GENERAL ASSISTANCE SYSTEM; AND REQUIRING A REPORT OF THE FINDINGS AND RECOMMENDATIONS OF THE STUDY TO THE 51ST LEGISLATURE.

WHEREAS, Montana's welfare spending per \$1,000 of personal income is currently third highest among the 17 Western states; and

WHEREAS, this expenditure is growing uncontrollably; and

WHEREAS, there is at present no consistency of eligibility or services among counties; and

WHEREAS, Montana's public policy in providing adequate yet cost-effective welfare, Medicaid, and general assistance programs is of great significance to all Montanans; and

WHEREAS, House Bill No. 637 refers a constitutional amendment to the people that, on their approval, would allow the Legislature to determine welfare and human service benefits, but for the 51st Legislature to make those determinations, it is necessary that priorities be examined and information on welfare be available before the 1989 Session begins; and

WHEREAS, the 50th Legislature's current consideration of House Bill No. 581, House Bill No. 325, House Bill No. 600, House Bill No. 538, House Bill No. 2, and House Bill No. 542, all of which pertain to this subject, reflects the need for an in-depth review of the policies and procedures for administering welfare, Medicaid, and general assistance programs.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee be assigned to study Montana's welfare, Medicaid, and general assistance system.

(2) That the committee, in its study:

- (a) analyze existing eligibility and benefits criteria and evaluate alternative methods of controlling costs of services;
  - (b) evaluate approaches used in other states in providing cost-effective welfare, Medicaid, and general assistance programs; and
  - (c) evaluate the experience with work programs in Montana and in other states.
- (3) That the committee report its findings and recommendations to the 51st Legislature.

Passed April 21, 1987.

## HOUSE JOINT RESOLUTION NO. 54

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE FEASIBILITY OF ALLOWING MONTANA CITIZENS TO ESTABLISH EDUCATIONAL TRAINING ACCOUNTS FOR THE PURPOSE OF SAVING FOR EDUCATIONAL COSTS; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 51ST LEGISLATURE.

WHEREAS, the State of Montana has, throughout the years, made educational opportunities for its citizens a significant state priority; and

WHEREAS, the Legislature recognizes that opportunities for Montana's citizens hinge on the accessibility of public or private postsecondary education, continuing education, and retraining options; and

WHEREAS, the state needs to continue to explore and to offer education options for citizens, even at a time when the state's revenue sources are not expanding; and

WHEREAS, a number of states are exploring types of incentive plans for encouraging citizens to save for future educational costs for themselves and their families; and

WHEREAS, the state has an opportunity to enter into a partnership with its citizens to provide increased educational opportunities through the establishment of educational training accounts for the prepayment of educational costs.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study:

- (1) what other states are exploring with regard to tuition prepayment plans and other incentive plans for saving for postsecondary education or adult retraining;
- (2) the advantages and disadvantages of establishing educational training accounts, either under a state system or through private investment plans;

(3) the feasibility of tax-exempt or deferral status for such accounts; and

(4) what monitoring and documentation would be required by the Department of Revenue if a tax incentive plan were created.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 51st Legislature and, if necessary, draft legislation to implement its recommendations.

Passed April 22, 1987.

## HOUSE JOINT RESOLUTION NO. 56

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE REVENUE OVERSIGHT COMMITTEE TO STUDY METHODS TO STRENGTHEN ENFORCEMENT OF THE GASOLINE LICENSE TAX COLLECTION LAWS; REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 51ST LEGISLATURE.

WHEREAS, gasoline exported or sold for export out of the state is excluded from the gasoline license tax; and

WHEREAS, certain unscrupulous purchasers of gasoline sell within the state gasoline that is purchased for export, using various methods to avoid the tax; and

WHEREAS, Senate Bill No. 116 was introduced in recognition of the problem of gasoline license tax avoidance but unfairly required the distributor to pay the tax for the tax evaders; and

WHEREAS, the Revenue Oversight Committee has the expertise and time to properly investigate the extent of gasoline license tax evasion and to devise an equitable and fair method of enforcement.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Revenue Oversight Committee study the enforcement of the gasoline license tax collection laws relating to gasoline purchased for export.

BE IT FURTHER RESOLVED, that the Committee report its findings to the 51st Legislature and, if necessary, draft legislation to implement its recommendations.

Passed April 23, 1987.

## HOUSE JOINT RESOLUTION NO. 57

A JOINT RESOLUTION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE POTENTIAL FOR ECONOMIC GROWTH THROUGH TOURISM DEVELOPMENT; AND REQUIRING A REPORT TO THE 51ST LEGISLATURE.

WHEREAS, Montana holds a natural advantage in domestic and international tourism; and

WHEREAS, tourism has displayed steady growth in visitation, income, and employment; and

WHEREAS, the tourism potential of Montana is largely untapped; and

WHEREAS, tourism is a basic industry that attracts new income and investment to Montana; and

WHEREAS, public policy can have a significant effect on the realization of economic growth through tourism development.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study the following:

- (1) the potential for attracting domestic and international investment for development of specific tourism destinations within the state;
- (2) the potential for, and desirability of, construction and operation of visitor information centers in Montana;
- (3) methods for increasing international visitation to Montana;
- (4) methods for enhancing Montana's scheduled and charter air service;
- (5) current incentives for private development of tourism destinations and facilities; and
- (6) incentives or disincentives for development financing in the tourism sector.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 51st Legislature and, if necessary, draft legislation to implement its recommendations.

Passed April 23, 1987.

## HOUSE JOINT RESOLUTION NO. 58

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO URGE THE COMMISSIONER OF HIGHER EDUCATION TO ESTABLISH A TASK FORCE ON TELECOMMUNICATION TECHNOLOGIES FOR MONTANA.

WHEREAS, telecommunication technologies exist that may contribute to the expansion and improvement of many vital aspects of life in Montana, including all levels of public and private education, numerous components

of local and state government, and the education and business needs of the private sector; and

WHEREAS, there is a need for the various interested parties to begin to share knowledge, plans, and possibilities for coordinated telecommunication technologies for Montana; and

WHEREAS, a coordination of telecommunication technologies in the state has the potential to produce significant cost savings in the delivery of such services as education and training, library resources, public information, and intergovernmental projects; and

WHEREAS, there is a special need to identify the application of telecommunication technologies that will best serve the rural communities in the state; and

WHEREAS, a broad-based study and application of telecommunication technologies for Montana would be a signal that this state is able and eager to be a leader in this vital area; and

WHEREAS, the Legislature urges the Commissioner of Higher Education to establish a task force on telecommunication technologies for Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Commissioner of Higher Education be urged to establish a task force on telecommunication technologies to study and to coordinate the implementation of telecommunications and technology-based delivery systems for education, government, and the private sector in Montana.

(2) That the purposes of the task force be to:

(a) identify and work towards the resolution of policy issues that may impede the implementation of a coordinated delivery system for telecommunication technologies in Montana;

(b) seek participation, input, and information from all public and private parties in Montana who are interested in providing or receiving benefit from telecommunication technologies;

(c) evaluate the potential for joint projects among the interested parties; and

(d) consider other issues and concerns pertinent to the funding, implementation, use, governance, or development of telecommunication technologies for Montana.

(3) That the task force consist of 11 members appointed in the following manner:

(a) two members of the Montana Legislature, one appointed by the Speaker of the House and one appointed by the Senate Committee on Committees;



(b) four members appointed by the Governor, one to represent the Department of Commerce, one to represent the Department of Administration, one to represent the Department of Agriculture, and one to represent the public at large;

(c) one member appointed by the Superintendent of Public Instruction;

(d) one member appointed by the Board of Regents;

(e) one member appointed by the Board of Public Education; and

(f) two members appointed by the Governor to represent those private industries engaged in the delivery of telecommunications technology in Montana.

(4) That the task force seek and receive advice and research from:

(a) the staff of any of the persons or agencies that appointed members to the task force; and

(b) any other resource or interested party.

BE IT FURTHER RESOLVED, that the Commissioner of Higher Education may contract with the Montana Legislative Council to perform any administration, staff duty, and accounting function necessary to the performance of the task force.

BE IT FURTHER RESOLVED, that the task force report the results of its study to the 51st Legislature, along with any proposals or recommendations for coordination and delivery of telecommunication technologies in the next decade.

Passed April 23, 1987.

## HOUSE JOINT RESOLUTION NO. 59

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, IN CONJUNCTION WITH AN APPROPRIATE COMMUNITY ENTITY, TO REQUEST THE U. S. BUREAU OF RECLAMATION AND OTHER APPROPRIATE AGENCIES TO REEVALUATE THE FEASIBILITY OF DEVELOPING THE CALAMITY JANE RESERVOIR AND TO EVALUATE OTHER RESERVOIR SITES NEAR BILLINGS FOR RECREATION POTENTIAL AND OTHER BENEFITS; AND DIRECTING THE DEPARTMENT TO SUBMIT A PROPOSAL TO THE 51ST LEGISLATURE FOR DEVELOPMENT OF A RESERVOIR IF THE RESERVOIR IS DETERMINED TO BE FEASIBLE AND COST EFFECTIVE.

WHEREAS, the Billings area needs additional reservoir water for various uses, including recreation; and

WHEREAS, in the late 1970s, two studies were conducted by the U.S. Bureau of Reclamation and the Montana Department of Natural Resources

and Conservation that examined the feasibility of constructing a reservoir on upper Canyon Creek in Yellowstone County; and

WHEREAS, this reservoir, known as Calamity Jane Reservoir, would provide needed recreational benefits to area residents and tourists; and

WHEREAS, the Calamity Jane Reservoir would also provide a source of water for the City of Billings and has potential benefits as a source of hydroelectricity, thus diversifying Montana's energy sources; and

WHEREAS, the site for the Calamity Jane Reservoir is an excellent site for a reservoir, having natural water on the South Fork of Canyon Creek and having the potential to be a major waterfowl habitat; and

WHEREAS, the feasibility studies are outdated and in need of further analysis in light of current economic conditions that may favor development in the near future; and

WHEREAS, a study that uses current economic conditions in thoroughly evaluating the recreational, water supply, wildlife, and possible hydropower benefits associated with the development of the reservoir could indicate a very attractive project for federal or private funding; and

WHEREAS, alternate sites in the Billings area have not been evaluated for reservoir potential emphasizing recreation; and

WHEREAS, the alternate sites could provide recreational and other benefits at a lower overall project cost; and

WHEREAS, the U.S. Congress has recently enacted two major omnibus bills for water projects, demonstrating a renewed commitment to development of the nation's water resources; and

WHEREAS, there is a need for a state agency, in conjunction with an appropriate entity representing community interests, to lead the effort to encourage the U.S. Bureau of Reclamation to further examine the feasibility and cost-effectiveness of Calamity Jane Reservoir and other reservoir sites near Billings; and

WHEREAS, there is a need for a lead agency to assess state, federal, and private funding sources and to develop a proposal for funding an appropriate reservoir.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Department of Natural Resources and Conservation, in conjunction with an appropriate entity representing community interests, request that the U.S. Bureau of Reclamation reevaluate the feasibility and cost effectiveness of developing the Calamity Jane Reservoir in Yellowstone County.

(2) That the Department and the community entity also request that the Bureau of Reclamation or other appropriate state or federal agencies evaluate alternate sites within approximately 30 miles of Billings for recreation potential and other benefits and assess their feasibility and cost effectiveness.

(3) That the Department and the community entity request that the Bureau of Reclamation or other appropriate agencies use current economic conditions in assessing the full range of benefits associated with the Calamity Jane Reservoir and other alternate sites.

(4) That the Department and other state and local agencies cooperate with the evaluating agencies in providing information necessary for the studies.

(5) That the Department and the community entity request that the evaluating agencies complete their evaluation and submit their findings to the 51st Legislature by December 15, 1988.

(6) That the Department submit a proposal to the 51st Legislature by December 15, 1988, for funding development of a reservoir site if the agency evaluations determine that the reservoir would be feasible and cost effective.

Passed April 23, 1987.

## HOUSE JOINT RESOLUTION NO. 60

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE NEED FOR A STATE MECHANISM TO REGULATE GAMBLING; AND REQUIRING A REPORT TO THE 51ST LEGISLATURE.

WHEREAS, gambling and wagering in various forms are legitimate activities in Montana when conducted in accordance with the provisions of Title 23, chapters 4 and 5, MCA, and Chapter 669, Laws of 1985; and

WHEREAS, gambling and wagering in various forms have far-reaching economic and social impacts upon the State of Montana and its citizens that necessitate control and regulation; and

WHEREAS, Title 23, chapter 5, MCA, imposes on local governments the responsibility for controlling and regulating gambling, and this situation has resulted in fragmentation and disparity; and

WHEREAS, problems arising from gambling have been manifested in bills proposed in recent legislatures and in litigation in the courts of Montana; and

WHEREAS, prior to the enactment of laws legalizing certain forms of gambling in Montana, the Board of Crime Control completed a comprehensive study of gambling as an industry and in its report strongly emphasized the need for state control of gambling and for taxation of the industry to support mitigation of the pervasive impacts of gambling in the state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee be assigned to study the establishment of a state mechanism to regulate gambling in Montana, with particular attention to:

- (a) the feasibility of and the need for such a mechanism; and
- (b) the proper form of such a mechanism and the scope of its authority.

(2) That the interim committee:

(a) examine and review the extent and the effectiveness of existing gambling regulations;

(b) review the appropriate level of taxation of the various forms of gambling in relationship to the profits of the gambling enterprises;

(c) consider the relationship of gambling allowable on Indian reservations to the provisions of the state gambling laws;

(d) evaluate the interrelationships among the various forms of gambling; and

(e) recommend the degree of oversight and regulation that the state should exercise in:

- (i) the state lottery;
- (ii) parimutuel betting on race meets;
- (iii) bingo and keno;
- (iv) sports pools;
- (v) electronic gambling devices;
- (vi) authorized card games; and
- (vii) any other forms of gaming.

BE IT FURTHER RESOLVED, that the interim committee report its findings and recommendations, along with any recommended legislation, to the 51st Legislature.

Passed April 23, 1987.

## SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA TO ADOPT RULES TO GOVERN ITS PROCEEDINGS IN ADDITION TO THE JOINT RULES.

BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following rules be adopted:

### CHAPTER 1

Presiding Officer — Decorum,  
Order, and Debate

**S1-1.** (1) The Senate shall choose a President from its membership who shall be the presiding officer. In case of the absence or disqualification

of the President, the President pro tempore of the Senate shall perform the duties of the President until the vacancy is filled or the disability removed.

(2) Whenever the President pro tempore of the Senate is of the opposite political party from that of the President, the following procedure applies:

(a) If the President dies while in office, the members of his political party shall have the right to immediately nominate and elect an acting President of the same party.

(b) If the President is absent for two or more legislative days or at any time after the 85th legislative day or at any time during special session of the Legislature but able and desirous of appointing an acting President to act in his absence, he may do so, or the members of his political party shall have the right to immediately nominate and elect an acting President of the same party.

(c) An acting President of the Senate shall have the powers of the President and supersede the powers of the President pro tempore.

**S1-2.** The Senate shall, at the beginning of each regular session, and at such other times as may be necessary, elect one of its members President pro tempore. The Senate shall choose its other officers and shall be the judge of the elections, returns, and qualifications of its members.

**S1-3.** The President or President pro tempore, when acting as presiding officer of the Senate, shall vote as any other member of the Senate.

**S1-4.** The President may name a Senator to perform the duties of the chair when the President pro tempore is not present in the Senate chamber. The Senator who is so named is vested during such time with all the powers of the President, but he does not lose the right to vote on any question while presiding.

**S1-5.** No Senator shall speak more than twice on any one motion or question without unanimous consent of the Senate, unless he has introduced or proposed the motion or question under debate, in which case he may speak twice and also close the debate. However, a Senator who has spoken shall not speak again on the same motion or question to the exclusion of a Senator who has not spoken.

**S1-6.** On Order of Business No. 8, second reading of bills, in addition to other methods, a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as such. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

**S1-7.** Only the following persons may be admitted to the floor of the Senate during sessions: legislators, legislative officers and employees whose presence is necessary for the conduct of the business of the session, accredited members of the press, radio, and television, and former legislators. The

Rules Committee shall be allowed to make exceptions for visiting dignitaries.

#### **CHAPTER 4** **Order of Business**

**S4-1.** On Order of Business No. 2, reports of standing committees, no debate shall be had on any report unless a minority report has been submitted. Any member seeking a reconsideration of the Senate's action on the adoption of a committee report shall do so on Order of Business No. 6 by motion to reconsider. Any member may make such motion and need not have voted on the prevailing side. This rule shall apply notwithstanding any joint rule to the contrary.

#### **CHAPTER 5** **Motions**

**S5-1.** All proper motions on second reading are debatable. If a motion to reconsider third reading action on a bill or resolution is carried, there shall be no further action on that bill or resolution until the succeeding legislative day.

#### **CHAPTER 7** **Committees**

**S7-1.** The Senate shall elect a Committee on Committees consisting of five members, except when the Senate is evenly divided between parties, when the Committee on Committees shall consist of six members, three from each party. The Committee on Committees, with the approval of the Senate, shall appoint standing and select committees of the Senate and Senate membership on joint committees except conference committees and special committees. The President shall appoint all conference committees and special committees, with the advice of the floor leaders. The Senate may change the membership of any committee on one day's notice.

**S7-2.** The standing committees of the Senate are as follows:

1. Agriculture, Livestock and Irrigation
2. Bills and Journal
3. Business and Industry
4. Education and Cultural Resources
5. Finance and Claims
6. Highways and Transportation
7. Judiciary
8. Labor and Employment Relations
9. Legislative Administration
10. Local Government

11. Natural Resources
12. Fish and Game
13. Public Health, Welfare and Safety
14. Rules
15. State Administration
16. Taxation

**S7-3.** Each floor leader shall be an ex officio member of all committees in order to establish a quorum.

**S7-4.** When a conference committee report is filed with the Secretary of the Senate, the same shall be read under Order of Business No. 3, select committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the same legislative day.

**S7-5.** Pairs in standing committee and Committee of the Whole are prohibited. Standing and select committees may by a majority vote of the committee authorize members to vote in absentia while engaged in other legislative business. Authorization for such voting shall be reflected in the committee minutes.

**S7-6.** There is a Select Committee on Long-Range Building. The select committee shall meet jointly with the Long-Range Building Subcommittee of the House Committee on Appropriations to make recommendations on issues assigned to the joint subcommittee. The select committee shall consider and make recommendations to the Committee on Finance and Claims concerning issues assigned to it by the President. Select committee members may participate and vote as members of the Committee on Finance and Claims on issues considered by them as members of the select committee.

## CHAPTER 8

### Rules and Journal

**S8-1. (1)** A motion to amend or adopt a rule of the Senate shall be referred to the Committee on Rules without debate. A rule of the Senate may be amended or adopted only with the concurrence of a majority of the Senate and after 1 day's notice.

**(2)** A rule may be suspended temporarily by a two-thirds vote.

**S8-2.** Mason's Manual of Legislative Procedure governs the proceedings of the Senate in all cases not covered by these rules.

## CHAPTER 10

### Nominations from the Governor

**S10-1.** The Governor shall nominate and, by and with the consent of the Senate, appoint all officers whose offices are established by the Montana Constitution or which may be created by law, and for whom appointment or election is not otherwise provided. If during a recess of the Senate

a vacancy occurs in any such office, the Governor shall appoint some fit person to discharge the duties thereof until the next meeting of the Senate, when he shall nominate a person to fill such office.

**S10-2.** When nominations are sent by the Governor to the Senate for confirmation, they shall not be acted on before the next succeeding legislative day, except nominations sent by the Governor on the last legislative day of the session, which shall be acted upon that day.

Passed January 6, 1987.

## SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE REGULAR SESSION OF THE 50TH LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 15, 1987, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations, below designated, of appointments which have been submitted to the Senate by the Governor, to wit:

(1) As judge of the District Court, thirteenth Judicial District in accordance with sections 3-1-1013 and 3-1-1014, MCA.

Mr. Russell K. Fillner, Billings, Montana 59101, appointed to serve until he or his successor is duly elected and qualified in accordance with the laws of Montana.

(2) As Administrator of the Division of Workers' Compensation in accordance with sections 2-15-111 and 2-15-1702, MCA.

Mr. Robert J. Robinson, Helena, Montana 59601, is appointed to serve at the pleasure of the Governor.

(3) As members of the Board of Architects in accordance with section 2-15-1871, MCA.

Mr. Robert Utzinger, Bozeman, Montana 59715, reappointed for a term ending March 27, 1989.

Mr. Michael A. Walker, Great Falls, Montana 59404, appointed for a term ending July 1, 1989.

(4) As members of the Montana Arts Council in accordance with section 2-15-1513 and Title 22, Chapter 2, MCA.

Mr. James D. Kriley, Missoula, Montana 59812, appointed for a term ending February 1, 1988.

Mr. Larry Pirnie, Missoula, Montana 59802, appointed for a term ending February 1, 1988.



(5) As members of the Board of Athletics in accordance with section 2-15-1882, MCA.

Mr. Gene B. Daly, Helena, Montana 59601, reappointed for a term ending April 25, 1989.

Dr. John R. Halseth, Great Falls, Montana 59404, reappointed for a term ending April 25, 1989.

Mr. John M. Svaldi, Butte, Montana 59701, reappointed for a term ending April 25, 1989.

(6) As members of the State Banking Board in accordance with section 2-15-1803, MCA.

Mr. Willis M. McKeon, Malta, Montana 59538, appointed for a term ending July 1, 1989.

Mr. Michael J. Milodragovich, Missoula, Montana 59801, appointed for a term ending July 1, 1988.

Mr. Thomas W. Scott, Billings, Montana 59116, appointed for a term ending July 1, 1989.

Mr. John C. Witte, Poplar, Montana 59255, reappointed for a term ending July 1, 1988.

(7) As members of the Board of Barbers in accordance with section 2-15-1856, MCA.

Ms. June D. Baker, Miles City, Montana 59301, appointed for a term ending October 7, 1987.

Mr. Lawrence M. Sandretto, Red Lodge, Montana 59068, reappointed for a term ending July 1, 1989.

Mr. Eugene J. Thomas, Anaconda, Montana 59711, reappointed for a term ending July 1, 1988.

(8) As members of the Board of Chiropractors in accordance with section 2-15-1847, MCA.

Dr. W. Pat Pardis, Shelby, Montana 59474, reappointed for a term ending January 9, 1989.

(9) As members of the Board of Cosmetologists in accordance with section 2-15-1857, MCA.

Mr. David Blanco, Billings, Montana 59102, appointed for a term ending July 1, 1989.

Ms. Janice Lane Huffman, Billings, Montana 59102, appointed for a term ending July 1, 1989.

(10) As members of the Board of County Printing in accordance with section 2-15-1811, MCA.

Mr. Larry C. Bowler, Scobey, Montana 59263, reappointed for a term ending April 1, 1987.

Mr. Everett C. Elliott, Conrad, Montana 59425, reappointed for a term ending April 1, 1987.

Mr. Ronald D. Lytle, Hardin, Montana 59034, reappointed for a term ending April 1, 1987.

Mr. Dan L. Rieder, Bozeman, Montana 59715, reappointed for a term ending April 1, 1987.

Mr. Merle Thorstad, Lloyd, Montana 59535, reappointed for a term ending April 1, 1987.

(11) As members of the Board of Dentistry in accordance with section 2-15-1842, MCA.

Dr. Robert B. Cotner, Columbia Falls, Montana 59912, appointed for a term ending March 29, 1991.

Mr. Stan Rogers, Billings, Montana 59101, reappointed for a term ending January 4, 1992.

(12) As members of the Board of Dentistry in accordance with section 2-15-1855, MCA.

Dr. Gayle A. Roset, Billings, Montana 59102, appointed for a term ending January 11, 1989.

(13) As members of the State Electrical Board in accordance with section 2-15-1874, MCA.

Mr. James A. Lewis, Helena, Montana 59601, reappointed for a term ending July 1, 1991.

Mr. Charles T. Sweet, Kalispell, Montana 59901, appointed for a term ending July 1, 1990.

(14) As members of the Board of Hail Insurance in accordance with section 2-15-3003, MCA.

Mr. Gary L. Dyer, Brady, Montana 59416, appointed for a term ending April 18, 1988.

Mr. Troy Martin, Winifred, Montana 59489, reappointed for a term ending April 18, 1989.

(15) As members of the Hard-Rock Mining Impact Board in accordance with section 2-15-1822, MCA.

Mr. Edwin H. Jasmin, Helena, Montana 59601, appointed for a term ending January 2, 1989.

(16) As members of the Board of Health and Environmental Sciences in accordance with section 2-15-2104, MCA.

Dr. Daniel R. Fiehrer, Helena, Montana 59601, appointed for a term ending January 2, 1989.

(17) As members of the Board of Hearing Aid Dispensers in accordance with section 2-15-1850, MCA.

Mr. Dudley A. Anderson, Missoula, Montana 59801, reappointed for a term ending July 1, 1988.

Ms. Lee E. Micken, Bozeman, Montana 59715, appointed for a term ending July 1, 1989.

Dr. William J. Simic, Helena, Montana 59601, reappointed for a term ending July 1, 1988.

(18) As members of the Board of Trustees of the State Historical Society in accordance with section 2-15-1512 and 22-3-104, MCA.

Mr. Bruce L. Ennis, Billings, Montana 59102, reappointed for a term ending July 1, 1991.

Mr. Leif Erickson, Big Fork, Montana 59911, reappointed for a term ending July 1, 1991.

Mr. Loran A. Perry, Fort Benton, Montana 59442, appointed for a term ending July 1, 1990.

Mr. James W. Reger, Billings, Montana 59103, reappointed for a term ending July 1, 1990.

Mr. J. Robert Sletten, Great Falls, Montana 59403, appointed for a term ending July 1, 1990.

Mr. Harold G. Stearns, Helena, Montana 59601, reappointed for a term ending July 1, 1991.

(19) As members of the Board of Horseracing in accordance with section 2-15-1881, MCA.

Mr. Harold E. Gerke, Billings, Montana 59101, appointed for a term ending January 20, 1989.

Mr. John M. Trippe, Seeley Lake, Montana 59868, appointed for a term ending January 20, 1989.

(20) As members of the Board of Housing in accordance with section 2-15-1814, MCA.

Mr. George W. Swords III, Billings, Montana 59101, appointed for a term ending January 2, 1989.

(21) As members of the Board of Labor Appeals in accordance with section 2-15-1704, MCA.

Mr. James P. Reardon, East Helena, Montana 59635, appointed for a term ending January 1, 1991.

Mr. Joseph E. Thares, Helena, Montana 59601, appointed for a term ending January 2, 1989.

(22) As members of the Board of Landscape Architects in accordance with section 2-15-1872, MCA.

Ms. Sandra K. Fischer, Billings, Montana 59101, reappointed for a term ending July 1, 1989.

Mr. Richard K. Pohl, Bozeman, Montana 59715, reappointed for a term ending July 1, 1989.

Mr. Patrick A. Thomas, Kalispell, Montana 59901, appointed for a term ending July 1, 1990.

Ms. Valerie A. Tooley, Billings, Montana 59101, appointed for a term ending July 1, 1990.

(23) As members of the Board of Medical Examiners in accordance with section 2-15-1841, MCA.

Dr. F.M. Alvarez, Helena, Montana 59601, appointed for a term ending September 1, 1989.

Dr. E.E. Bertagnolli, Three Forks, Montana 59752, reappointed for a term ending September 1, 1990.

Mr. Thomas D. Booth, Havre, Montana 59501, appointed for a term ending September 1, 1990.

Dr. Maurice P. Hamill, Helena, Montana 59601, reappointed for a term ending September 1, 1990.

Dr. John R. Jacobson, Butte, Montana 59701, appointed for a term ending September 1, 1987.

Ms. Katherine G. Kleinkopf, Missoula, Montana 59801, appointed for a term ending September 1, 1989.

Mr. Jerome M. Kohn, Billings, Montana 59103, reappointed for a term ending September 1, 1989.

(24) As members of the Milk Control Board in accordance with section 2-15-1802, MCA.

Ms. Norma E. Happ, Kalispell, Montana 59901, reappointed for a term ending January 2, 1989.

(25) As members of the Montana Economic Development Board in accordance with section 2-15-1805, MCA.

Ms. Patrice B. LaTourelle, Whitefish, Montana 59937, appointed for a term ending January 2, 1989.

(26) As members of the Montana Health Facility Authority in accordance with section 2-15-1815, MCA.

Mr. Sidney K. Brubaker, Terry, Montana 59349, appointed for a term ending June 30, 1988.

Dr. Amos R. Little, Helena, Montana 59601, appointed for a term ending June 30, 1989.

Dr. Garry E. Pitts, Billings, Montana 59102, appointed for a term ending June 30, 1990.

Mr. Charles V. Shewey, Bozeman, Montana 59715, appointed for a term ending June 30, 1989.

(27) As members of the Montana Science and Technology Development Board in accordance with section 2-15-1810, MCA.

Mr. Lloyd Allen, Billings, Montana 59101, appointed for a term ending January 7, 1989.

Mr. R. Stephen Browning, Helena, Montana 59624, appointed for a term ending January 7, 1989.

Mr. Richard C. Conover, Bozeman, Montana 59715, appointed for a term ending January 7, 1989.

Mr. Russell H. Hudson, Libby, Montana 59923, appointed for a term ending January 7, 1989.

Dr. James Koch, Missoula, Montana 59812, appointed for a term ending January 2, 1989.

Mr. Jon Marchi, Polson, Montana 59860, appointed for a term ending January 7, 1989.

Dr. William J. Tietz, Bozeman, Montana 59715, appointed for a term ending January 7, 1989.

(28) As members of the Board of Morticians in accordance with section 2-15-1853, MCA.

Mr. William B. Brown, Billings, Montana 59103, appointed for a term ending July 1, 1990.

Mr. Guy W. Miser, Fort Benton, Montana 59442, appointed for a term ending July 1, 1989.

(29) As members of the Board of Natural Resources and Conservation in accordance with section 2-15-3302, MCA.

Mr. Giles W. Gregoire, Havre, Montana 59501, appointed for a term ending January 1, 1989.

(30) As members of the Board of Nursing Home Administrators in accordance with section 2-15-1845, MCA.

Ms. Dorothy A. Bompert, Clancy, Montana 59634, appointed for a term ending May 28, 1991.

Mr. John H. Johnson, Harlowton, Montana 59036, appointed for a term ending May 28, 1990.

Ms. Linda M. Smith, Missoula, Montana 59801, appointed for a term ending May 28, 1987.

(31) As members of the Board of Nursing in accordance with section 2-15-1844, MCA.

Ms. Janice Anderson, Boulder, Montana 59632, reappointed for a term ending July 1, 1990.

Ms. June E. Holmes, Harlowton, Montana 59036, appointed for a term ending July 1, 1990.

Ms. Donna J. Schramm, Billings, Montana 59101, appointed for a term ending July 1, 1989.

Ms. Naomi E. Summers, Whitefish, Montana 59937, reappointed for a term ending July 1, 1990.

Mr. William W. Thackeray, Havre, Montana 59501, reappointed for a term ending July 1, 1990.

(32) As members of the Board of Occupational Therapy Practice in accordance with section 2-15-1859, MCA.

Ms. Debra J. Ammondson, Great Falls, Montana 59405, appointed for a term ending December 31, 1987.

Ms. Julia A. Borggreen, Great Falls, Montana 59405, appointed for a term ending December 31, 1989.

Ms. Connie L. Grenz, Boulder, Montana 59632, reappointed for a term ending December 21, 1990.

Ms. Leigh Ann Rosemore, Plentywood, Montana 59254, appointed for a term ending December 31, 1988.

Ms. Diane L. Witt, Belgrade, Montana 59714, reappointed for a term ending December 31, 1990.

(33) As members of the Board of Pharmacy in accordance with section 2-15-1843, MCA.

Mr. D. Wayne Bollinger, Kalispell, Montana 59901, reappointed for a term ending July 1, 1991.

Mr. Anthony J. Francisco, Townsend, Montana 59644, reappointed for a term ending July 1, 1990.

(34) As members of the Board of Physical Therapy Examiners in accordance with section 2-15-1858, MCA.

Ms. Barbara Reed, Butte, Montana 59701, appointed for a term ending July 1, 1988.

Mr. Lorin R. Wright, Red Lodge, Montana 59068, appointed for a term ending July 1, 1989.

(35) As members of the Board of Plumbers in accordance with section 2-15-1875, MCA.

Mr. William A. Lindsay, Helena, Montana 59601, appointed for a term ending July 1, 1987.

Mr. Monty F. Patterson, Billings, Montana 59107, reappointed for a term ending May 4, 1990.

Mr. Kastor Simensen, Wolf Point, Montana 59201, reappointed for a term ending May 4, 1990.

Mr. William R. Tooley Jr., Billings, Montana 59101, reappointed for a term ending May 4, 1989.

(36) As the Commissioner of Political Practices in accordance with section 13-37-102, MCA.

Ms. Dolores Colburg, Helena, Montana 59624, appointed for a term ending January 1, 1993.

(37) As members of the Board of Private Security Patrolmen and Investigators in accordance with section 2-15-1891, MCA.

Mr. David J. Collings, Deer Lodge, Montana 59722, reappointed for a term ending August 1, 1988.

Ms. Mary G. Luntsford, Kalispell, Montana 59901, appointed for a term ending August 1, 1989.

Mr. David E. McAllister, Victor, Montana 59875, reappointed for a term ending August 1, 1989.

Mr. Al Murphy, Missoula, Montana 59802, reappointed for a term ending August 1, 1988.

Mr. Thomas J. O'Brien, Billings, Montana 59103, reappointed for a term ending August 1, 1988.

(38) As members of the Board of Professional Engineers and Land Surveyors in accordance with section 2-15-1873, MCA.

Mr. Louis Fontana, Great Falls, Montana 59401, reappointed for a term ending July 1, 1990.

Mr. James B. Spring, Billings, Montana 59102, reappointed for a term ending July 1, 1990.

(39) As members of the Board of Psychologists in accordance with section 2-15-1851, MCA.

Dr. William P. Bredehoft, Billings, Montana 59102, appointed for a term ending September 1, 1988.

Dr. Richard Emery, Helena, Montana 59601, appointed for a term ending September 1, 1989.

Ms. Brenda K. Schye, Glasgow, Montana 59230, appointed for a term ending September 1, 1989.

(40) As members of the Board of Public Accountants in accordance with section 2-15-1866, MCA.

Ms. Karen McNeal Booker, Helena, Montana 59624, appointed for a term ending July 1, 1989.

Mr. Clinton J. Frazee, Bozeman, Montana 59715, reappointed for a term ending July 1, 1988.

Mr. Joseph W. Upshaw, Helena, Montana 59601, appointed for a term ending July 1, 1988.

(41) As members of the Board of Public Education in accordance with section 2-15-1507 and 2-15-1508, MCA.

Mr. Bill Thomas, Great Falls, Montana 59405, reappointed for a term ending February 1, 1993.

(42) As members of the Board of Radiologic Technologists in accordance with section 2-15-1848, MCA.

Ms. Carole Angland, Great Falls, Montana 59405, appointed for a term ending July 1, 1989.

Dr. Donald E. Bosshardt, Whitefish, Montana 59937, appointed for a term ending July 1, 1987.

Mr. Adrian C. Howe, Helena, Montana 59620, reappointed for a term ending July 1, 1988.

Mr. Dail F. Lodge, Bozeman, Montana 59715, reappointed for a term ending July 1, 1989.

(43) As members of the Board of Realty Regulation in accordance with section 2-15-1867, MCA.

Ms. B. Helen Garrick, Missoula, Montana 59803, appointed for a term ending May 9, 1989.

Ms. Marjorie W. King, Winnett, Montana 59087, appointed for a term ending May 9, 1990.

(44) As members of the Board of Regents of Higher Education in accordance with section 2-15-1505 and 2-15-1508, MCA.

Mr. Scott Lee Birkenbuel, Bozeman, Montana 59715, appointed for a term ending June 10, 1987.

Mr. Burt L. Hurwitz, White Sulphur Springs, Montana 59645, reappointed for a term ending February 1, 1993.

Mr. James K. Kaze, Havre, Montana 59501, appointed for a term ending February 1, 1992.

(45) As members of the Board of Sanitarians in accordance with section 2-15-1861, MCA.

Mr. Samuel R. Kalafat, Black Eagle, Montana 59414, reappointed for a term ending July 1, 1989.

Mr. James M. Peterson, Helena, Montana 59601, reappointed for a term ending July 1, 1988.

(46) As members of the Board of Social Work Examiners and Professional Counselors in accordance with section 2-15-1854, MCA.

Reverend Anthony Gregori, Black Eagle, Montana 59424, appointed for a term ending January 2, 1989.

Mr. Ray M. Lappin, Deer Lodge, Montana 59722, appointed for a term ending January 2, 1989.

(47) As members of the Board of Speech Pathologists and Audiologists in accordance with section 2-15-1849, MCA.



Mr. Gene W. Bukowski, Billings, Montana 59102, appointed for a term ending December 31, 1989.

Mr. Frank Gary, Butte, Montana 59701, appointed for a term ending December 31, 1989.

Mr. Floyd J. McDowell, Great Falls, Montana 59401, reappointed for a term ending December 31, 1988.

(48) As members of the Board of Veterans' Affairs in accordance with section 2-15-1205, MCA.

Mr. Robert A. Durkee, Helena, Montana 59601, appointed for a term ending May 18, 1991.

Mr. John L. Gallagher, Havre, Montana 59501, appointed for a term ending May 18, 1990.

(49) As members of the Board of Veterinary Medicine in accordance with section 2-15-1852, MCA.

Dr. James N. Brogger, Ronan, Montana 59864, appointed for a term ending July 31, 1990.

Mr. Douglas Delaney, Lewistown, Montana 59457, reappointed for a term ending July 31, 1990.

Dr. Anne Johnson, Malta, Montana 59538, appointed for a term ending July 31, 1988.

Dr. William Daniel McFarland, Fort Benton, Montana 59442, reappointed for a term ending July 31, 1991.

(50) As members of the Board of Water Well Contractors in accordance with section 2-15-3307, MCA.

Mr. W. J. Lindsay, Clancy, Montana 59634, reappointed for a term ending July 1, 1988.

Mr. William F. Osborne, Kalispell, Montana 59901, reappointed for a term ending July 1, 1989.

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:**

That the Senate of the regular Session of the 50th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this Resolution pursuant to section 5-5-303, MCA.

**Passed March 5, 1987.**

**SENATE RESOLUTION NO. 3**

A RESOLUTION OF THE SENATE OF THE REGULAR SESSION OF THE 50TH LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 16, 1987, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations, below designated, of appointments which have been submitted to the Senate by the Governor, to wit:

(1) As members of the Board of Aeronautics, in accordance with section 2-15-1812, MCA:

Mr. Al Cochrane, Bigfork, Montana 59911, appointed for a term ending January 1, 1991.

Mr. Terry D. Marshall, Billings, Montana 59101, reappointed for a term ending January 1, 1991.

Mr. Myron K. Strand, Kalispell, Montana 59901, reappointed for a term ending January 1, 1991.

Mr. C. R. Ugrin, Miles City, Montana 59301, reappointed for a term ending January 1, 1991.

(2) As members of the Agricultural Loan Authority, in accordance with section 2-15-3011, MCA:

Mr. Dennis L. DeVries, Polson, Montana 59860, reappointed for a term ending January 1, 1991.

Mr. C. David Gorton, Billings, Montana 59101, reappointed for a term ending January 1, 1991.

Mr. Terry Murphy, Great Falls, Montana 59404, reappointed for a term ending January 1, 1991.

Mr. Paul T. Ringling, Miles City, Montana 59301, reappointed for a term ending January 1, 1991.

(3) As a member of the Board of Chiropractors, in accordance with section 2-15-1847, MCA:

Dr. Deborah Sorenson, White Sulphur Springs, Montana 59645, appointed for a term ending January 9, 1990.

(4) As members of the Board of Crime Control, in accordance with section 2-15-2006, MCA:

Mr. Craig J. Anderson, Glendive, Montana 59330, appointed for a term ending January 1, 1991.

Sheriff Robert Butorovich, Butte, Montana 59701, appointed for a term ending January 2, 1989.

Ms. Andree Deligdisch, Great Falls, Montana 59401, reappointed for a term ending January 1, 1991.

Attorney General Mike Greeley, Helena, Montana 59620, reappointed for a term ending January 1, 1991.

Mr. Frank W. Hazelbaker, Polson, Montana 59860, reappointed for a term ending January 1, 1991.

Senator Matt A. Himsl, Kalispell, Montana 59901, reappointed for a term ending January 1, 1991.

Mr. Donald R. Peoples, Butte, Montana 59701, reappointed for a term ending January 1, 1991.

(5) As members of the Fish & Game Commission, in accordance with section 2-15-3402, MCA:

Mr. F. W. Howell, West Yellowstone, Montana 59758, appointed for a term ending January 1, 1991.

Mr. Robert A. Jensen, Circle, Montana 59215, reappointed for a term ending January 1, 1991.

(6) As members of the Hard-Rock Mining Impact Board, in accordance with section 2-15-1822, MCA:

Mr. Donald B. Kinsey, Big Timber, Montana 59011, reappointed for a term ending January 1, 1991.

Mr. R. C. Rice, Billings, Montana 59102, appointed for a term ending January 1, 1991.

(7) As members of the Board of Health & Environmental Sciences, in accordance with section 2-15-2104, MCA:

Dr. John F. McGregor, Great Falls, Montana 59401, reappointed for a term ending January 1, 1991.

Ms. Joyce Spicher, Hingham, Montana 59528, appointed for a term ending January 1, 1991.

Mr. J. Howard Toole, Missoula, Montana 59802, reappointed for a term ending January 1, 1991.

(8) As members of the Highway Commission, in accordance with section 2-15-2502, MCA:

Mr. Gerald T. Archambeault, Glasgow, Montana 59230, reappointed for a term ending January 1, 1991.

Mr. Roy M. Duff, Whitefish, Montana 59937, reappointed for a term ending January 1, 1991.

(9) As members of the Board of Housing, in accordance with section 2-15-1814, MCA:

Mr. John D. Buchanan, Cascade, Montana 59421, reappointed for a term ending January 1, 1991.

Mr. Howard Rosenleaf, Anaconda, Montana 59711, reappointed for a term ending January 1, 1991.

Mr. Brad Walterskirchen, Kalispell, Montana 59901, reappointed for a term ending January 1, 1991.

(10) As members of the Commission for Human Rights, in accordance with section 2-15-1706, MCA:

Mr. Dennis Limberhand, Lame Deer, Montana 59043, reappointed for a term ending January 1, 1991.

Mr. Jack M. McLean, Helena, Montana 59601, reappointed for a term ending January 1, 1991.

(11) As members of the Board of Livestock, in accordance with section 2-15-3102, MCA:

Mr. Donald L. Herzog, Rapelje, Montana 59067, reappointed for a term ending March 1, 1993.

Mr. John Kelly, Red Lodge, Montana 59068, reappointed for a term ending March 1, 1993.

Mr. Ralph J. Parker, Fort Shaw, Montana 59443, reappointed for a term ending March 1, 1993.

(12) As members of the Board of Milk Control, in accordance with section 2-15-1802, MCA:

Mr. Curtis C. Cook, Hamilton, Montana 59840, reappointed for a term ending January 1, 1991.

Mr. Michael W. Holland, Helena, Montana 59601, appointed for a term ending January 1, 1991.

(13) As members of the Board of Natural Resources and Conservation, in accordance with section 2-15-3302, MCA:

Mr. William A. Shields, Great Falls, Montana 59401, reappointed for a term ending January 1, 1991.

Ms. Joan Toole, Helena, Montana 59601, reappointed for a term ending January 1, 1991.

Mr. Jerry L. Wiedebush, Plentywood, Montana 59254, appointed for a term ending January 1, 1991.

(14) As members of the Board of Oil and Gas Conservation, in accordance with section 2-15-3303, MCA:

Mr. James C. Nelson, Cut Bank, Montana 59427, reappointed for a term ending January 1, 1991.

Mr. Warren H. Ross, Chinook, Montana 59523, appointed for a term ending January 1, 1991.

Mr. Dean A. Swanson, Billings, Montana 59103, appointed for a term ending January 1, 1991.

(15) As a member of the Board of Pardons, in accordance with section 2-15-2302, MCA:

Mr. Thomas M. Keegan, Helena, Montana 59601, reappointed for a term ending January 1, 1991.

(16) As members of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

Mr. Jerald H. Hudspeth, Glendive, Montana 59330, reappointed for a term ending January 1, 1991.

Mr. Ivan O'Neil, Kalispell, Montana 59901, reappointed for a term ending January 1, 1991.

(17) As a member of the Board of Regents of Higher Education, in accordance with sections 2-15-1505 and 2-15-1508, MCA:

Mr. Jeffrey B. Morrison, Helena, Montana 59620, reappointed for a term ending February 1, 1994.

(18) As members of the Board of Social Work Examiners and Professional Counselors, in accordance with section 2-15-1854, MCA:

Mr. Larry E. Fritz, Columbus, Montana 59019, reappointed for a term ending January 1, 1991.

Mr. Patrick J. Kelly, Miles City, Montana 59301, reappointed for a term ending January 1, 1991.

Ms. Joan I. Rebich, Helena, Montana 59604, appointed for a term ending January 1, 1991.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the regular Session of the 50th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution pursuant to section 5-5-303, MCA.

Passed April 1, 1987.

## SENATE RESOLUTION NO. 5

A RESOLUTION OF THE SENATE OF THE REGULAR SESSION OF THE 50TH LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED APRIL 14, 1987, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations, below designated, of appointments which have been submitted to the Senate by the Governor, to wit:

(1) As a member of the Board of Architects, in accordance with section 2-15-1871, MCA.

Mr. F. Wayne Gustafson, Billings, Montana 59105, appointed for a term ending March 27, 1990.

(2) As members of the Montana Arts Council, in accordance with section 2-15-1513, MCA.

Ms. Kitty Belle Deernose, Crow Agency, Montana 59022, appointed for a term ending February 1, 1992.

Mr. Jack W. Nickels, Fort Peck, Montana 59223, appointed for a term ending February 1, 1990.

Mr. Randall S. Ogle, Kalispell, Montana 59903, reappointed for a term ending February 1, 1992.

Ms. Jessica P. Stickney, Miles City, Montana 59301, reappointed for a term ending February 1, 1992.

Mr. Charles F. Tooley, Billings, Montana 59101, reappointed for a term ending February 1, 1992.

Mr. Patrick Zentz, Laurel, Montana 59044, reappointed for a term ending February 1, 1992.

(3) As members of the Coal Board, in accordance with section 2-15-1821, MCA.

Mr. Gene H. Kurtz, Forsyth, Montana 59327, appointed for a term ending January 1, 1991.

Mr. Monty Long, Kalispell, Montana 59901, reappointed for a term ending January 1, 1991.

Mr. Hal J. Stearns, Missoula, Montana 59803, appointed for a term ending January 1, 1991.

(4) As a member of the Board of Horseracing, in accordance with section 2-15-1881, MCA.

Sheriff Chuck O'Reilly, Helena, Montana 59601, reappointed for a term ending January 20, 1990.

(5) As members of the Board of Optometrists, in accordance with section 2-15-1846, MCA.

Dr. P. L. Kathrein, Great Falls, Montana 59401, reappointed for a term ending April 3, 1991.

Ms. Sara Gertrude Malone, Bigfork, Montana 59911, reappointed for a term ending February 20, 1991.

(6) As members of the Board of Professional Engineers and Land Surveyors, in accordance with section 2-15-1873, MCA.

Mr. Lloyd L. Allen, Fort Benton, Montana 59442, appointed for a term ending March 31, 1990.

Ms. Nancy K. Moe, Missoula, Montana 59802, reappointed for a term ending March 31, 1991.

(7) As a member of the Board of Public Education, in accordance with section 2-15-1507, MCA.

Mr. Thomas A. Thompson, Browning, Montana 59417, reappointed for a term ending February 1, 1994.

(8) As a member of the State Tax Appeal Board, in accordance with section 15-2-101, MCA.

Mr. Patrick E. McKelvey, Helena, Montana 59601, appointed for a term ending March 1, 1993.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the regular Session of the 50th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this Resolution pursuant to section 5-5-303, MCA.

Passed April 20, 1987.

## SENATE RESOLUTION NO. 6

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA RECOGNIZING THE EFFORTS OF NORM ECK IN RESOLVING THE VENTILATION CHALLENGES PRESENTED BY ROOM 413/415 OF THE STATE CAPITOL AND IN ENABLING THE SENATE TAXATION, LABOR, AND AGRICULTURE COMMITTEES TO FUNCTION MORE EFFECTIVELY.

WHEREAS, the Senate Taxation Committee, the Senate Agriculture, Livestock and Irrigation Committee, and the Senate Labor and Employment Relations Committee meet and deliberate in Room 413/415 of the State Capitol; and

WHEREAS, Room 413/415 of the State Capitol possesses certain architectural features—namely, interior positioning with no windows—that present a respiratory challenge to the committee members and members of the public that spend countless hours pursuing important legislation; and

WHEREAS, it is counterproductive to efficiency in the deliberations of the three committees that their meeting room frequently matches the “pressure-cooker” analogy often associated with deliberations of the Montana Legislature; and

WHEREAS, Norm Eck has worked diligently in attempting to alleviate the ventilation problem in Room 413/415.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the members of the Senate recognize and applaud the efforts of Norm Eck in diligently attempting to control the excessive heat and inadequate ventilation associated with the meeting room used by the Senate Taxation Committee, the Senate Agriculture, Livestock and Irrigation Committee, and the Senate Labor and Employment Relations Committee.

Passed April 23, 1987.

## SENATE RESOLUTION NO. 7

A RESOLUTION OF THE SENATE OF THE REGULAR SESSION OF THE 50TH LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED APRIL 21, 1987, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations, below designated, of appointments which have been submitted to the Senate by the Governor, to wit:

(1) As Commissioner of the Department of Labor and Industry, in accordance with section 2-15-1701, MCA.

Ms. M. M. "Peg" Hartman, Helena, Montana 59601.

(2) As Director of the Department of Family Services, in accordance with House Bill No. 325 of the 1987 Legislature.

Mr. Eugene Huntington, Helena, Montana 59601.

(3) As Justice of the Montana Supreme Court, nominated to fill the vacancy created by the resignation of Justice Frank B. Morrison, in accordance with Article VII, section 8, of the Montana Constitution.

Judge Russell C. McDonough, Glendive, Montana 59330.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the regular Session of the 50th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this Resolution pursuant to section 5-5-303, MCA.

Passed April 22, 1987.



**SENATE RESOLUTION NO. 8**

A RESOLUTION OF THE SENATE OF THE REGULAR SESSION OF THE 50TH LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED APRIL 22, 1987, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations, below designated, of appointments which have been submitted to the Senate by the Governor, to wit:

(1) As members of the Board of Investments, in accordance with Senate Bill No. 298, of the 1987 Legislature.

Mr. Robert L. Batista, Great Falls, Montana 59401, appointed for a term ending January 2, 1989.

Mr. Steve Brown, Helena, Montana 59601, appointed for a term ending January 1, 1991.

Mr. James William Kearns Jr., Townsend, Montana 59644, appointed for a term ending January 2, 1989.

Ms. Patrice B. LaTourelle, Whitefish, Montana 59937, appointed for a term ending January 2, 1989.

Mr. Joel T. Long, Billings, Montana 59106, appointed for a term ending January 2, 1989.

Mr. Joseph B. Reber, Helena, Montana 59601, appointed for a term ending January 2, 1989.

Mr. W. E. Schreiber, Whitefish, Montana 59937, appointed for a term ending January 1, 1991.

Mr. Wilbur E. Scott, Great Falls, Montana 59401, appointed for a term ending January 1, 1991.

Mr. Frederick B. Tossberg, Hamilton, Montana 59840, appointed for a term ending January 1, 1991.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the regular Session of the 50th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this Resolution pursuant to section 5-5-303, MCA.

Passed April 23, 1987.

## HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT RULES IN ADDITION TO THE JOINT RULES TO GOVERN ITS PROCEEDINGS.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following rules be adopted:

### CHAPTER 1

#### Presiding Officer — Decorum, Order, and Debate

**H1-1.** The House of Representatives shall elect one of its members Speaker. The House shall choose its other officers and shall be the judge of the elections, returns, and qualifications of its members.

**H1-2.** The House shall elect one of its members Speaker pro tempore, who shall perform all of the duties of the Speaker in the absence of that officer and on such other occasions as the Speaker may request.

**H1-3.** No member shall speak for longer than 30 minutes in debate on any one motion or question; however, in Committee of the Whole, no member may speak over 5 minutes on any motion except the member who made the motion on the immediately pending question, and that member shall have 5 minutes to close.

**H1-4.** No member shall speak more than once on the same question without the unanimous consent of the House, unless he has proposed or introduced the immediately pending question, in which case he may speak in reply after all members choosing to speak have spoken.

**H1-5.** If the motions "do pass" and either "do not pass" or "indefinitely postpone" both fail on second reading, a motion to reconsider is in order in Committee of the Whole.

**H1-6.** Only the following persons may be admitted to the floor of the House during sessions: legislators; legislative officers and employees whose presence is necessary for the conduct of the business of the session; accredited members of the press, radio, and television; former legislators; and members' spouses and their children. Exceptions may be made for visiting dignitaries.

### CHAPTER 2

#### Meetings, Quorums, and Attendance

**H2-1.** Lobbying on the floor of the House of Representatives is prohibited during the session and within 2 hours prior to the commencement of a session and within 2 hours after recess or adjournment.

### CHAPTER 3

#### Committees

**H3-1.** The standing committees of the House are as follows:

1. Agriculture, Livestock and Irrigation
2. Appropriations
3. Business and Labor
4. Education and Cultural Resources
5. Fish and Game
6. Highways and Transportation
7. Human Services and Aging
8. Judiciary
9. Legislative Administration/Bills and Journal
10. Local Government
11. Natural Resources
12. Rules
13. State Administration
14. Taxation

The first named member of a committee is the chairman, and in his absence the next named member, and so on.

**H3-2.** The Committee on Rules shall consist of the Speaker, the majority leader and other members of the majority party appointed by the Speaker, and the minority leader and other members of the minority party designated by the minority leader and appointed by the Speaker. The Speaker shall appoint the members of other standing committees, select committees, and house membership on joint committees and conference committees.

**H3-3.** The Speaker, majority leader, and minority leader shall be ex officio members on all committees.

**H3-4.** (1) All bills having "do pass" committee recommendations shall be deemed adopted and shall be placed on second reading unless they are referred to a committee by motion duly made on Order of Business No. 6.

(2) If the committee report is that the bill "do not pass", the committee report will be voted on on Order of Business No. 2.

**H3-5.** After an amendment to a bill has been adopted in a committee or Committee of the Whole, the amendment adheres to the bill until it is removed by a specific action of the committee or until final disposition of the bill by the committee.

## CHAPTER 4

### Rules

**H4-1.** (1) A motion to amend or adopt a rule of the House shall be referred to the Committee on Rules, which shall report no later than the

next legislative day. Unless recommended by the Committee on Rules, no House rule shall be amended or adopted except by a two-thirds vote.

(2) A House rule may be suspended temporarily for a specified purpose by a two-thirds vote.

**H4-2.** Mason's Manual of Legislative Procedure governs the proceedings of the House of Representatives in all cases not covered by these rules.

Passed January 6, 1987.

# APPENDICES

- 1    **Ballot Issues**
  - (a)   **Constitutional Amendment No. 15**
  - (b)   **Constitutional Amendment No. 16**
  - (c)   **Constitutional Initiative No. 30**
  - (d)   **Initiative No. 105**
  - (e)   **Legislative Referendum No. 100**
  
- 2    **Special Sessions 49th Legislature**
  - March 24, 1986 — March 29, 1986**
  - June 16, 1986 — July 1, 1986**



# BALLOT ISSUES

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## CONSTITUTIONAL AMENDMENTS

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### CONSTITUTIONAL AMENDMENT NO. 15

By Chapter 129, Laws of 1985, the Legislature proposed an amendment to The Constitution of the State of Montana to remove the legal drinking age of 19 years from the Constitution and allow the legal drinking age to be established by statute or initiative.

Chapter 129 was approved by the following vote at the General Election held November 4, 1986:

|          |         |
|----------|---------|
| For:     | 207,233 |
| Against: | 106,611 |

The title and text of Chapter 129 follow:

**AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II, SECTION 14, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE PEOPLE OR THE LEGISLATURE MAY ESTABLISH THE LEGAL AGE FOR PURCHASING, CONSUMING, OR POSSESSING ALCOHOLIC BEVERAGES; AND PROVIDING AN EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Article II, section 14, of the Constitution of the State of Montana is amended to read:

**"Section 14. Adult rights.** A person 18 years of age or older is an adult for all purposes, except that the legislature or the people by initiative may establish the legal age for *purchasing*, consuming, or possessing alcoholic beverages."

Section 2. **Effective date.** If approved by the electorate, this amendment becomes effective January 1, 1987.

Section 3. **Submission to electorate.** This amendment shall be submitted to the electors of the State of Montana at the general election held in November 1986 by printing on the ballot the full title of this act and the following:

- ☐ **FOR** removing the legal drinking age of 19 years from the constitution and allowing the legal drinking age to be established by statute or initiative.

- ☐ AGAINST removing the legal drinking age of 19 years from the constitution and allowing the legal drinking age to be established by statute or initiative.

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### CONSTITUTIONAL AMENDMENT NO. 16

By Chapter 158, Laws of 1985, the Legislature proposed an amendment to The Constitution of the State of Montana to abolish the Montana Salary Commission.

Chapter 158 was approved by the following vote at the General Election held November 4, 1986:

|          |         |
|----------|---------|
| For:     | 172,517 |
| Against: | 116,143 |

The title and text of Chapter 158 follow:

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO THE MONTANA CONSTITUTION TO REPEAL ARTICLE XIII, SECTION 3, THEREOF, WHICH REQUIRES THE LEGISLATURE TO CREATE A SALARY COMMISSION TO RECOMMEND COMPENSATION FOR THE JUDICIARY AND ELECTED MEMBERS OF THE LEGISLATIVE AND EXECUTIVE BRANCHES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Repealer.** Article XIII, section 3, of the Constitution of the State of Montana is repealed.

**Section 2. Submission to electorate.** This amendment shall be submitted to the electors of Montana at the general election to be held November 4, 1986, by printing on the ballot the full title of this act and the following words:

- ☐ FOR abolishing the Montana salary commission.
- ☐ AGAINST abolishing the Montana salary commission.

### INITIATIVE

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### CONSTITUTIONAL INITIATIVE NO. 30

By Constitutional Initiative No. 30, the people proposed an amendment to The Constitution of the State of Montana to authorize the Legislature to determine the rights and remedies for injury or damage to person, property, or chapter.

Initiative No. 30 was approved by the following vote at the General Election held November 4, 1986:

|          |         |
|----------|---------|
| For:     | 172,502 |
| Against: | 136,653 |



The text of the Initiative follows:

*Be it enacted by the People of the State of Montana:*

Section 1. Article II, section 16, of the Constitution of the State of Montana is amended to read:

**"Section 16: The administration of justice.** (1) Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. *Right and justice shall be administered without sale, denial, or delay.*

(2) No person shall be deprived of ~~this full~~ legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. *Right and justice shall be administered without sale, denial, or delay.*

(3) *This section shall not be construed as a limitation upon the authority of the legislature to enact statutes establishing, limiting, modifying, or abolishing remedies, claims for relief, damages, or allocations of responsibility for damages in any civil proceeding; except that any express dollar limits on compensatory damages for actual economic loss for bodily injury must be approved by a 2/3 vote of each house of the legislature."*

Section 2. **Effective date.** This amendment is effective on approval of the electorate.

### Compiler's Comment

*Void Election:* In State ex rel. Montana Citizens for the Preservation of Citizens' Rights v. Waltermire, \_\_\_ M \_\_\_, \_\_\_ P2d \_\_\_, 44 St. Rep. \_\_\_ (1987), the Montana Supreme Court held that the proposed amendment failed because of material constitutional defects in the manner it was presented to the electors for a vote.

## INITIATIVE

### INITIATIVE NO. 105

By Initiative No. 105, the people proposed that the amount of taxes levied on property classes 3, 4, 6, 9, 12, and 14 may not exceed the amounts levied on those classes of property for the taxable year 1986. The act took effect July 1, 1987, because prior to that date the Legislature failed to pass an act lowering taxes on the above listed classes of property and establishing alternative revenue sources.

Initiative No. 105 was approved by the following vote at the General Election held November 4, 1986:

|          |         |
|----------|---------|
| For:     | 166,694 |
| Against: | 136,904 |

The text of the Initiative follows:

*Be it enacted by the People of the State of Montana:*

**Section 1. Declaration of policy.** (1) The State of Montana's reliance on the taxation of property to support education and local government has placed an unreasonable burden on the owners of classes three, four, six, nine, twelve, and fourteen property, as those classes are defined in Title 15, ch. 6, part 1.

(2) The legislature's failure to give local governments and local school districts the flexibility to develop alternative sources of revenue will only lead to increases in the tax burden on the already overburdened property taxpayer.

(3) The legislature is the appropriate forum to make the difficult and complex decisions to develop:

(a) a tax system that is fair to property taxpayers; and

(b) a method of providing adequate funding for local government and education.

(4) The legislature has failed in its responsibility to taxpayers, education, and local government, to relieve the tax burden on property classes three, four, six, nine, twelve, and fourteen.

(5) The people of the State of Montana declare it is the policy of the State of Montana that no further property tax increases be imposed on property classes three, four, six, nine, twelve, and fourteen.

**Section 2. Property tax limited to 1986 levels.** (1) Except as provided in subsections (2) and (3), the amount of taxes levied on property described in 15-6-133, 15-6-134, 15-6-136, 15-6-139, 15-6-142, and 15-6-144 may not, for any taxing jurisdiction, exceed the amount levied for taxable year 1986.

(2) The limitation contained in subsection (1) does not apply to levies for rural improvement districts, Title 7, ch. 12, part 21; special improvement districts, Title 7, ch. 12, part 41; or bonded indebtedness.

(3) New construction or improvements to or deletions from property described in subsection (1) is subject to taxation at 1986 levels.

(4) As used in this section, the "amount of taxes levied" and the "amount levied" mean the actual dollar amount of taxes imposed on an individual piece of property, notwithstanding an increase or decrease in value due to inflation, reappraisal, adjustments in the percentage multiplier used to convert appraised value to taxable value, changes in the number of mills levied, or increase or decrease in the value of a mill.

**Section 3. Contingent effective date.** (1) Except as provided in subsection (2), this act is effective July 1, 1987, and applies to taxable year 1987.

(2) This act will not become effective if, prior to July 1, 1987, an act is passed and approved that:

(a) states that it is being enacted in response to this initiative;

(b) reduces property tax on a statewide basis on property described in 15-6-133, 15-6-134, 15-6-136, 15-6-139, 15-6-142, and 15-6-144; and

(c) establishes alternative revenue sources to replace revenue lost to local governments, school districts, the university system, and other property taxing jurisdictions as a result of the reduced property taxes.

### LEGISLATIVE REFERENDUM

#### LEGISLATIVE REFERENDUM NO. 100

By Chapter 669, Laws of 1985, the Legislature submitted this proposal to establish a state lottery and provide for its administration.

Referendum No. 100 was approved by the following vote at the General Election held November 4, 1986:

|          |         |
|----------|---------|
| For:     | 216,706 |
| Against: | 97,459  |

The title and text of the Referendum follow:

AN ACT TO ESTABLISH A STATE LOTTERY AND PROVIDE FOR ITS ADMINISTRATION; AMENDING SECTION 23-5-202, MCA; PROVIDING EFFECTIVE DATES; AND PROVIDING THAT THE PROPOSED LOTTERY LAW BE SUBMITTED TO THE ELECTORS OF THE STATE OF MONTANA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [Sections 1 through 20] may be cited as the "Montana State Lottery Act of 1985".

Section 2. **Purpose.** (1) The purpose of [sections 1 through 20] is to allow lottery games in which the player purchases from the state, through the administrators of the state lottery, a chance to win a prize. [Sections 1 through 20] do not allow and may not be construed to allow any game in which a player competes against or plays with any other person, including a person employed by an establishment in which a lottery game may be played.

(2) The administration and construction of [sections 1 through 20] must comply with Article III, section 9, of the Montana constitution, which mandates that all forms of gambling are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum. Therefore, [sections 1 through 20] must be strictly construed to allow only those games that are within the scope of this section and within the definition of "lottery game".

(3) The state lottery may not:

(a) operate a slot machine or carry on any form of gambling prohibited by the laws of this state; or

(b) carry on any form of gambling permitted by the laws of this state but which is not a lottery game within the scope of this section and within the definition of "lottery game".

**Section 3. Definitions.** As used in [sections 1 through 20], the following definitions apply:

(1) "Commission" means the state lottery commission created by [section 4].

(2) "Director" means the director appointed by the governor under [section 6] to administer and manage the state lottery.

(3) "Lottery" or "state lottery" means the Montana state lottery created and operated pursuant to [sections 1 through 20].

(4) "Lottery game" means any procedure, including any on-line or other procedure using a machine or electronic device, by which one or more prizes are distributed among persons who have paid for a chance to win a prize and includes but is not limited to weekly (or other, longer time period) winner games, instant winner games, daily numbers games, and sports pool games, except games prohibited by Title 23, chapter 5, part 1; lotteries prohibited by Title 23, chapter 5, part 2; card games regulated by Title 23, chapter 5, part 3; raffles and bingo games governed by Title 23, chapter 5, part 4; and sports pools governed by Title 23, chapter 5, part 5.

**Section 4. State lottery commission — allocation — composition — compensation — quorum.** (1) There is a state lottery commission.

(2) The commission consists of five members, who shall reside in Montana, appointed by the governor.

(3) At least one commissioner must have 5 years of experience as a law enforcement officer. At least one commissioner must be an attorney admitted to the practice of law in Montana. At least one commissioner must be a certified public accountant licensed in Montana.

(4) After initial appointments, each commissioner shall be appointed to a 4-year term of office, and the terms shall be staggered.

(5) A commissioner may be removed by the governor for good cause. An office that for any reason becomes vacant must be filled within 30 days by the governor, and the commissioner filling the vacancy shall serve for the rest of the unexpired term.

(6) The commission shall elect one of its members as chairman.

(7) Three or more commissioners constitute a quorum to do business, and action may be taken by a majority of a quorum.

(8) Commissioners are entitled to compensation, to be paid out of the state lottery fund, at the rate of \$50 for each day in which they are engaged in the performance of their duties and are entitled to travel, meals, and lodging expenses, to be paid out of the state lottery fund, as provided for in Title 2, chapter 18, part 5.

(9) The commission is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

**Section 5. Powers and duties of commission.** The commission shall:

(1) establish and operate a state lottery and may not become involved in any other gambling or gaming;

(2) determine policies for the operation of the state lottery, supervise the director and his staff, and meet with the director at least once every 3 months to make and consider recommendations, set policies, determine types and forms of lottery games to be operated by the state lottery, and transact other necessary business;

(3) determine the price of each ticket or chance and the number and size of prizes;

(4) provide for the conduct of drawings of winners of lottery games;

(5) carry out, with the director, a continuing study of the state lotteries of Montana and other states to make the state lottery more efficient, profitable, and secure from violations of the law;

(6) study the possibility of working with other lottery states to offer regional lottery games;

(7) prepare quarterly and annual reports on all aspects of the operation of the state lottery, including but not limited to types of games, gross revenue, prize money paid, operating expenses, net revenue to the state, contracts with gaming suppliers, and recommendations for changes to [sections 1 through 20], and deliver a copy of each report to the governor, the department of administration, the legislative auditor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house; and

(8) adopt rules necessary to carry out [sections 1 through 20].

**Section 6. Director — appointment — compensation — qualifications.** (1) The director must be appointed by the governor and shall hold office at the pleasure of the governor.

(2) The director must be qualified by training and experience to direct the state lottery. He must be a full-time employee and may not engage in any other occupation.

(3) The director's salary is equal to 90% of the salary of the director of the department of commerce.

**Section 7. Powers and duties of director.** (1) The director shall:

(a) administer the operation of the state lottery in accordance with [sections 1 through 20] and the rules and other directives of the commission;

(b) appoint an assistant director for security and employ and direct personnel necessary to the operation of the state lottery;

(c) license lottery ticket or chance sales agents and suspend or revoke licenses pursuant to [sections 1 through 20] and commission rules; and

(d) maintain, with the assistant director for security, the security of the state lottery.

(2) With the concurrence of the commission or pursuant to commission rules, the director may enter into contracts for materials, equipment, and supplies to be used in the operation of the state lottery, for the design and installation of games, for consultant services, and for promotion of the lottery. All contracts must be made in accordance with state law. No contract is legal or enforceable that provides for the management of the state lottery or for the entire operation of its games by any private person or firm. When a contract is awarded, a performance bond satisfactory to the commission and executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the commission, in an amount equal to the price of the contract, must be delivered to the commission.

**Section 8. Assistant director for security — qualifications — duties.** (1) The director shall appoint an assistant director for security.

(2) The assistant director for security must be qualified by training and experience, have at least 5 years of law enforcement experience, and be knowledgeable and experienced in computer security.

(3) The assistant director for security shall:

(a) be responsible for a security division to assure security, honesty, fairness, and integrity in the operation and administration of the lottery, including but not limited to an examination of the background of all prospective employees, ticket or chance sales agents, lottery vendors, and lottery contractors. The security division is designated a law enforcement agency for the purpose of administering [sections 1 through 20].

(b) in conjunction with the director, confer with the attorney general or his designee to promote and ensure security, honesty, fairness, and integrity of the operation and administration of the lottery; and

(c) in conjunction with the director, report any alleged violation of law to the attorney general, the legislative auditor, and any other appropriate law enforcement authority for further investigation and action.

**Section 9. Ticket or chance sales agents — licenses.** (1) Lottery tickets or chances may be sold only by ticket or chance sales agents licensed by the director in accordance with this section.

(2) The commission shall by rule determine the places at which state lottery game tickets or chances may be sold.

(3) (a) Before issuing a license, the director shall consider:

(i) the financial responsibility and security of the applicant and his business or activity;

(ii) the accessibility of his place of business or activity to the public; and

(iii) the sufficiency of existing licenses to serve the public convenience and the volume of the expected sales.

(b) No person under 18 years of age may sell lottery tickets or chances.

(c) A license as an agent to sell lottery tickets or chances may not be issued to any person to engage in business exclusively as a lottery ticket or chance sales agent.

(4) The director may issue temporary licenses upon conditions he considers necessary.

(5) License applicants shall pay a \$50 fee to cover the cost of investigating and processing the application.

(6) The director may require a bond from any licensed agent in an amount provided in the commission's rules and may purchase a blanket bond covering the activities of licensed agents.

(7) A licensed agent shall display his license or a copy thereof conspicuously in accordance with the commission's rules.

(8) A license is not assignable or transferable.

(9) No employee of a ticket or chance sales agent may be required to sell lottery game tickets or chances if the sale is against his religious or moral beliefs.

(10) Sales agents are entitled to no more than a 5% commission on tickets and chances sold.

(11) Each sales agent shall keep a complete and up-to-date set of records and accounts fully showing his sales and provide it for inspection upon request of the commission, the director, the department of commerce, the office of the legislative auditor, or the office of the attorney general.

(12) Sales agents may pay the state lottery only by check, bankdraft, electronic fund transfer, or other recorded, noncash, financial transfer method as determined by the director.

(13) A license may be suspended or revoked for failure to maintain the license qualifications provided in subsection (3) or for violation of any provision of [sections 1 through 20] or a commission rule. Prior to suspension or revocation, the licensee must be given notice and an opportunity for a hearing.

**Section 10. Sales restrictions.** (1) The price of each lottery game ticket or chance must be clearly stated thereon. The price of a lottery game chance vended by a machine or electronic device must be clearly stated on the machine or device.

(2) Tickets and chances may not be sold to or purchased by persons under 18 years of age.

(3) Tickets and chances must be paid for in cash.

(4) Tickets and chances may not be sold to or purchased by commissioners, the director, his staff, gaming suppliers doing business with the state lottery, suppliers' officers and employees, employees of any firm or governmental agency auditing or investigating the state lottery, or members of their families living with them.

(5) The names of elected officials may not appear on any ticket or chance.

**Section 11. Disclosure of odds.** The director shall make adequate disclosure of the odds with respect to each state lottery game by stating the odds in lottery game advertisements and by posting the odds at each place in which tickets or chances are sold.

**Section 12. State lottery fund.** There is a fund of the enterprise fund type, as defined in 17-2-102, to be known as the state lottery fund. The gross revenue from the state lottery, consisting of money from the sale of lottery tickets and chances, ticket or chance sales agent license fees, unclaimed prizes, or any other source, must be deposited in the fund, except that, at the discretion of the director, money for prizes paid immediately by a sales agent and money equaling the sales agent's commission may be drawn by a sales agent from his gross revenue before depositing his gross revenue with the state lottery.

**Section 13. Disposition of revenue.** (1) As near as possible to 45% of the money paid for tickets or chances in each separate state lottery game must be paid out as prize money for the game.

(2) Up to 15% of the gross revenue from the state lottery may be used by the director to pay the operating expenses of the state lottery. Commissions paid to lottery ticket or chance sales agents are a state lottery operating expense.

(3) That part of all gross revenue not used for the payment of prizes and operating expenses is net revenue and must be paid quarterly from the enterprise fund established by [section 12] to the superintendent of public instruction for distribution as equalization aid to the retirement funds required by 20-9-501. [The net revenue is statutorily appropriated, as provided in [section 2 of House Bill 12].] The superintendent of public instruction shall establish the dollar amount per ANB by dividing the net lottery revenue for the school year by the total state ANB in the prior school year. He shall then notify each county superintendent by the fourth Monday of July of the total retirement fund equalization aid available to the county, as calculated separately for elementary and high school districts using the prior year's ANB and prorated as specified in 20-9-501(6) for any joint school district, and each county superintendent must use such amounts to reduce the total retirement fund levy requirement for elementary school districts and the total retirement fund levy requirement for high school districts. The superintendent of public instruction shall then distribute by state warrant the total amount of retirement fund equalization aid for each county by October 1 of the school fiscal year.

**Section 14. Felony and gambling-related convictions — ineligibility for lottery positions.** No person who has been convicted of a felony or a gambling-related offense under federal law or the law of any state may be a commissioner, director, assistant director, employee of the state lottery, or licensed ticket or chance sales agent. Prior to appointment to any such position, a person shall submit to the commission a full set of fingerprints made at a law enforcement agency by an agent or officer of such agency on forms supplied by the agency.



**Section 15. Conflict of interest.** No commissioner, director, assistant director, state lottery employee, licensed ticket or chance sales agent, or member of his family living with him may have a financial interest in any gaming supplier or any contract between the state lottery and a gaming supplier or accept any gift or thing of value from a gaming supplier.

**Section 16. Drawings for and payment of prizes — unclaimed prizes.** (1) All drawings must be held in public. The selection of winning tickets may not be performed by an employee of the lottery or by a member of the commission. All drawings must be witnessed by a professional staff employee of the legislative auditor's office, and all lottery drawing equipment used in public drawings to select winning prizes or participants for prizes must be examined by the director's staff and a professional staff employee of the legislative auditor's office prior to and after each public drawing.

(2) The commission may provide for the immediate payment of prizes by the ticket or chance sales agent who sold the winning ticket or chance whenever the amount of the prize is less than an amount set by commission rule. Payment may not be made directly by a machine or device or by a computer terminal.

(3) Prizes over \$100,000 may in the discretion of the commission be paid either in one lump sum or in equal yearly installments without interest over a period of not more than 10 years, except that each installment payment must be at least \$20,000.

(4) Prizes not claimed within 6 months are forfeited and must be paid into the state lottery fund. No interest is due on a prize when a claim is delayed but made within 6 months.

(5) The right to a prize is not assignable, but prizes may be paid to a deceased winner's estate or to a person designated by judicial order.

**Section 17. Disclosures by gaming suppliers.** (1) Any person, firm, association, or corporation that submits a bid or proposal for a contract to supply lottery equipment, tickets, or other material or consultant services for use in the operation of the state lottery shall disclose at the time of such bid or proposal:

(a) the supplier's business name and address and the names and addresses of the following:

(i) if the supplier is a partnership, all of the general and limited partners;

(ii) if the supplier is a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(iii) if the supplier is an association, the members, officers, and directors;

(iv) if the supplier is a corporation, the officers, directors, and each owner or holder, directly or indirectly, of any equity security or other evidence of ownership of any interest in the corporation; except that, in the case of owners or holders of publicly held equity securities of a publicly

traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed;

(v) if the supplier is a subsidiary company, each intermediary company, holding company, or parent company involved therewith and the officers, directors, and stockholders of each; except that, in the case of owners or holders of publicly held securities of an intermediary company, holding company, or parent company which is a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed;

(b) if the supplier is a corporation, all the states in which the supplier is authorized to do business and the nature of that business;

(c) other jurisdictions in which the supplier has contracts to supply gaming materials, equipment, or consultant services;

(d) the details of any conviction, state or federal, of the supplier or any person whose name and address are required by subsection (1)(a) of a criminal offense punishable by imprisonment for more than 1 year and shall submit to the commission a full set of fingerprints of such person made at a law enforcement agency by an agent or officer of such agency on forms supplied by the agency;

(e) the details of any disciplinary action taken by any state against the supplier or any person whose name and address are required by subsection (1)(a) regarding any matter related to gaming consultant services or the selling, leasing, offering for sale or lease, buying, or servicing of gaming materials or equipment;

(f) audited annual financial statements for the preceding 5 years;

(g) a statement of the gross receipts realized in the preceding year from gaming consultant services and the sale, lease, or distribution of gaming materials or equipment to states operating lotteries and to private persons licensed to conduct gambling, differentiating that portion of the gross receipts attributable to transactions with states operating lotteries from that portion of the gross receipts attributable to transactions with private persons licensed to conduct gambling;

(h) the name and address of any source of gaming materials or equipment for the supplier;

(i) the number of years the supplier has been in the business of supplying gaming consultant services or gaming materials or equipment; and

(j) any other information, accompanied by any documents the commission by rule may reasonably require as being necessary or appropriate in the public interest to accomplish the purposes of [sections 1 through 20].

(2) No person, firm, association, or corporation contracting to supply gaming equipment or materials or consultant services to the state for use in the operation of the state lottery may have any financial interest or connection with any person, firm, association, or corporation licensed as a ticket or chance sales agent.

(3) No contract for supplying consultant services or gaming materials or equipment for use in the operation of the state lottery is enforceable against the state unless the requirements of this section have been fulfilled.

**Section 18. Annual audit.** The legislative auditor shall conduct an annual audit of the state lottery. The costs of the audit must be paid out of the state lottery fund. A copy of the audit report must be delivered to the commission, the director, the governor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house.

**Section 19. Audit of lottery security.** (1) After the first 9 months of sales to the public and every 2 years after that, the office of the legislative auditor shall conduct or have conducted a comprehensive audit of all aspects of security in the operation of the lottery. The costs of the audit are a state lottery operating expense and must be paid out of the state lottery fund. The audit must include:

- (a) personnel security;
- (b) lottery sales agent security;
- (c) lottery contractor security;
- (d) security of manufacturing operations of lottery contractors;
- (e) security against ticket or chance counterfeiting and alteration and other means of fraudulently winning;
- (f) security of drawings among entries or finalists;
- (g) computer security;
- (h) data communications security;
- (i) database security;
- (j) systems security;
- (k) lottery premises and warehouse security;
- (l) security in distribution;
- (m) security involving validation and payment procedures;
- (n) security involving unclaimed prizes;
- (o) security aspects applicable to each particular lottery game;
- (p) security of drawings in games whenever winners are determined by drawings;
- (q) the completeness of security against locating winners in lottery games with preprinted winners by persons involved in their production, storage, distribution, administration, or sales; and
- (r) any other aspects of security applicable to any particular lottery game and to the lottery and its operations.

(2) The security audit report must be presented to the commission, the director, the governor, the president of the senate, and the speaker of the house of representatives.

**Section 20. Penalties.** It is a misdemeanor, punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 6 months, or both, to knowingly or purposely:

(1) require an employee to sell lottery tickets or chances in violation of [section 9(9)];

(2) violate [section 9(11)];

(3) sell a lottery ticket or chance to a person under 18 years of age;

(4) violate [subsection (3) or (4) of section 10];

(5) serve as a commissioner, director, assistant director, employee, or licensed agent of the state lottery in violation of [section 14];

(6) violate [section 15];

(7) violate [section 17]; or

(8) influence the winning of a prize through the use of coercion, fraud, deception, or tampering with lottery equipment or materials.

**Section 21.** Section 23-5-202, MCA, is amended to read:

**"23-5-202. Application.** This part shall not apply to the provisions of part 4 of this chapter, to [sections 1 through 20], or to the giving away of cash or merchandise attendance prizes or premiums by public drawings at agricultural fairs or rodeo associations in this state, and the county fair commissioners of agricultural fairs or rodeo associations in this state may give away at such fairs cash or merchandise attendance prizes or premiums by public drawings."

**Section 22. Initial appointment and terms of commissioners.** Initial appointments to the commission must be made within 30 days after [the effective date of sections 1 through 25]. Two of the initial appointees shall serve for 2 years, two shall serve for 3 years, and one shall serve for 4 years.

**Section 23. Initial duties of commission — lottery study — first game.** (1) The commission shall immediately conduct an initial study of other state lotteries.

(2) The commission shall begin the operation of state lottery games at the earliest practicable time and in any event no later than July 1, 1987.

**Section 24. Temporary state treasury line of credit for expense of starting state lottery.** There is a temporary line of credit that may be drawn by the director of the state lottery from the state general fund and deposited in the state lottery fund, in the amount of \$1,500,000. This temporary line of credit may be drawn upon only during the first 12 months after the effective date of [sections 1 through 20] and only for the purpose of financing the initial expenses of starting the state lottery. The director may draw upon all or part of this temporary line of credit. Any

funds advanced under the temporary line of credit must be repaid out of the lottery's net revenue to the general fund within 1 year of the advance, and no net revenue may be paid out under [section 13(3)] until all advanced funds are repaid. Interest must be paid at an annual simple interest rate of 10% on funds advanced, commencing on the day funds are advanced and until the funds are repaid.

**Section 25. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 26. Effective date.** (1) If approved by the electorate, sections 1 through 25 of this act are effective January 1, 1987.

(2) This section and section 27 are effective on passage.

**Section 27. Submission to electorate.** The question whether sections 1 through 25 of this act will become effective shall be submitted to the electors of the State of Montana at the general election to be held in November 1986 by printing on the ballot the full title of this act and the following:

- ☐ FOR establishing a state lottery.
- ☐ AGAINST establishing a state lottery.

**Section 28. Coordination instruction.** The bracketed language in section 13 is effective only if House Bill 12 of the 49th legislature is passed and approved. In addition, if House Bill 12 is passed and approved, a reference to section 13 is included in the subsection of House Bill 12 listing all sections containing statutory appropriations.



# **SESSION LAWS**

**ENACTED BY THE**

**Forty-Ninth Legislature**

**IN SPECIAL**

**SESSION**

**March 24 Through 29, 1986**

**STATE OF MONTANA**

**1986**

**EXPLANATORY NOTE:**

Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics.

**2095**





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## HOUSE AND SENATE BILLS

| Chap.<br>Num. | Senate<br>Bill | House<br>Bill | Sponsor     | Title                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------|----------------|---------------|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1             |                | 13            | D. Brown    | AN ACT TO PROVIDE CRITERIA GOVERNING THE LIABILITY OF A PERSON OR ENTITY FURNISHING AN ALCOHOLIC BEVERAGE FOR INJURY OR DAMAGE ARISING FROM AN EVENT INVOLVING THE CONSUMER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 2             |                | 14            | Driscoll    | AN ACT PREVENTING THE CLOSURE OF LIQUOR STORES OPERATED BY THE DEPARTMENT OF REVENUE UNLESS A STORE IS NOT OPERATING AT A PROFIT OR SUCH CLOSURE HAS BEEN APPROVED BY THE LEGISLATURE; PROVIDING THAT THE DEPARTMENT OF REVENUE MAY NOT CHANGE THE RATE OF COMMISSIONS PAYABLE FOR THE OPERATION OF AGENCY LIQUOR STORES UNTIL JULY 1, 1986, TO ALLOW THE JUNE SPECIAL SESSION OF THE 49TH LEGISLATURE TO EXAMINE THE ISSUE OF AGENCY STORE COMMISSIONS; PROVIDING FOR THE DEVELOPMENT OF A LIQUOR DIVISION RECOVERY PLAN TO BE SUBMITTED FOR CONSIDERATION BY THE JUNE SESSION; AMENDING SECTION 16-2-101, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE. |
| 3             | 2              |               | Crippen     | AN ACT AUTHORIZING POLITICAL SUBDIVISIONS TO ISSUE BONDS OR NOTES, INDIVIDUALLY OR JOINTLY, TO ESTABLISH SELF-INSURANCE RESERVE FUNDS; AMENDING SECTIONS 2-9-211 AND 2-9-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 4             | 6              |               | Christiaens | AN ACT TO INCLUDE CERTAIN HIGHER EDUCATION FACILITIES IN THE LIST OF PROJECTS FINANCED BY THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS; AMENDING SECTIONS 90-5-101 AND 90-5-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 5             | 7              |               | Neuman      | AN ACT CREATING AN AGRICULTURAL PRODUCTION LOAN LINKED DEPOSIT PROGRAM; AUTHORIZING THE BOARD OF INVESTMENTS TO PLACE UP TO \$50,000,000 OF PUBLIC INVESTMENT FUNDS IN CERTIFICATES OF DEPOSIT WITH PARTICIPATING LENDING INSTITUTIONS AT AN INTEREST RATE 1 PERCENT BELOW THE CURRENT MARKET RATE; REQUIRING EACH INSTITUTION TO LEND THE VALUE OF SUCH DEPOSITS TO ELIGIBLE AGRICULTURAL OPERATIONS AT AN INTEREST RATE NOT EXCEEDING 2 PERCENTAGE POINTS GREATER THAN THE RATE PAYABLE ON THE CERTIFICATES OF DEPOSIT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.                                                                                                                       |
| 6             | 9              |               | Galt        | AN ACT TO PROVIDE FUNDING TO ENABLE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ISSUE ADDITIONAL GENERAL OBLIGATION WATER DEVELOPMENT BONDS; AMENDING SECTIONS 85-1-603, 85-1-604, AND 85-1-617, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 7             | 11             |               | Towe        | AN ACT LIMITING THE AIRLINE TRANSPORTATION PROPERTY TAX RATE TO NOT MORE THAN 12 PERCENT; SEPARATING RAILROAD AND AIRLINE TRANSPORTATION PROPERTY INTO DIFFERENT TAX CLASSES; AMENDING SECTIONS 15-6-141, 15-6-145, AND 15-8-111, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.                                                                                                                                                                                                                                                                                                                                                                                            |
| 8             |                | 4             | Pistoria    | AN ACT TO PROVIDE THAT A SPECIAL ELECTION FOR THE ELECTION OF NEW OFFICIALS TO IMPLEMENT A CHANGE IN THE FORM OF A LOCAL GOVERNMENT MAY BE HELD ON A REGULARLY SCHEDULED PRIMARY OR GENERAL ELECTION DATE; AMENDING SECTION 7-3-160, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                                                                                                                                                                                                                                                                                                                                                                                              |

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| 9             |                | 11 Holliday              | AN ACT ESTABLISHING AN AGRICULTURAL ASSISTANCE AND COUNSELING PROGRAM TO AID FINANCIALLY DISTRESSED FARMERS; PROVIDING FOR FINANCIAL AND FARM MANAGEMENT CONSULTING, LEGAL INFORMATION SERVICES, VOLUNTARY DEBT MEDIATION, MENTAL HEALTH ASSISTANCE, SUPPORT COUNSELING, AND REFERRAL SERVICES; AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO ADMINISTER THE PROGRAM; APPROPRIATING FUNDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. |
| 10            |                | 12 Winslow               | AN ACT REQUIRING ABLE-BODIED RECIPIENTS OF GENERAL RELIEF TO ENROLL IN A STRUCTURED JOB SEARCH, TRAINING, AND WORK PROGRAM; AMENDING SECTIONS 53-3-304 AND 53-3-305, MCA; AND PROVIDING AN EFFECTIVE DATE.                                                                                                                                                                                                                                                  |
| 11            |                | 16 Miller                | AN ACT ESTABLISHING AN INSURANCE ASSISTANCE PLAN FOR COMMERCIAL LIABILITY INSURANCE; PROVIDING AUTHORITY TO FORM A JOINT UNDERWRITING ASSOCIATION FOR COMMERCIAL LIABILITY INSURANCE; APPROPRIATING MONEY; REQUIRING A REPORT ON THE EFFECTIVENESS OF THE PLAN TO THE 50TH LEGISLATURE; AMENDING SECTION 33-17-201, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.                                                                              |

## APPROPRIATIONS

| HB | Sponsor    | Title                                                                                                                                                                                                                                                                                                                                    |
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| 1  | Bardanouve | AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE SPECIAL SESSION OF THE FORTY-NINTH LEGISLATURE CONVENING ON MARCH 24, 1986, AND FOR THE FUNDING OF A STUDY COMMITTEE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                                                                                     |
| 2  | Bardanouve | AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND THE DEPARTMENT OF LABOR AND INDUSTRY FOR THE FISCAL YEARS ENDING JUNE 30, 1986, AND JUNE 30, 1987; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                         |
| 5  | Manuel     | AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EXPENSES OF EXPERT WITNESSES AND FOR TESTIMONY FOR THE MCCARTY FARMS CASE AND COMPANION CASE CONCERNING GRAIN RAIL SHIPMENT RATES BEFORE THE INTERSTATE COMMERCE COMMISSION; PROVIDING FOR REPAYMENT FROM ANY AWARD OR RECOVERY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. |
| 8  | Jack Moore | AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF STATE LANDS FOR THE FISCAL YEAR ENDING JUNE 30, 1986; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                                                                                              |
| 10 | Schultz    | AN ACT APPROPRIATING MONEY TO REPLACE THE POTENTIAL EARNINGS LOST TO INVESTMENT FUNDS USED TO PURCHASE DISCOUNTED CERTIFICATES OF DEPOSIT UNDER THE AGRICULTURAL PRODUCTION LOAN LINKED DEPOSIT PROGRAM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                                                      |
| 18 | D. Brown   | AN ACT TO APPROPRIATE MONEY DERIVED FROM UNANTICIPATED INDIRECT COST REIMBURSEMENTS TO THE SIX UNITS OF THE MONTANA UNIVERSITY SYSTEM TO PROVIDE FOR UNANTICIPATED UNIVERSITY SYSTEM REVENUE SHORTFALL, THUS PROVIDING A SUPPLEMENTAL APPROPRIATION FOR FISCAL YEARS 1986 AND 1987; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.           |

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### SENATE JOINT RESOLUTIONS

| SJR | Sponsor | Title                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| 2   | Kolstad | A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES SECRETARY OF AGRICULTURE TO MAKE ADVANCE COMMODITY CREDIT CORPORATION (CCC) RECOURSE LOANS AVAILABLE TO MONTANA AGRICULTURAL PRODUCERS, AS AUTHORIZED UNDER PROVISIONS OF THE FOOD SECURITY ACT OF 1985, THEREBY ENSURING THAT ADEQUATE OPERATING CREDIT IS AVAILABLE FOR PLANTING OF THE 1986 CROP. |

### HOUSE JOINT RESOLUTIONS

| HJR | Sponsor | Title                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| 3   | Glaser  | A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE UNITED STATES CONGRESS NOT TO IMPOSE AN EXCISE TAX ON IMPORTED CRUDE OIL BECAUSE OF THE SERIOUS FINANCIAL IMPACT SUCH TAX WOULD HAVE UPON AGRICULTURE IN MONTANA.                                                                                                                                                                                                                                                                                                             |



# SESSION LAWS

## CHAPTER NO. 1

[HB 13]

AN ACT TO PROVIDE CRITERIA GOVERNING THE LIABILITY OF A PERSON OR ENTITY FURNISHING AN ALCOHOLIC BEVERAGE FOR INJURY OR DAMAGE ARISING FROM AN EVENT INVOLVING THE CONSUMER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Civil liability for injuries involving alcohol consumption.** (1) The purpose of this section is to set statutory criteria governing the liability of a person or entity that furnishes an alcoholic beverage for injury or damage arising from an event involving the person who consumed the beverage.

(2) A person or entity furnishing an alcoholic beverage may not be found liable for injury or damage arising from an event involving the consumer wholly or partially on the basis of a provision or a violation of a provision of Title 16 of the Montana Code Annotated.

(3) Furnishing a person with an alcoholic beverage is not a cause of, or grounds for finding the furnishing person or entity liable for, injury or damage wholly or partly arising from an event involving the person who consumed the beverage unless:

(a) the consumer was under the legal drinking age and the furnishing person knew that the consumer was underage or did not make a reasonable attempt to determine the consumer's age;

(b) the consumer was visibly intoxicated; or

(c) the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol.

**Section 2. Effective date.** This act is effective on passage and approval.

Approved April 4, 1986.

**CHAPTER NO. 2**

[HB 14]

AN ACT PREVENTING THE CLOSURE OF LIQUOR STORES OPERATED BY THE DEPARTMENT OF REVENUE UNLESS A STORE IS NOT OPERATING AT A PROFIT OR SUCH CLOSURE HAS BEEN APPROVED BY THE LEGISLATURE; PROVIDING THAT THE DEPARTMENT OF REVENUE MAY NOT CHANGE THE RATE OF COMMISSIONS PAYABLE FOR THE OPERATION OF AGENCY LIQUOR STORES UNTIL JULY 1, 1986, TO ALLOW THE JUNE SPECIAL SESSION OF THE 49TH LEGISLATURE TO EXAMINE THE ISSUE OF AGENCY STORE COMMISSIONS; PROVIDING FOR THE DEVELOPMENT OF A LIQUOR DIVISION RECOVERY PLAN TO BE SUBMITTED FOR CONSIDERATION BY THE JUNE SESSION; AMENDING SECTION 16-2-101, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 16-2-101, MCA, is amended to read:

**"16-2-101. Establishment and closure of state liquor stores — kinds and prices of liquor.** (1) (a) The department shall establish and maintain one or more stores, to be known as "state liquor stores", as the department finds feasible for the sale of liquor in accordance with the provisions of this code and the rules made thereunder.

(b) The department shall enter into an agency agreement or employ the necessary help to operate said stores and shall designate the duties to be performed by the agent or employees.

(c) *Once established, a store may not be closed by the department unless:*

(i) *the store is not operating at a profit; or*

(ii) *the closure is approved by the legislature at the next session of the legislature following the department's announcement of intent to close the store.*

(2) The department may from time to time fix the prices at which the various classes, varieties, and brands of liquor may be sold, and prices shall be the same at all state stores."

**Section 2. Change prohibited in rate of commissions payable for operation of agency liquor stores — legislative consideration.** To facilitate legislative examination of the operation of agency liquor stores, the department of revenue may not change the rate of commissions payable for such operations until July 1, 1986. All such commissions must remain in effect as they were on January 1, 1986.

**Section 3. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this

act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 4. Recovery plan.** The department of revenue shall work with the revenue oversight committee of the 49th legislature to develop a liquor division recovery plan for consideration by the June 1986 special legislative session.

**Section 5. Effective date — retroactive applicability — termination.** (1) This act is effective on passage and approval and applies retroactively, as that term is used in 1-2-109, to occurrences after December 31, 1985.

(2) This act terminates on July 1, 1986.

Approved April 4, 1986.

## CHAPTER NO. 3

[SB 2]

AN ACT AUTHORIZING POLITICAL SUBDIVISIONS TO ISSUE BONDS OR NOTES, INDIVIDUALLY OR JOINTLY, TO ESTABLISH SELF-INSURANCE RESERVE FUNDS; AMENDING SECTIONS 2-9-211 AND 2-9-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-9-211, MCA, is amended to read:

**“2-9-211. Political subdivision insurance.** (1) All political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part.

(2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve *separately or jointly with other subdivisions*.

(3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund, *separately or jointly with other subdivisions*, sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose *or from the proceeds of bonds or notes authorized by subsection (5)*. Proceeds of the fund may be used only to pay claims under parts 1 through 3 of this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures shall be invested and all proceeds of the investment credited to the fund.

(5) *A political subdivision may issue and sell its bonds or notes for purposes of funding a self-insurance or deductible reserve fund and costs incident thereto in an amount not exceeding 3% of the taxable value of the political subdivision as of the date of issuance. The bonds or notes must be authorized by resolution of the governing body, are payable from the taxes authorized by 2-9-212, may be sold at public or private sale, do not constitute debt within the meaning of any statutory debt limitation, and may contain such other terms and provisions as the governing body determines. Two or more political subdivisions may agree pursuant to an interlocal agreement to exercise their respective borrowing powers hereunder jointly and may authorize a joint board created pursuant to such agreement to exercise such powers on their behalf."*

Section 2. Section 2-9-212, MCA, is amended to read:

**"2-9-212. Political subdivision tax levy to pay premiums.** Notwithstanding any provisions of law to the contrary, all political subdivisions may levy an annual property tax in the amount necessary to fund the premium for insurance, deductible reserve fund, and self-insurance reserve fund as herein authorized *and to pay the principal and interest on bonds or notes issued pursuant to 2-9-211(5)*, even though as a result of such levy the maximum levy as otherwise restricted by law is exceeded thereby, provided that the revenues derived therefrom may not be used for any other purpose."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 7, 1986.

## CHAPTER NO. 4

[SB 6]

AN ACT TO INCLUDE CERTAIN HIGHER EDUCATION FACILITIES IN THE LIST OF PROJECTS FINANCED BY THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS; AMENDING SECTIONS 90-5-101 AND 90-5-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 90-5-101, MCA, is amended to read:

**"90-5-101. Definition of terms.** As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Agricultural enterprises" include but are not limited to producing, warehousing, storing, fattening, treating, handling, distributing, or selling farm products or livestock.

(2) "Bonds" means bonds, refunding bonds, notes, or other obligations issued by a municipality or county under the authority of this part, including without limitation short-term bonds or notes issued in anticipation of the issuance of long-term bonds or notes.



(3) "Governing body" means the board or body in which the general legislative powers of the municipality or county are vested.

(4) "*Higher education facilities*" means any real or personal properties required or useful for the operation of an institution of higher education.

(5) "*Institution of higher education*" means any private nonprofit corporation or institution within the state of Montana:

(a) *authorized to provide or operate educational facilities; and*

(b) *providing a program of education beyond the high school level.*

(6) "Mortgage" means a mortgage or deed of trust or other security device.

(7) "Municipality" means any incorporated city or town in the state.

(8) "Project" means any land; any building or other improvement; and any other real or personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing, hospitals, long-term care facilities, or medical facilities; *higher education facilities*; small-scale hydroelectric production facilities with a capacity of 50 megawatts or less; and any combination of these projects."

Section 2. Section 90-5-108, MCA, is amended to read:

**"90-5-108. Use of proceeds of bond sales.** (1) The proceeds from the sale of any bonds issued under authority of this part shall be applied only for the purpose for which the bonds were issued or to discharge any existing indebtedness secured by a lien against a hospital or long-term care facility or *higher education facility* leased or owned by a nonprofit corporation. However, if the project is not a hospital or long-term care facility or *higher education facility* leased or owned by a nonprofit corporation, the proceeds from the sale of bonds may not be used to discharge indebtedness without an improvement to the project.

(2) Any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold. If for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 7, 1986.

**CHAPTER NO. 5**

[SB 7]

AN ACT CREATING AN AGRICULTURAL PRODUCTION LOAN LINKED DEPOSIT PROGRAM; AUTHORIZING THE BOARD OF INVESTMENTS TO PLACE UP TO \$50,000,000 OF PUBLIC INVESTMENT FUNDS IN CERTIFICATES OF DEPOSIT WITH PARTICIPATING LENDING INSTITUTIONS AT AN INTEREST RATE 1 PERCENT BELOW THE CURRENT MARKET RATE; REQUIRING EACH INSTITUTION TO LEND THE VALUE OF SUCH DEPOSITS TO ELIGIBLE AGRICULTURAL OPERATIONS AT AN INTEREST RATE NOT EXCEEDING 2 PERCENTAGE POINTS GREATER THAN THE RATE PAYABLE ON THE CERTIFICATES OF DEPOSIT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Findings and purpose.** The legislature finds that due to economic, climatic, and other factors beyond their control a significant number of Montana agricultural producers are presently unable to obtain the financial credit necessary to continue operating and are in imminent peril of losing their operations and their livelihood. Because of the dependence of the entire Montana economy on the well-being of agriculture, the legislature further finds that the current crisis in agriculture poses a serious threat to all Montana's citizens. It is the purpose of [this act] to permit deposit of public investment funds in local financial institutions at less than current market rates to in turn enable those institutions to make credit available to certain agricultural borrowers at favorable rates. Notwithstanding other statutory fiduciary requirements, a deposit under [this act] is hereby authorized and declared to be for a valid public purpose.

**Section 2. Definitions.** As used in [this act], the following definitions apply:

(1) "Board" means the board of investments established under 2-15-1005.

(2) "Eligible agricultural operation" means any person, corporation, partnership, or other entity which is engaged in the production of agricultural, livestock, poultry, dairy, or fruit or other horticultural products and which:

- (a) derives at least 70% of its gross income from such production; and
- (b) has total financial liabilities exceeding 30% of its total assets.
- (3) "Eligible lending institution" means a financial institution that:
  - (a) is eligible to make commercial loans;
  - (b) is a public depository of state funds; and

(c) agrees to participate in the linked deposit program established by [this act].

(4) "Linked deposit" means an agreement between the board and an eligible financial institution whereby a certificate of deposit for a term not exceeding 6 months is placed by the board with an eligible lending institution at a rate 1% below the current market rate for such a deposit, as determined by the board, provided the institution agrees to lend the value of such deposit, pursuant to the deposit agreement provided in [section 5], to eligible agricultural operations at an interest rate not exceeding 2 percentage points greater than the rate payable on the certificate of deposit.

**Section 3. Amount authorized for linked deposits.** The board may place public funds under its control not exceeding \$50,000,000 in linked deposits in eligible lending institutions qualified under [this act] to receive such deposits.

**Section 4. Application for funds — criteria for loans.** (1) An eligible lending institution that desires to receive a linked deposit shall accept and review applications for linked deposit loans from eligible agricultural operations. The institution shall apply all usual lending standards to determine credit worthiness of each applicant. No linked deposit loan made to any eligible agricultural operation may exceed \$50,000, and no service of separate loans funded under [this act] may be made which in the aggregate exceeds such limit to any single eligible agricultural operation.

(2) An eligible agricultural operation must certify on its loan application that the reduced rate loan will be used exclusively for its necessary production expenses or for the short-term acquisition of livestock for other than breeding purposes.

(3) The eligible lending institution must forward to the board a linked deposit loan package on a form prescribed by the board which discloses the recipient, amount, rate of interest, and term of each loan proposed to be made with the linked deposit, and ratio of total financial liabilities to total assets of each borrower. The institution shall ensure and certify that each loan applicant meets the eligibility requirements of [this act].

**Section 5. Approval and acceptance of deposit — deposit agreement.** (1) The board may accept or reject the linked deposit loan package or any portion thereof.

(2) Upon acceptance of the linked deposit loan package or any portion thereof, the board may place certificates of deposit for a term not to exceed 6 months with the eligible lending institution at a rate 1% below the current market rate for such certificates, as determined by the board.

(3) The eligible lending institution must enter into a deposit agreement with the board, which shall specify the recipients, amount, rate of interest, and length of time of loans which the institution will make upon receiving a linked deposit. The agreement must also specify that interest on the linked deposit must be paid at the times determined by the board.

(4) The period of time for which a certificate of deposit is placed with an eligible lending institution may be neither longer nor shorter than the period of time for which the linked deposit is used to provide loans at reduced interest rates.

**Section 6. Linked deposit loans.** (1) Upon placement of a linked deposit with an eligible lending institution, the institution must lend such

funds to each approved eligible agricultural operation listed in the linked deposit loan package required by [section 4] and in accordance with the deposit agreement required by [section 5]. Each loan must be at a fixed rate of interest not exceeding 2 percentage points greater than the rate payable on the linked deposit.

(2) All records and documents pertaining to each loan shall be segregated by the lending institution for ease of identification and examination.

(3) Each eligible agricultural operation receiving a loan under [this act] shall promptly certify receipt of the loan to the board in the form and manner prescribed by the board.

(4) Any report of noncompliance by an eligible lending institution chartered under the laws of this state must be referred to the financial division of the department of commerce for appropriate action. Any report of noncompliance by an eligible lending institution chartered under federal law must be referred to the office of United States comptroller of the currency or other appropriate federal regulatory agency for appropriate action.

**Section 7. Liability for loans and deposit funds.** Neither the state nor the board is liable to any eligible lending institution in any manner for payment of the principal or interest on any loan to an eligible agricultural operation. Any delay in payments or default on the part of an eligible agricultural operation does not in any manner affect the deposit agreement between the eligible lending institution and the board.

**Section 8. Penalty.** (1) Any person who knowingly makes a false statement concerning any loan application or linked deposit loan package is guilty of a misdemeanor.

(2) Any lending officer of an eligible lending institution who knowingly violates any provision of [this act] is guilty of a misdemeanor.

**Section 9. Effective date — termination.** (1) This act is effective on passage and approval and terminates March 15, 1987.

(2) The authority of the board to make linked deposits under this act terminates August 31, 1986.

Approved April 7, 1986.

## CHAPTER NO. 6

[SB 9]

AN ACT TO PROVIDE FUNDING TO ENABLE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ISSUE ADDITIONAL GENERAL OBLIGATION WATER DEVELOPMENT BONDS; AMENDING SECTIONS 85-1-603, 85-1-604, AND 85-1-617, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-1-603, MCA, is amended to read:

**"85-1-603. Water development debt service fund created — coal severance tax allocated.** (1) There is created a water development debt service fund within the debt service fund type established in 17-2-102.

(2) The state pledges and allocates and directs to be credited to the water development debt service fund, as received:

(a) 1 ¼% of all money from time to time received from the coal severance tax collected under Title 15, chapter 35, and remaining after allocation of such tax to the trust fund established under Article IX, section 5, of The Constitution of the State of Montana;

(b) *any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under 85-1-617;*

(c) *all interest income earned on proceeds of water development bonds; and*

(d) *revenue or money otherwise required to be paid into the water development state special revenue account pursuant to 85-1-604, as determined by the board of examiners in connection with the issuance of bonds pursuant to 85-1-617."*

Section 2. Section 85-1-604, MCA, is amended to read:

**"85-1-604. Water development state special revenue account created — revenues allocated — limitations on appropriations from account.** (1) There is created a water development state special revenue account within the state special revenue fund established in 17-2-102.

(2) *Except to the extent that they are required to be credited to the water development debt service fund pursuant to 85-1-603, there shall be paid into the water development state special revenue account:*

(a) all revenues of the works and other money as provided in 85-1-332;

(b) 30% of the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the water development debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619; *and*

(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests.

(3) Appropriations may be made from the water development state special revenue account for the following purposes and subject to the following conditions:

(a) An amount less than or equal to that paid into the account under 85-1-332 and only that amount may be appropriated for the operation and maintenance of state-owned projects and works. If the amount of money available for appropriation under this subsection (3)(a) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(b).

(b) An amount less than or equal to that paid into the account from the resource indemnity trust account plus any excess from subsection (3)(a) and only that amount may be appropriated from the account for:

- (i) the rehabilitation of state-owned projects and works, including the rehabilitation of spillways of state-owned dams;
- (ii) the formulation of downstream emergency warning and evacuation plans for state-owned dams;
- (iii) the development of the hydropower potential of state-owned dams;
- (iv) assistance in the implementation of the water reservations established under 85-2-316 of conservation districts;
- (v) the promotion of the development of offstream and tributary storage;
- (vi) the promotion of joint state-tribal, state-federal, and state-tribal-federal water development;
- (vii) administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, office space, and other necessities incurred in the administration of the water development program except the administration of loans and grants; and
- (viii) any other expenditures that meet the policies and objectives of the state water development program.

(c) An amount less than or equal to that paid into the account from the sources provided for in (c) and (d) of subsection (2) and only that amount may be appropriated from the account for loans and grants for water development projects and activities; for administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, and office space; for the servicing of loans, including arrangements for obtaining security interests; and for other necessities incurred in administering the loans and grants."

Section 3. Section 85-1-617, MCA, is amended to read:

**"85-1-617. Issuing bonds.** (1) When authorized by the legislature and within the limits of the authorization and within the further limitations established in this section, the board of examiners may issue and sell water development bonds of the state in the amount and manner it considers necessary and proper to finance the water development loan program. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds so issued and interest and redemption premiums payable thereon according to their terms.

(2) Each series of water development bonds may be issued by the board of examiners, upon request of the board of natural resources and conservation, at public or private sale, in such denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at such rate or rates, maturing at such rate or rates, maturing at such time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at such

earlier times and prices and upon such notice, with such provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of such banking institution or institutions within or outside the state, as the board of examiners shall determine subject to the limitations contained in this section and 17-5-731.

(3) In the issuance of each series of water development bonds, the interest rates and the maturities and any mandatory redemption provisions thereof shall be established in such manner that the funds then specifically pledged and appropriated by law to the water development debt service fund will in the judgment of the board of examiners be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of such bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. Such bonds, notes, and any interest coupons appurtenant thereto must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds and notes issued and sold.

(5) There is created a water development account within the state special revenue fund established in 17-2-102.

(6) All proceeds of bonds or notes issued under this section, other than refunding bonds, must be deposited in the water development account established in subsection (5), except that any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under this section must be deposited in the water development *debt service fund pursuant to 85-1-603*. All proceeds of refunding bonds must be deposited in the water development debt service fund and applied to the payment and redemption of outstanding bonds issued under this section as directed by the board, whether at maturity or on any earlier date on which they may be prepaid according to their terms.

(7) All actions taken by the board of examiners under this section or 85-1-619 must be authorized by a vote of a majority of the members of the board of examiners."

**Section 4. Effective date.** This act is effective on passage and approval.

Approved April 7, 1986.

**CHAPTER NO. 7**

[SB 11]

AN ACT LIMITING THE AIRLINE TRANSPORTATION PROPERTY TAX RATE TO NOT MORE THAN 12 PERCENT; SEPARATING RAILROAD AND AIRLINE TRANSPORTATION PROPERTY INTO DIFFERENT TAX CLASSES; AMENDING SECTIONS 15-6-141, 15-6-145, AND 15-8-111, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-6-145, MCA, is amended to read:

**“15-6-145. Class fifteen property — description — taxable percentage.** (1) Class fifteen property includes all railroad transportation property as described in the Railroad Revitalization and Regulatory Reform Act of 1976 as it read on January 1, 1986.

(2) For the taxable year beginning January 1, 1986, and for each taxable year thereafter, class fifteen property is taxed at the percentage rate “R”, to be determined by the department as provided in subsection (3).

(3)  $R = A/B$  where:

(a) A is the total statewide taxable value of all commercial property, *except class fifteen property*, as commercial property is described in 15-1-101(1)(d), including class 1 and class 2 property; and

(b) B is the total statewide market value of all commercial property, *except class fifteen property*, as commercial property is described in 15-1-101(1)(d), including class 1 and class 2 property.

(4) (a) For the taxable year beginning January 1, 1986, and for every taxable year thereafter, the department shall conduct a sales assessment ratio study of all commercial and industrial real property and improvements. The study must be based on:

(i) assessments of such property as of January 1 of the year for which the study is being conducted; and

(ii) a statistically valid sample of sales using data from realty transfer certificates filed during the same taxable year or from the immediately preceding taxable year, but only if a sufficient number of certificates is unavailable from the current taxable year to provide a statistically valid sample.

(b) The department shall determine the value-weighted mean sales assessment ratio “M” for all such property and reduce the taxable value of property described in subsection (4) only, by multiplying the total statewide taxable value of property described in subsection (4) by “M” prior to calculating “A” in subsection (3).

(c) The adjustment referred to in subsection (4)(b) will be made beginning January 1, 1986, and in each subsequent tax year to equalize the railroad taxable values.



(5) For the purpose of complying with the Railroad Revitalization and Regulatory Reform Act of 1976, as it read on January 1, 1986, the rate "R" referred to in this section is the equalized average tax rate generally applicable to commercial and industrial property, *except class fifteen property*, as commercial property is defined in 15-1-101(1)(d)."

**Section 2. Class seventeen property — description — taxable percentage.** (1) Class seventeen property includes all airline transportation property as described in the Tax Equity and Fiscal Responsibility Act of 1982 as it read on January 1, 1986.

(2) For the taxable years 1986 through 1990 class seventeen property is taxed at 12%, and for each taxable year thereafter, class seventeen property is taxed at the lesser of 12% or the percentage rate for class fifteen property without adjustment.

(3) For the purpose of complying with the Tax Equity and Fiscal Responsibility Act of 1982, as it read on January 1, 1986, the rate "R" referred to in this section is the equalized average tax rate generally applicable to commercial and industrial property, *except class seventeen property*, as commercial property is defined in 15-1-101(1)(d).

Section 3. Section 15-6-141, MCA, is amended to read:

**"15-6-141. Class eleven property — description — taxable percentage.** (1) Class eleven property includes:

(a) centrally assessed electric power companies' allocations, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electric power and natural gas companies' property;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five;

(iii) property owned by organizations providing telephone communications to rural areas and classified in class seven;

(iv) railroad transportation property included in class fifteen; and

(v) *airline transportation property included in class seventeen.*

(2) Class eleven property is taxed at 12% of market value."

Section 4. Section 15-8-111, MCA, is amended to read:

**"15-8-111. Assessment — market value standard — exceptions.** (1) All taxable property must be assessed at 100% of its market

value except as provided in subsection (5) of this section and in 15-7-111 through 15-7-114.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) Except as provided in subsection (3), the market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to aircraft and boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in 15-6-134 through 15-6-140, 15-6-145, 15-6-146, and [section 2], except:

(a) the wholesale value for agricultural implements and machinery is the loan value as shown in the Official Guide, Tractor and Farm Equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri; and

(b) for agricultural implements and machinery not listed in the official guide, the department shall prepare a supplemental manual where the values reflect the same depreciation as those found in the official guide.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property in classes four through eleven and fifteen *through seventeen* is the percentage of market value established for each class of property in 15-6-134 through 15-6-141, 15-6-145, 15-6-146, and [section 2].

(6) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-143, under class thirteen, are assessed at 100% of the combined appraised value of the standing timber and grazing productivity of the land when valued as timberland.

(7) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(8) The taxable value of all property in 15-6-131 and classes two, three, and thirteen is the percentage of assessed value established in 15-6-131(2), 15-6-132, 15-6-133, and 15-6-143 for each class of property."

**Section 5. Codification instruction.** Section 2 is intended to be codified as an integral part of Title 15, chapter 6, part 1, and the provisions of Title 15, chapter 6, part 1, apply to section 2.

**Section 6. Coordination instruction.** (1) If Senate Bill No. 8 is passed and approved, any provisions in Senate Bill No. 8 pertaining to tax rates for airline transportation property that conflict with the provisions of this act are void, except as provided in subsection (2).

(2) (a) If Senate Bill No. 8 passes or if the settlement agreement with Burlington Northern is ratified, then during the taxable year 1991 the percentage rate for class fifteen property which is incorporated into [section 2(2)] by reference shall be adjusted for class seventeen only to reflect the value-weighted mean sales assessment ratio "M" for all commercial and industrial property and reduce the taxable value of property described in 15-6-145(4) only by multiplying the total statewide taxable value of property described in 15-6-145(4) by "M" prior to calculating "A" in 15-6-145(3).

(b) If Senate Bill No. 8 is passed and approved, then 1992 on line 10, page 2 of Senate Bill No. 8 is changed to 1990.

**Section 7. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 8. Retroactive applicability — effective date.** (1) Sections 1 and 2 apply retroactively, within the meaning of 1-2-109, to all tax years beginning after December 31, 1985.

(2) This act is effective on passage and approval.

Approved April 7, 1986.

## CHAPTER NO. 8

[HB 4]

AN ACT TO PROVIDE THAT A SPECIAL ELECTION FOR THE ELECTION OF NEW OFFICIALS TO IMPLEMENT A CHANGE IN THE FORM OF A LOCAL GOVERNMENT MAY BE HELD ON A REGULARLY SCHEDULED PRIMARY OR GENERAL ELECTION DATE; AMENDING SECTION 7-3-160, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-3-160, MCA, is amended to read:

**"7-3-160. Election of new officials.** (1) Within 20 days after an election at which the new plan of government is approved by the electors, the governing body of the local government shall meet and order a special primary and general election for the purpose of electing the officials required by the new form of government. The elections for officials may be held in conjunction with any other election.

(2) The order shall specify:

(a) a date for the primary election *to be held no later than the next regularly scheduled city or county primary election*; and

(b) a date for the general election *to be held no later than the next regularly scheduled city or county general election following the primary election date established under subsection (2)(a).*"

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 7, 1986.

## CHAPTER NO. 9

[HB 11]

AN ACT ESTABLISHING AN AGRICULTURAL ASSISTANCE AND COUNSELING PROGRAM TO AID FINANCIALLY DISTRESSED FARMERS; PROVIDING FOR FINANCIAL AND FARM MANAGEMENT CONSULTING, LEGAL INFORMATION SERVICES, VOLUNTARY DEBT MEDIATION, MENTAL HEALTH ASSISTANCE, SUPPORT COUNSELING, AND REFERRAL SERVICES; AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO ADMINISTER THE PROGRAM; APPROPRIATING FUNDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Purpose.** It is the declared purpose of [this act] to establish an emergency program to directly assist individual farmers who are financially distressed by providing them assistance and counseling to manage

farm credit problems, to avoid or mitigate forced liquidation or farm foreclosure, and to cope with the financial stress resulting from the adverse conditions of agriculture in this state. It is a goal of this program to maximize program effectiveness by utilizing peer counselors and by cooperating with the private sector.

**Section 2. Definitions.** As used in [this act], unless the context indicates otherwise, the following definitions apply:

(1) "Agricultural production" means the production of livestock, poultry, field crops, fruit, or other animal and vegetable matter for food or fiber.

(2) "Agricultural property" means:

- (a) real property that is principally used for agricultural production; and
- (b) personal property that is part of an agricultural production operation or used as security to finance such an operation, including equipment, crops, livestock, and the proceeds of any security.

(3) "Department" means the department of agriculture provided for in 2-15-3001.

(4) "Farmer" means a person who owns or operates a farm or ranch primarily for the purpose of agricultural production.

(5) "Mediator" means a person authorized under [section 7] to serve as a negotiator between a farmer and a creditor.

(6) "Peer counselor" means a person who is or has been involved in production agriculture and who has been trained through the department and others in financial counseling and mediation or negotiation techniques and who works to aid financially distressed farmers through this program.

(7) "Program" means the agricultural assistance and counseling program provided for in [section 3].

(8) "Secured creditor" means:

- (a) the holder of a mortgage on agricultural property;
- (b) a vendor of a contract for deed of agricultural property;
- (c) a person with a statutory lien or a perfected security interest in agricultural property; or
- (d) a judgment creditor with a judgment against a debtor engaged in agricultural production.

(9) "Unsecured creditor" means a person who extends credit without a perfected security interest to a farmer for the purchase of goods or services used in agricultural production.

**Section 3. Agricultural assistance and counseling program.** (1) The department shall establish an agricultural assistance and counseling program to aid financially distressed farmers in this state.

(2) Under the program, the department shall make available to farmers the following types of assistance:

- (a) financial consulting;
- (b) farm management consulting;
- (c) legal information services;
- (d) voluntary debt mediation as provided for in [section 6];
- (e) mental health assistance;
- (f) support counseling; and
- (g) referral services.

**Section 4. Powers and duties of department.** (1) For the purpose of administering the program, the department shall:

- (a) utilize the services of:
  - (i) a network of trained peer counselors who can directly assist financially distressed farmers;
  - (ii) the cooperative extension service and the college of agriculture at Montana state university;
  - (iii) state or federal agencies;
  - (iv) legal service corporations, the university of Montana law school, or private law firms;
  - (v) community service organizations;
  - (vi) private business;
  - (vii) professional associations;
  - (viii) regional mental health corporations;
  - (ix) volunteer organizations; and
  - (x) any other person or entity;
- (b) contract for services with qualified personnel, including peer counselors, farm management specialists, accountants, attorneys, and mental health professionals, to provide the assistance required under [section 3];
- (c) hire a coordinator and necessary staff to implement and manage the program;
- (d) provide training for interested and qualified persons, including peer counselors, to assist farmers needing help with farm financial management problems;
- (e) establish a toll-free telephone line to receive requests for assistance, counseling, and referral of services; and
- (f) compile a directory of services available through the program.

(2) The department may:

- (a) establish an advisory board to assist the department in determining policy and in developing plans for administration of the program; and

(b) adopt rules necessary for the administration of the program.

**Section 5. Gifts and grants.** The department may accept monetary or in-kind contributions, gifts, and grants provided to support the program.

**Section 6. Voluntary mediation — filing procedure — dismissal of requests.** (1) A farmer who is in danger of foreclosure on agricultural property or a secured creditor may request mediation of the farmer's indebtedness by filing a request with the department on a form prescribed by the department.

(2) In filing or responding to a mediation request, the farmer shall provide:

- (a) the name and address of each secured and unsecured creditor;
- (b) the amount owed to each creditor;
- (c) the amount of the periodic installment payments due each creditor;
- (d) any financial statements and pro forma cash flow statements, including those related to any nonfarm activities; and
- (e) any additional information the department may require.

(3) In filing or responding to a mediation request, a secured creditor shall provide:

- (a) information pertaining to the basis of the credit determination;
- (b) financial statements and pro forma cash flow statements on the respective farmer;
- (c) statements regarding the status of the farmer's loan performance;
- (d) the name and title of the representative of the creditor authorized to enter into a binding mediation agreement; and
- (e) any additional information the department may require.

(4) A farmer or secured creditor who agrees to participate in mediation shall authorize the release to the department of any information held by a creditor.

(5) Upon receipt of a properly completed mediation request form, the department shall direct a mediator to meet with the farmer and secured creditor to assist in mediation. An unsecured creditor may participate in mediation between a farmer and secured creditor if each party agrees or if the mediator determines that an unsecured creditor is a necessary party to the mediation.

(6) Subject to the provisions of subsection (7), the department shall immediately terminate an attempt at mediation and dismiss the mediation request if at any time it finds that:

- (a) a secured creditor does not agree to participate in mediation requested by the farmer; or
- (b) the farmer does not agree to participate in any mediation requested by a secured creditor.

(7) If the mediation request involves more than one secured creditor and any one creditor does not agree to participate in mediation, the department shall dismiss the mediation request only insofar as it relates to that creditor.

**Section 7. Duties and requirements of mediators.** (1) A mediator must be qualified to provide the services required under [this act]. A mediator must be an impartial person knowledgeable in agricultural and financial matters.

(2) In carrying out his properly authorized duties, the mediator shall:

(a) listen to the farmer and any creditor desiring to be heard;

(b) attempt to negotiate an agreement that:

(i) extends the term of credit;

(ii) reduces the dollar amount of payments under credit; or

(iii) permits the farmer to continue in agricultural production and provides reasonable security to the creditor; and

(c) advise, counsel, and assist the farmer and creditor in attempting to arrive at a satisfactory agreement.

(3) A mediator may attempt to:

(a) arrange mutually agreed upon forbearance from litigation, rescheduled or renegotiated debt, voluntary sale, or other liquidation of any agricultural property; and

(b) obtain assistance from any public or private agency.

**Section 8. Mediation agreement.** (1) If an agreement is reached between the farmer and a creditor, the mediator shall draft a written mediation agreement to be signed by the farmer and the creditor.

(2) A farmer and any creditor who are parties to a mediation agreement:

(a) are bound by the terms of the agreement;

(b) may enforce the mediation agreement as a legal contract; and

(c) may use the mediation agreement as a defense against an action contrary to the mediation agreement.

**Section 9. Unsuccessful mediation.** If a mediation agreement cannot be reached, the mediator shall recommend to the department that the mediation be concluded and the mediation request be dismissed.

**Section 10. Confidentiality of records.** (1) All materials, data, and information received by the department with respect to any request filed under [section 6] are confidential and are not subject to examination or disclosure as public information.

(2) No official, employee, or agent of the department may knowingly disclose any materials, data, or information concerning a mediation request without the consent of the farmer and the creditor.



Section 11. **Closed meetings.** Meetings between a farmer and any creditor conducted by a mediator are not open to public participation and are not subject to the provisions of the open meeting law contained in 2-3-203.

Section 12. **Waiver of immunity.** All parties who voluntarily enter into the mediation process as described in [this act] shall waive their right to take civil action against the state of Montana and its designated mediator and thereby release the state and its designated mediator from civil liability for actions occurring within the scope of the mediation services.

Section 13. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. **Appropriation.** There is appropriated from the general fund to the department of agriculture for the biennium ending June 30, 1987, the sum of \$350,000 to administer [this act].

Section 15. **Effective date — termination.** This act is effective on passage and approval and terminates July 1, 1987.

Approved April 7, 1986.

## CHAPTER NO. 10

[HB 12]

AN ACT REQUIRING ABLE-BODIED RECIPIENTS OF GENERAL RELIEF TO ENROLL IN A STRUCTURED JOB SEARCH, TRAINING, AND WORK PROGRAM; AMENDING SECTIONS 53-3-304 AND 53-3-305, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-3-304, MCA, is amended to read:

**"53-3-304. Power to require recipient to participate in job search, training, and work programs.** (1) *The department shall cooperate with the department of labor and industry and other designated agencies to initiate, promote, and develop job search, training, and work programs that will contribute to the employability of persons receiving general relief under the provisions of this chapter. These programs must be designed to preserve and improve the work habits and job-finding skills of recipients for whom jobs are not otherwise immediately available.*

(2) *For each county with state-assumed welfare services, the department shall contract with the department of labor and industry or other designated agencies to institute a job search, training, and work program that provides able-bodied general relief recipients with the necessary job-finding skills to seek unsubsidized employment independently.*

(3) *In a county with state-assumed welfare services, an able-bodied recipient of general relief shall enroll in a structured job search and training program at an employment office or other site designated by the department. The program must include but is not limited to the following elements:*

- (a) assessment and testing;*
- (b) an employability plan;*
- (c) remedial education or job skills training, if it is called for in the employability plan and if it provides for immediate referral to an appropriate Job Training Partnership Act program;*
- (d) a job readiness and job search program that must include but is not limited to:*
  - (i) self-assessment and occupational testing;*
  - (ii) instruction in completing applications, writing resumes, and preparing for interviews;*
  - (iii) identification of and contact with potential employers; and*
  - (iv) participation in simulated job interviews;*
- (e) a supervised effort to find employment; and*
- (f) efforts to address barriers to employment.*

(4) *In addition to the training required in subsection (3), if a public agency or a private nonprofit agency has work available which a recipient of general relief is capable of performing or the department of social and rehabilitation services is required to operate a work program under the provisions of 53-2-822, then the county department of public welfare or the department of social and rehabilitation services may require a recipient to perform work at the minimum wage or may pay a recipient at the prevailing rate of wages paid in that county by that agency for similar work, to be paid from the county poor fund or state funds, in place of granting him general relief.*

(5) *No currently employed worker may be displaced by any recipient (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits).*

(6) *No recipient may be employed when any other person is on layoff from the same or any substantially equivalent job, or when the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a recipient whose wages are subsidized under this section.*

(7) *The county department of public welfare or the department of social and rehabilitation services, as the case may be, shall provide coverage under the Workers' Compensation Act for those recipients of general relief working under the provisions hereof and may enter into such agreements with the division of workers' compensation of the department of labor and industry as may be necessary to carry out the provisions of this section.*

(8) *A recipient who has completed the assessment and testing portions of the program and has developed an employability plan shall participate in the job readiness and job search program provided for in subsection (3)(d) for at least 80 hours in any 5-week period and shall spend at least 8 hours a week in a supervised effort to find employment.*

(9) *A recipient who has completed the job search program provided for in subsection (3) shall:*

(a) *continue to spend at least 8 hours a week in a supervised effort to find employment; and*

(b) *for the duration of his eligibility for general relief, spend 32 hours a week, as called for in the employability plan, in:*

(i) *remedial education;*

(ii) *counseling;*

(iii) *job skills training;*

(iv) *work for a public agency or a private nonprofit agency, as required in subsection (4); or*

(v) *job-seeking or other related activities.*

(10) *Nothing in this chapter requires a recipient to continue the activities required by subsection (9) for longer than 6 months.*

(11) *Where a labor organization represents a substantial number of employees who are engaged in similar work or training in the area where it is proposed to assign the recipient to work or training, an opportunity must be provided for that organization to submit comments with respect to such proposal.*

(12) *No work program may impair existing contracts for services or collective bargaining agreements, and no work program that would be inconsistent with the terms of a collective bargaining agreement may be undertaken without the written concurrence of the labor organization and employer concerned."*

Section 2. Section 53-3-305, MCA, is amended to read:

**"53-3-305. Effect of refusal to enroll in job search, training, and work programs.** Any recipient of general relief who is subject to the provisions of 53-3-303 and 53-3-304 and who without cause refuses to participate in the job search and training program or to perform work assigned to him as therein provided shall lose one-fourth of his next monthly benefit amount for each refusal."

Section 3. **Extension of authority.** Any existing authority of the department of social and rehabilitation services and the department of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. **Effective date.** This act is effective July 1, 1986.

Approved April 7, 1986.

## CHAPTER NO. 11

[HB 16]

AN ACT ESTABLISHING AN INSURANCE ASSISTANCE PLAN FOR COMMERCIAL LIABILITY INSURANCE; PROVIDING AUTHORITY TO FORM A JOINT UNDERWRITING ASSOCIATION FOR COMMERCIAL LIABILITY INSURANCE; APPROPRIATING MONEY; REQUIRING A REPORT ON THE EFFECTIVENESS OF THE PLAN TO THE 50TH LEGISLATURE; AMENDING SECTION 33-17-201, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title — definition.** [Sections 1 through 16] may be cited as the “Montana Insurance Assistance Plan”. As used in [sections 1 through 16], “plan” means the “Montana Insurance Assistance Plan”.

Section 2. **Purpose.** The purpose of [sections 1 through 16] is to establish a temporary plan to assist insurance consumers in this state in obtaining needed commercial liability insurance when no quotation is available from regular sources of insurance. The plan is not constituted to act as an insurer capable of assuming insurance risks.

Section 3. **Limit on term of operation — review of necessity — dissolution.** (1) The plan is established as a temporary market assistance plan to function only as long as its services are considered necessary to relieve perceived insurance market problems in this state.

(2) Six months after the plan becomes operational and on each 6-month anniversary thereafter, the advisory committee established under [section 4] shall review the necessity for continuation of the plan.

(3) If, after review, the advisory committee finds that a need exists for continued operation, it shall report that finding to the commissioner.

(4) If, after review, the advisory committee finds that there is no longer a need for continued operation of the plan, it may recommend to the commissioner that he dissolve the plan and discontinue its services. The advisory committee's recommendation is advisory only, and the commissioner is not required to follow the advisory committee's recommendation.

(5) The plan may be dissolved only on the written authorization of the commissioner.

Section 4. **Plan structure — committees.** The plan consists of three committees appointed by the commissioner. The committees are:

(1) the advisory committee, which consists of one member from the insurance department, one member representing agents, and three members representing company underwriters;

(2) the agents committee, which consists of two members representing the independent insurance agents of Montana (IIAM), one member representing the professional insurance agents (PIA), one member representing

the excess and surplus lines agents, and one member representing direct writer agents; and

(3) the underwriting committee, which consists of one member representing American insurance association (AIA), one member representing national association of independent insurers (NAII), one member representing alliance of American insurers (AAI), one member representing unaffiliated insurers, and one member representing excess and surplus lines underwriters.

**Section 5. Apportionment agreements.** (1) Insurers participating in the plan shall agree to equitably apportion, according to the provisions of [section 13(6)], insurance to be offered under the plan to eligible applicants who, although entitled to insurance from regular insurance markets, have been unable to procure such insurance through ordinary methods after a good faith effort.

(2) Apportionment agreements under subsection (1) must be approved by the commissioner.

**Section 6. Exemption from agent appointment requirements.** (1) For purposes of the plan:

(a) an insurer that has entered into an agreement as provided in [section 5] may accept applications for insurance coverage from any agent even though that agent has not been appointed by the insurer; and

(b) an agent may place business, as to any type of insurance for which he is licensed at the time, with any insurer participating in the plan even though the agent has not been appointed as an agent by that insurer.

(2) An insurer that issues insurance coverage upon an application submitted by an agent who has not been appointed by the insurer shall pay the agent a commission in conformity with the insurer's filed rates, rating plans, or forms for the kind of insurance effected.

(3) An agent who countersigns a policy, when a countersignature is required by 33-17-1111, shall be paid a countersignature commission as provided in 33-17-1113.

**Section 7. Types of coverages — exemptions.** (1) The plan may assist in the individual placement of the following coverages:

(a) liability insurance coverage for political subdivisions, defined in 2-9-101(5), excluding pollution coverages;

(b) liability insurance coverage for day-care facilities, defined in 53-4-501(2)(b), which satisfy the requirements of 53-4-508 and 53-4-509, excluding damages from sexual abuse;

(c) liquor liability insurance; and

(d) other commercial lines liability coverages if the commissioner finds in writing, after consultation with the plan's advisory committee, that there are severe availability problems in the marketplace and that the plan is likely to provide assistance with a reasonable probability of success.

(2) Coverages that could be written through the Montana automobile assigned risk plan, Montana workers' compensation insurance plan, or Montana medical liability joint underwriting association, if activated, may not be issued under the plan.

**Section 8. Eligibility for assistance — application — rules.** (1) Any person constituting or having an insurable risk that is resident, located, or to be performed in this state is eligible for assistance in procuring coverage under the plan on submission of:

- (a) a fee set by a rule adopted by the commissioner;
- (b) a properly executed application form; and
- (c) documentation of the unavailability problem by an insurance agent licensed in this state.

(2) The application fees must be paid in advance as set forth in rules adopted by the commissioner.

(3) All properly executed applications must be sent to the commissioner.

(4) Applications and supplemental forms, if appropriate, must be completed in their entirety. Incomplete applications may be returned.

**Section 9. Insurer membership — election not to participate.** (1) The commissioner shall develop a listing of participating insurers as provided in subsection (2).

(2) The commissioner shall mail to each admitted property and casualty insurer and eligible surplus lines insurer a bulletin outlining the conditions of the plan and advising that each is considered to be a voluntary participant. An insurer may request permission not to participate by providing to the commissioner reasons why its participation should be waived.

**Section 10. Advisory committee — duties and responsibilities.** (1) The advisory committee, assisted by the insurance department staff, is the principal operations committee and shall receive the initial application from applicants for insurance assistance who have encountered an availability-related insurance problem. An initial application may not be accepted from applicants who currently have insurance coverage or have not yet been rejected from markets to which they have applied.

(2) Information of the initial contact must be maintained on a standard form that contains the following information:

- (a) name, address, telephone number, and other applicant information;
- (b) kind of coverage and limits needed;
- (c) name, address, and telephone number of the current or most recent insurance agent for the applicant;
- (d) name and address of current or most recent insurance company, information about and identity of the underwriting office and persons involved, if known, and reasons for cancellation or nonrenewal;

- (e) names of other insurers contacted for coverage;
- (f) summary of advisory committee actions; and
- (g) other information as considered necessary to document the applicant's availability problem.

(3) The advisory committee is authorized to give direction to the plan and to the producers and underwriting committees. The committee shall meet as needed and review the activities of the agents and underwriting committees and all other operations of the plan.

(4) The advisory committee shall review and authorize all letters stating that the plan is unable to be of assistance. The advisory committee may override all decisions of the agents and underwriting committees and may resubmit to the plan an application that has been denied by either committee.

**Section 11. Agents committee — duties and responsibilities.** (1) The agents committee, assisted by the insurance department staff, shall process properly executed applications accompanied by appropriate underwriting information.

(2) Each application must be reviewed to determine the availability problem. Depending on the nature of the problem, the committee may:

- (a) resubmit the application to the present or most recent insurer for reconsideration;
- (b) check other sources of insurance of the submitting agent;
- (c) check all other known sources of insurance;
- (d) check the excess and surplus lines markets; or
- (e) negotiate extensions of coverage with the prior insurer to allow time for additional exploration of markets or accumulation of essential underwriting data.

(3) If the actions permitted in subsection (2) fail, the chairman shall refer the application with appropriate comments to the underwriting committee.

**Section 12. Underwriting committee — duties and responsibilities.** (1) The underwriting committee may provide technical assistance on those lines of business for which member insurers have agreed to participate.

(2) The underwriting committee may consider and act only on applications referred to it by the agents committee.

(3) The underwriting committee shall establish a rotation system that permits a participating insurer to offer insurance coverage that it is qualified to write in this state to a qualified, eligible applicant, pursuant to [section 13].

(4) If the underwriting committee finds that it cannot assist an applicant, the chairman shall draft a letter to the insurance commissioner with

an explanation. The letter shall be transmitted to the advisory committee for review.

**Section 13. Issuance of insurance — premiums.** (1) A participating insurer may offer to write insurance under the plan on the same basis as it normally provides insurance in this state using its filed rates, rules, and forms.

(2) Each participating insurer may individually evaluate the risk represented by an applicant and develop a premium for a risk in accordance with its filed rating plans.

(3) An applicant shall pay in advance any premium for risks accepted under the plan.

(4) On approval of the advisory committee, a participating insurer may develop "A" rates for risks that do not fall within the rules or rates filed by the insurer.

(5) Within 10 working days of receiving an application, a participating insurer shall indicate its willingness to offer or refusal to offer insurance on the application to the chairman of the underwriting committee. A reasonable extension may be granted by the chairman of the underwriting committee.

(6) A participating insurer is expected to quote on at least one out of every five applications received from the underwriting committee. The insurer shall notify the applicant's insurance agent of any quotations and of the administrative procedure to be followed if the applicant accepts coverage from the insurer at the price quoted.

(7) If insurance coverage obtained through the plan is canceled for non-payment of premium, the applicant may not reapply to the plan for the same coverage for the same risk.

**Section 14. Joint underwriting association — rules.** If, after a public hearing, the commissioner determines that a voluntary plan would, in his judgment, fail for any reason to provide essential insurance coverage, he may, by rule, establish a nonprofit unincorporated legal entity known as a joint underwriting association. Each insurer authorized to write and engaged in writing within this state, on a direct premium basis, the kind of insurance covered by the association shall remain a member of the association as a condition of its authority to continue to transact that kind of insurance in this state.

**Section 15. Immunity.** There is no liability on the part of and no cause of action of any nature against any employees, members of the advisory committee, members of the agents committee, members of the underwriting committee, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under the plan.

**Section 16. Rules — penalty.** (1) The commissioner may adopt reasonable rules consistent with the plan for any of the following purposes:

(a) effectuation of the plan;



(b) establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement in the plan; or

(c) establishment, procedures, and operations of the plan's agents and others designed to assist such agents to comply with the plan.

(2) Rules adopted pursuant to this section are subject to the procedures and carry the penalty provided by 33-1-313.

Section 17. Section 33-17-201, MCA, is amended to read:

**"33-17-201. License required of agents, managing general agents, and solicitors — forms.** (1) No person shall in this state act as or hold himself out to be an agent or solicitor as to subjects of insurance located, resident, or to be performed in this state unless then licensed as such agent or solicitor under this chapter.

(2) No person may act or hold himself out in this state to be a managing general agent unless licensed as an insurance agent under this chapter and appointed by the insurers represented.

(3) No agent or solicitor shall solicit or take application for, procure, or place for others any kind of insurance as to which he is not then licensed.

(4) No agent shall place any business, other than coverage of his own risks, with any insurer as to which he does not then hold an appointment or license as agent under this chapter, except as provided in 33-17-1104 as to life or disability insurance agents *and in [section 6]*.

(5) The commissioner shall prescribe and furnish forms required in connection with application for, issuance, continuation, or termination of licenses and appointments.

(6) Unless licensed as a life insurance agent as required by this section, no person shall in this state solicit life insurance or annuities or procure applications therefor or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney at law, relative to such insurance or annuities for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of such employees."

Section 18. **Report to legislature.** The commissioner shall report to the 50th legislature on the effectiveness of the plan in providing insurance coverage for risks resident, located, or to be performed in this state and on the necessity to continue the authority granted by section 14.

Section 19. **Appropriation.** There is appropriated to the State Auditor's Office from the insurance earmarked account \$5,325 for the fiscal year ending June 30, 1986, and \$31,798 for the fiscal year ending June 30, 1987, for one staff position to assist in the plan.

**Section 20. Codification instruction.** Sections 1 through 16 are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to sections 1 through 16.

**Section 21. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 22. Effective dates — termination.** (1) Except for section 14, this act is effective on passage and approval. Section 14 is effective July 1, 1987.

(2) This act terminates July 1, 1989.

Approved April 7, 1986.

# **APPROPRIATIONS**

**ENACTED BY THE**

**Forty-Ninth Legislature**

**IN SPECIAL**

**SESSION**

**STATE OF MONTANA**

**March 1986**



# APPROPRIATIONS

## HOUSE BILL NO. 1

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE SPECIAL SESSION OF THE FORTY-NINTH LEGISLATURE CONVENING ON MARCH 24, 1986, AND FOR THE FUNDING OF A STUDY COMMITTEE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Operations appropriation.** The following amounts are appropriated from the general fund for fiscal year 1986 for the operation of the Special Session of the Forty-Ninth Legislature convening on March 24, 1986:

|                          |           |
|--------------------------|-----------|
| House of Representatives | \$151,891 |
| Senate                   | \$100,087 |
| Legislative Council      | \$34,444  |

Section 2. **Study committee appropriation.** The following amount is appropriated from the general fund for fiscal years 1986 and 1987:

|                                |          |
|--------------------------------|----------|
| Legislative Council            |          |
| Interim Committee on Insurance | \$12,000 |

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 4, 1986.

## HOUSE BILL NO. 2

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND THE DEPARTMENT OF LABOR AND INDUSTRY FOR THE FISCAL YEARS ENDING JUNE 30, 1986, AND JUNE 30, 1987; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Time limits.** The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. The unspent balance of any appropriation must revert to the fund from which it was appropriated.

Section 2. **Totals not appropriations.** The totals shown in this act are for informational purposes only and are not appropriations.

Section 3. **Appropriations.** The following money is appropriated, subject to the terms and conditions of this act, from the state general fund:

| <u>AGENCY AND PROGRAM</u>                                                | <u>FY 1986</u> | <u>FY 1987</u>     |
|--------------------------------------------------------------------------|----------------|--------------------|
| DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES                         |                |                    |
| General Assistance and Structured Job Search, Training, and Work Program | \$ 0           | \$3,638,948        |
| <b>TOTALS</b>                                                            | <u>\$ 0</u>    | <u>\$3,638,948</u> |

If SRS contracts with the Department of Labor and Industry to provide all or part of the structured job search, training, and work program, the Department of Labor and Industry is appropriated the spending authority for the contract.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 7, 1986.

## HOUSE BILL NO. 5

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EXPENSES OF EXPERT WITNESSES AND FOR TESTIMONY FOR THE MCCARTY FARMS CASE AND COMPANION CASE CONCERNING GRAIN RAIL SHIPMENT RATES BEFORE THE INTERSTATE COMMERCE COMMISSION; PROVIDING FOR REPAYMENT FROM ANY AWARD OR RECOVERY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appropriation.** There is appropriated to the Department of Commerce from the general fund \$144,314 for the biennium ending June 30, 1987. The appropriated funds are to be used in the preparation and presentation of expert testimony in the McCarty Farms, Inc., et al. v. Burlington Northern, Inc. and companion case before the Interstate Commerce Commission (Docket Nos. 37809, 37809(SUB-NO. 1), and 378155) concerning the reasonableness of rail shipping rates for Montana grain.

Section 2. **Repayment.** If the State of Montana recovers damages or receives other awards as a result of the cases referred to in section 1, the general fund must be reimbursed, to the extent possible, the amount expended under the appropriation in section 1, plus interest. The amount of such interest shall be computed annually at 10% simple interest.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 7, 1986.

**HOUSE BILL NO. 8**

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF STATE LANDS FOR THE FISCAL YEAR ENDING JUNE 30, 1986; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Time limits.** The appropriation contained in this act is intended to provide only necessary and ordinary expenditures for which the appropriation is made. The unspent balance of the appropriation must revert to the state general fund.

Section 2. **Appropriation.** There is appropriated to the Department of State Lands for fire suppression \$3,185,472 from the state general fund for the fiscal year ending June 30, 1986.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 7, 1986.

**HOUSE BILL NO. 10**

AN ACT APPROPRIATING MONEY TO REPLACE THE POTENTIAL EARNINGS LOST TO INVESTMENT FUNDS USED TO PURCHASE DISCOUNTED CERTIFICATES OF DEPOSIT UNDER THE AGRICULTURAL PRODUCTION LOAN LINKED DEPOSIT PROGRAM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appropriation.** There is appropriated from the general fund to the Board of Investments for the period ending March 15, 1987, an amount equal to  $\frac{1}{2}$  of 1% of the value of each linked deposit made by the Board under the agricultural production loan linked deposit program established by Senate Bill No. 7 of the 49th Legislature convened in Special Session March 24, 1986, not to exceed \$250,000 in the aggregate. Such amount must be credited by the Board to the earnings of each investment fund used as a source of money for the purchase of linked deposits in the same proportion as the amount used from each fund bears to the total.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 7, 1986.

**HOUSE BILL NO. 18**

AN ACT TO APPROPRIATE MONEY DERIVED FROM UNANTICIPATED INDIRECT COST REIMBURSEMENTS TO THE SIX UNITS OF THE MONTANA UNIVERSITY SYSTEM TO PROVIDE FOR UNANTICIPATED UNIVERSITY SYSTEM REVENUE SHORTFALL, THUS PROVIDING A SUPPLEMENTAL APPROPRIATION FOR FISCAL YEARS 1986 AND 1987; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriation.** (1) (a) Except as provided in subsection (1)(b), the appropriations contained in this act are subject to the provisions contained in sections 1 through 16, House Bill No. 500, L. 1985.

(b) The appropriations contained in this act are supplemental to the appropriations contained in House Bill No. 500, L. 1985, and are not funds from other sources, as that term is used in section 3, House Bill No. 500, L. 1985.

(2) For each year of the 1986-87 biennium, an amount equal to that portion of the current unrestricted fund at the following units of the Montana University System derived from indirect cost reimbursements that exceeds the amount set forth below is appropriated to the respective unit:

| UNIT                                            | ICR AMOUNT |
|-------------------------------------------------|------------|
| Montana State University                        | \$935,000  |
| University of Montana                           | \$400,000  |
| Eastern Montana College                         | \$ 85,000  |
| Northern Montana College                        | \$ 20,000  |
| Western Montana College                         | \$ 14,000  |
| Montana College of Mineral Science & Technology | \$150,000  |

**Section 2. Effective date.** This act is effective on passage and approval.

Approved April 7, 1986.



# **RESOLUTIONS**

ENACTED BY THE

**Forty-Ninth Legislature**

IN SPECIAL

SESSION

STATE OF MONTANA

March 1986



# RESOLUTIONS

## SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF INSURANCE-RELATED PROBLEMS, INCLUDING THE HIGH COST AND UNAVAILABILITY OF LIABILITY INSURANCE, PROPOSALS FOR GENERAL TORT REFORM, AND GENERAL QUESTIONS INVOLVING PUBLIC AND PRIVATE LIABILITY ISSUES; REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 50TH LEGISLATURE.

WHEREAS, on December 31, 1985, the Supreme Court of the State of Montana issued the Pfost decision, overturning our sovereign immunity protections and thereby exposing state governmental entities to unlimited civil liability; and

WHEREAS, current circumstances in the insurance industry have made insurance coverage and protection unavailable for many businesses and governmental entities; and

WHEREAS, considerable evidence establishes the difficulty of other businesses and governmental entities to obtain insurance coverage and protection at reasonable rates; and

WHEREAS, the high cost of insurance seriously threatens the provision of certain goods and services to the state's citizens; and

WHEREAS, proposed solutions to the complex problems of insurance coverage and protection and public and private tort liability are not easily identified, and adequate and effective solutions may not be obtainable within the pressures of a special or regular legislative session; and

WHEREAS, a thoughtful and reasoned study of the myriad aspects of insurance costs and availability, tort reform and constitutional amendment proposals, and public and private liability would aid in the solution of these complex issues.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That a special joint interim committee, to which the full subpoena power of the Legislature and the Legislative Council is extended, be assigned to study and to prepare legislation to address:

- (1) insurance problems, including how to make insurance coverage and protection available to Montana citizens at a reasonable cost;
- (2) the effectiveness of various tort reform and constitutional amendment proposals; and

(3) general questions involving public and private liability, including but not limited to the issues of the collateral source rule, simultaneous pursuit of a bad faith claim with the underlying claim, structured settlements, statutes of limitations, joint and several liability, caps on damage awards, contingent fee arrangements, attorney fees for defense counsel, reinsurance, a state reinsurance fund, insurance marketing assistance, wrongful discharge, punitive damages, and sanctions for filing frivolous lawsuits.

BE IT FURTHER RESOLVED, that money be appropriated to fund the study, and that the committee prepare a report of study findings for the 50th Legislature.

Passed March 29, 1986.

## SENATE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES SECRETARY OF AGRICULTURE TO MAKE ADVANCE COMMODITY CREDIT CORPORATION (CCC) RECOURSE LOANS AVAILABLE TO MONTANA AGRICULTURAL PRODUCERS, AS AUTHORIZED UNDER PROVISIONS OF THE FOOD SECURITY ACT OF 1985, THEREBY ENSURING THAT ADEQUATE OPERATING CREDIT IS AVAILABLE FOR PLANTING OF THE 1986 CROP.

WHEREAS, during the last year, 15.6% of all Montana agricultural producers had agricultural loan applications refused by financial lenders, and 53.4% of those producers could not secure financing from any other lender; and

WHEREAS, interest rates for agricultural loans average 12.9% in Montana, with interest rates reported as high as 13.5% and 14% in many instances; and

WHEREAS, in the present market, there exists an urgent demand for financing, which is not available in adequate supply or at reasonable interest rates; and

WHEREAS, the lack of available, adequate financing at reasonable rates makes it difficult for many Montana producers to finance the production of crops in 1986 or to continue their existing agricultural operations; and

WHEREAS, Section 1003 of the Food Security Act of 1985, P.L. 99-198, grants the U.S. Secretary of Agriculture discretionary authority to make advance CCC recourse loans available to agricultural producers to finance the 1986 crop if the Secretary finds that such loans are needed to ensure that adequate operating credit is available to producers; and

WHEREAS, in recent amendments to the Food Security Act of 1985, P.L. 99-260, the U.S. Congress has affirmed that the Secretary of Agriculture should carry out a program to make advance CCC recourse loans

available to producers who are unable to obtain sufficient credit elsewhere to finance production of the 1986 crop.

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:**

That the Legislature of the State of Montana strongly urge the U.S. Secretary of Agriculture to make advance CCC recourse loans available to Montana agricultural producers, as authorized under provisions of the Food Security Act of 1985, so that adequate operating credit is available for planting of the 1986 crop.

**BE IT FURTHER RESOLVED**, that the Secretary of State transmit a copy of this resolution to the President of the United States, the Honorable Richard Lyng, U.S. Secretary of Agriculture, and each member of the Montana Congressional Delegation.

Passed March 28, 1986.

## **HOUSE JOINT RESOLUTION NO. 1**

**A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONSENTING TO THE CONSTRUCTION OF A FACILITY AT MONTANA STATE UNIVERSITY THAT WILL CONVERT ITS HEATING PLANT TO ENABLE IT TO UTILIZE THE MOST COST-EFFECTIVE FUELS.**

**WHEREAS**, section 18-2-102, MCA, requires legislative consent for construction projects by a state agency in excess of \$25,000; and

**WHEREAS**, section 18-2-102, MCA, authorizes use of a joint resolution to express legislative consent for such a construction project when no appropriation is required; and

**WHEREAS**, Montana State University wishes to carry out a construction project to convert its heating plant to enable it to use the most cost-effective fuels in order to attain the objective of lowest space-heating costs, for which project legislative appropriations are not required.

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:**

That the Senate and the House of Representatives of the State of Montana consent to a construction project at Montana State University to convert its heating plant to enable it to use the most cost-effective fuels to attain the objective of lowest space-heating costs.

**BE IT FURTHER RESOLVED**, that efforts will be made to receive funding from all possible charitable and funding sources prior to obtaining the funding through conventional lending.

Passed March 27, 1986.

## HOUSE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THAT THE UNITED STATES CONGRESS ENACT TEMPORARY LEGISLATION TO AID AGRICULTURAL BORROWERS AND LENDERS DURING THE CURRENT FINANCIAL CRISIS IN MONTANA AGRICULTURE AND REQUESTING CONGRESS TO EXPAND THE FARMERS HOME ADMINISTRATION LOAN GUARANTEE AND INTEREST RATE BUYDOWN PROGRAMS, TO PRESERVE THE SMALL BUSINESS ADMINISTRATION GUARANTEED LOAN PROGRAM FOR BUSINESSES IN RURAL FARM COMMUNITIES, AND TO CREATE A SECONDARY MARKET FOR FARM REAL ESTATE TO STABILIZE LAND VALUES.

WHEREAS, the Montana agricultural economy is under severe financial stress due to low commodity prices, drought, reduced exports, continuing high interest rates, and declining land values; and

WHEREAS, the number of farm foreclosures in Montana during 1985 reached a level not seen since the Great Depression; and

WHEREAS, many agriculture-related businesses in Montana communities are going out of business, reflecting the financial problems of farmers and ranchers in this state; and

WHEREAS, the current financial crisis in agriculture poses serious problems for Montana financial lenders; and

WHEREAS, many of Montana's agricultural producers currently face a severe shortage of operating capital; and

WHEREAS, Congress could improve the capacity of financial lenders to make agricultural credit available to farmers and ranchers by expanding the Farmers Home Administration loan guarantee and interest rate buydown programs; and

WHEREAS, many small, rural community businesses depend upon low interest financing through the Small Business Administration; and

WHEREAS, agricultural land values, which have declined as much as 50% in the last 5 years, could be stabilized by creation of a secondary market for farm real estate similar to the secondary markets established by Congress for the housing industry.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana urge the United States Congress to enact temporary legislation to help agricultural borrowers and lenders survive the current financial crisis in Montana agriculture.

BE IT FURTHER RESOLVED, that Congress:

(1) expand the Farmers Home Administration loan guarantee and interest rate buydown programs;

(2) preserve the guaranteed loan program administered by the Small Business Administration to assist businesses in rural farm communities; and

(3) create a secondary market for farm real estate to stabilize agricultural land values.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and to each member of the Montana Congressional Delegation.

Passed March 28, 1986.

### HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE UNITED STATES CONGRESS NOT TO IMPOSE AN EXCISE TAX ON IMPORTED CRUDE OIL BECAUSE OF THE SERIOUS FINANCIAL IMPACT SUCH TAX WOULD HAVE UPON AGRICULTURE IN MONTANA.

WHEREAS, legislation has been introduced in the United States Congress to impose an excise tax on imported oil; and

WHEREAS, in hearing S. 1507, S. 1997, and H.R. 3838, the Congress is considering imposition of an excise tax between \$5 and \$10 per barrel on imported crude oil; and

WHEREAS, it is estimated that a \$10-per-barrel import oil tax would add 24 cents to the price of each gallon of petroleum fuel; and

WHEREAS, a \$10 import oil tax would result in approximately \$36 million in increased costs for energy and petroleum products purchased by Montana farmers and ranchers; and

WHEREAS, Montana farmers and ranchers cannot add production cost increases, such as an oil import tax, to the price of their products because individually they do not have sufficient market power to set prices; and

WHEREAS, the increased costs of production resulting from an oil import tax would be borne by Montana farmers and ranchers; and

WHEREAS, depressed commodity prices and increased production costs have reduced net farm income, threatening the financial survival of many Montana farmers and ranchers; and

WHEREAS, an oil import tax would further reduce net farm income by raising production costs and thereby make an already critical financial situation in agriculture even worse.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana urgently request the United States Congress not to enact legislation imposing an excise tax on imported crude oil.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and the Montana Congressional Delegation.

Passed March 28, 1986.



# CODE SECTIONS AFFECTED

| Title-Ch.-Sec.     | Action       | Chapter |
|--------------------|--------------|---------|
| 2-9-211, 212.....  | amended..... | 3       |
| 7-3-160.....       | amended..... | 8       |
| 15-6-141.....      | amended..... | 7       |
| 15-6-145.....      | amended..... | 7       |
| 15-6-147.....      | enacted..... | 7       |
| 15-8-111.....      | amended..... | 7       |
| 16-2-101.....      | amended..... | 2       |
| 27-1-710.....      | enacted..... | 1       |
| 33-8-201—205.....  | enacted..... | 11      |
| 33-8-211—214.....  | enacted..... | 11      |
| 33-8-221, 222..... | enacted..... | 11      |
| 33-8-225—228.....  | enacted..... | 11      |
| 33-8-231.....      | enacted..... | 11      |
| 33-17-201.....     | amended..... | 11      |
| 53-3-304, 305..... | amended..... | 10      |
| 80-13-101—104..... | enacted..... | 9       |
| 80-13-111.....     | enacted..... | 9       |
| 80-13-201—204..... | enacted..... | 9       |
| 80-13-211—213..... | enacted..... | 9       |
| 80-14-101—103..... | enacted..... | 5       |
| 80-14-201—205..... | enacted..... | 5       |
| 85-1-603, 604..... | amended..... | 6       |
| 85-1-617.....      | amended..... | 6       |
| 90-5-101.....      | amended..... | 4       |
| 90-5-108.....      | amended..... | 4       |

# SENATE BILL TO CHAPTER NUMBER

| Bill No. |         | Chapter No. | Bill No. |          | Chapter No. |
|----------|---------|-------------|----------|----------|-------------|
| SB       | 2 ..... | 3           | SB       | 9 .....  | 6           |
| SB       | 6 ..... | 4           | SB       | 11 ..... | 7           |
| SB       | 7 ..... | 5           |          |          |             |

# HOUSE BILL TO CHAPTER NUMBER

| Bill No. |          | Chapter No. | Bill No. |          | Chapter No. |
|----------|----------|-------------|----------|----------|-------------|
| HB       | 4 .....  | 8           | HB       | 13 ..... | 1           |
| HB       | 11 ..... | 9           | HB       | 14 ..... | 2           |
| HB       | 12 ..... | 10          | HB       | 16 ..... | 11          |

# CHAPTER NUMBER TO BILL NUMBER

| Chapter No. |         | Bill No. | Chapter No. |          | Bill No. |
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| Ch.         | 1 ..... | HB 13    | Ch.         | 7 .....  | SB 11    |
| Ch.         | 2 ..... | HB 14    | Ch.         | 8 .....  | HB 4     |
| Ch.         | 3 ..... | SB 2     | Ch.         | 9 .....  | HB 11    |
| Ch.         | 4 ..... | SB 6     | Ch.         | 10 ..... | HB 12    |
| Ch.         | 5 ..... | SB 7     | Ch.         | 11 ..... | HB 16    |
| Ch.         | 6 ..... | SB 9     |             |          |          |

## EFFECTIVE DATES By Chapter Number

| Chapter No.                   | Effective Date |
|-------------------------------|----------------|
| Ch. 1 .....                   | 4/4/86         |
| Ch. 2 .....                   | 4/4/86         |
| Ch. 3 .....                   | 4/7/86         |
| Ch. 4 .....                   | 4/7/86         |
| Ch. 5 .....                   | 4/7/86         |
| Ch. 6 .....                   | 4/7/86         |
| Ch. 7 .....                   | 4/7/86         |
| Ch. 8 .....                   | 4/7/86         |
| Ch. 9 .....                   | 4/7/86         |
| Ch. 10 .....                  | 7/1/86         |
| Ch. 11 (§§ 1-13, 15-22) ..... | 4/7/86         |
| (§ 14) .....                  | 7/1/87         |
| HB 1 .....                    | 4/4/86         |
| HB 2 .....                    | 4/7/86         |
| HB 5 .....                    | 4/7/86         |
| HB 8 .....                    | 4/7/86         |
| HB 10 .....                   | 4/7/86         |
| HB 18 .....                   | 4/7/86         |

# SESSION LAW TO CODE

March 1986

| Ch. | Sec. | MCA                                                                                                                | Ch. | Sec. | MCA                               |
|-----|------|--------------------------------------------------------------------------------------------------------------------|-----|------|-----------------------------------|
| 1   | 1    | 27-1-710                                                                                                           |     | 2    | Effective date                    |
|     | 2    | Effective date                                                                                                     | 9   | 1    | 80-13-101 (temporary)             |
| 2   | 1    | 16-2-101                                                                                                           |     | 2    | 80-13-102 (temporary)             |
|     | 2    | Change prohibited in rate of commissions payable for operation of agency liquor stores — legislative consideration |     | 3    | 80-13-103 (temporary)             |
|     | 3    | Severability                                                                                                       |     | 4    | 80-13-104 (temporary)             |
|     | 4    | Recovery plan                                                                                                      |     | 5    | 80-13-111 (temporary)             |
|     | 5    | Effective date — retroactive applicability — termination                                                           |     | 6    | 80-13-201 (temporary)             |
| 3   | 1    | 2-9-211                                                                                                            |     | 7    | 80-13-202 (temporary)             |
|     | 2    | 2-9-212                                                                                                            |     | 8    | 80-13-203 (temporary)             |
|     | 3    | Effective date                                                                                                     |     | 9    | 80-13-204 (temporary)             |
| 4   | 1    | 90-5-101                                                                                                           |     | 10   | 80-13-211 (temporary)             |
|     | 2    | 90-5-108                                                                                                           |     | 11   | 80-13-212 (temporary)             |
|     | 3    | Effective date                                                                                                     |     | 12   | 80-13-213 (temporary)             |
| 5   | 1    | 80-14-101 (temporary)                                                                                              |     | 13   | Severability                      |
|     | 2    | 80-14-102 (temporary)                                                                                              |     | 14   | Appropriation                     |
|     | 3    | 80-14-103 (temporary)                                                                                              |     | 15   | Effective date — termination      |
|     | 4    | 80-14-201 (temporary)                                                                                              | 10  | 1    | 53-3-304                          |
|     | 5    | 80-14-202 (temporary)                                                                                              |     | 2    | 53-3-305                          |
|     | 6    | 80-14-203 (temporary)                                                                                              |     | 3    | Extension of authority            |
|     | 7    | 80-14-204 (temporary)                                                                                              |     | 4    | Effective date                    |
|     | 8    | 80-14-205 (temporary)                                                                                              | 11  | 1    | 33-8-201 (temporary)              |
|     | 9    | Effective date — termination                                                                                       |     | 2    | 33-8-202 (temporary)              |
| 6   | 1    | 85-1-603                                                                                                           |     | 3    | 33-8-203 (temporary)              |
|     | 2    | 85-1-604                                                                                                           |     | 4    | 33-8-211 (temporary)              |
|     | 3    | 85-1-617                                                                                                           |     | 5    | 33-8-212 (temporary)              |
|     | 4    | Effective date                                                                                                     |     | 6    | 33-8-213 (temporary)              |
| 7   | 1    | 15-6-145                                                                                                           |     | 7    | 33-8-214 (temporary)              |
|     | 2    | 15-6-147                                                                                                           |     | 8    | 33-8-221 (temporary)              |
|     | 3    | 15-6-141                                                                                                           |     | 9    | 33-8-222 (temporary)              |
|     | 4    | 15-8-111                                                                                                           |     | 10   | 33-8-225 (temporary)              |
|     | 5    | Codification instruction                                                                                           |     | 11   | 33-8-226 (temporary)              |
|     | 6    | Coordination instruction                                                                                           |     | 12   | 33-8-227 (temporary)              |
|     | 7    | Extension of authority                                                                                             |     | 13   | 33-8-228 (temporary)              |
|     | 8    | Retroactive applicability — effective date                                                                         |     | 14   | 33-8-231 (Effective July 1, 1987) |
| 8   | 1    | 7-3-160                                                                                                            |     | 15   | 33-8-204 (temporary)              |
|     |      |                                                                                                                    |     | 16   | 33-8-205 (temporary)              |
|     |      |                                                                                                                    |     | 17   | 33-17-201 (temporary)             |
|     |      |                                                                                                                    |     | 18   | Report to Legislature             |
|     |      |                                                                                                                    |     | 19   | Appropriation                     |
|     |      |                                                                                                                    |     | 20   | Codification instruction          |
|     |      |                                                                                                                    |     | 21   | Severability                      |
|     |      |                                                                                                                    |     | 22   | Effective dates — termination     |

# **SESSION LAWS**

**ENACTED BY THE**

**Forty-Ninth Legislature**

**IN SPECIAL**

**SESSION**

**June 16 through July 1, 1986**

**STATE OF MONTANA**

**EXPLANATORY NOTE:**

Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics.



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## HOUSE AND SENATE BILLS

| Chap.<br>Num. | Senate<br>Bill | House<br>Sponsor<br>Bill | Title                                                                                                                                                                                                                                                                                                                                                                                                                            |
|---------------|----------------|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1             | 2              | Himsel                   | AN ACT TO REQUIRE THAT ALL INTERENTITY LOANS BE PAID WITHIN 1 CALENDAR YEAR OF THE DATE APPROVED; AMENDING SECTION 17-2-107, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.                                                                                                                                                                                                                           |
| 2             | 3              | Himsel                   | AN ACT REMOVING THE LIMITATION ON THE AMOUNT OF NOTES THAT THE BOARD OF EXAMINERS MAY ISSUE IN ANTICIPATION OF REVENUE; REPEALING SECTION 17-1-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                                                                                                                                                                                              |
| 3             | 15             | Manuel                   | AN ACT REALLOCATING, UNTIL JUNE 30, 1989, 5 PERCENT OF THE COAL SEVERANCE TAX REVENUE TO THE GENERAL FUND FROM THE TRUST FUND WHOSE PURPOSE IS PARKS ACQUISITION AND MANAGEMENT AND PROTECTION OF CERTAIN WORKS OF ART; EXPANDING THE NUMBER OF PARKS THAT CAN BE OPERATED AND MAINTAINED WITH INCOME FROM THE TRUST FUND; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                           |
| 4             | 16             | Schye                    | AN ACT TRANSFERRING EXCESS INCOME EARNED ON THE SOCIAL SECURITY CONTRIBUTION ACCOUNT AFTER JULY 1, 1987, TO THE STATE GENERAL FUND; TRANSFERRING EXCESS EARNED INCOME FROM THE CURRENT AND PREVIOUS FISCAL YEARS AS OF JUNE 30, 1986, TO THE STATE GENERAL FUND; PROVIDING ALTERNATIVE FUNDING FOR ADMINISTERING THE RETIREMENT SYSTEMS; AMENDING SECTIONS 19-1-602, 19-3-603, AND 19-3-805, MCA; AND PROVIDING EFFECTIVE DATES. |
| 5             | 23             | Ream                     | AN ACT APPROPRIATING COAL BOARD MONEY TO THE GENERAL FUND; AMENDING SECTION 90-6-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                                                                                                                                                                                                                                                            |
| 6             | 31             | Spaeth                   | AN ACT CONTINUING FISCAL YEAR 1986 STATE EMPLOYEE COMPENSATION PLANS AND GROUP BENEFITS LEVELS FOR FISCAL YEAR 1987; AMENDING SECTIONS 2-18-301, 2-18-303 THROUGH 2-18-305, 2-18-311, 2-18-313 THROUGH 2-18-315, AND 2-18-703, MCA, AND SECTION 9, CHAPTER 740, LAWS OF 1985; REPEALING SECTION 2-18-312, MCA; AND PROVIDING EFFECTIVE DATES, A CONTINGENT TERMINATION DATE, AND CONTINGENT RETROACTIVE DATES.                   |
| 7             | 9              | Van Valkenburg           | AN ACT TO ADJUST THE MAXIMUM GENERAL FUND BUDGET SCHEDULES FOR ELEMENTARY SCHOOLS AND HIGH SCHOOLS FOR FISCAL YEAR 1987; TO ESTABLISH THE BASE YEAR FOR SCHEDULES AT THE FISCAL YEAR 1987 LEVEL; AMENDING SECTIONS 20-9-318 AND 20-9-319, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                                                                                                        |

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| Chap. Num. | Senate Bill | House Sponsor Bill | Title                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------------|-------------|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8          | 39          | Peck               | AN ACT GENERALLY REVISING THE RENEWABLE ENERGY SOURCES RESEARCH AND DEVELOPMENT STATUTES; PROVIDING FOR THE ADOPTION OF RULES FOR THE REPAYMENT OF GRANTS TO STATE GOVERNMENTAL UNITS; REQUIRING A BIENNIAL REPORT FOR GRANTS TO STATE GOVERNMENTAL UNITS; REQUIRING THAT GRANTS TO STATE GOVERNMENTAL UNITS EITHER BE repaid OR THAT AGENCY BUDGETS BE REDUCED COMMENSURATE WITH DOCUMENTED ENERGY SAVINGS; REQUIRING THAT GRANTS TO STATE GOVERNMENTAL UNITS BE ADMINISTERED ACCORDING TO TITLE 18, CHAPTER 2, MCA, BY THE DEPARTMENT OF ADMINISTRATION; ESTABLISHING AN ANNUAL ALLOCATION OF FUNDS; TRANSFERRING MONEY TO THE GENERAL FUND FROM THE ALTERNATIVE ENERGY AND ENERGY CONSERVATION RESEARCH DEVELOPMENT AND DEMONSTRATION ACCOUNT; AMENDING SECTIONS 90-4-104, 90-4-109, AND 90-4-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. |
| 9          | 3           | Ellerd             | AN ACT RETURNING THE SALARY OF LEGISLATORS TO THE LEVEL IN EFFECT PRIOR TO THE JANUARY 1, 1987, EFFECTIVE DATE OF THE SALARY RAISE ENACTED BY SECTION 3, CHAPTER 693, LAWS OF 1985; AMENDING SECTION 5-2-301, MCA; AND PROVIDING AN EFFECTIVE DATE.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 10         | 33          | Hand               | AN ACT REVISING LAWS RELATING TO PUBLIC ASSISTANCE; LIMITING THE DURATION OF ASSISTANCE PROVIDED TO ABLE-BODIED PERSONS; LIMITING THE AMOUNT OF MONTHLY GENERAL ASSISTANCE; REVISING INCOME ELIGIBILITY STANDARDS FOR GENERAL RELIEF MEDICAL ASSISTANCE; AMENDING SECTIONS 53-3-108, 53-3-109, 53-3-205, 53-3-206, AND 53-3-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 11         | 6           | Donaldson          | AN ACT TO ELIMINATE THE PROGRAM AT MOUNTAIN VIEW SCHOOL FOR THE DETENTION OF A YOUTH ALLEGED TO BE DELINQUENT; AMENDING SECTION 41-5-306, MCA; REPEALING SECTIONS 1 AND 3 THROUGH 6, CHAPTER 737, LAWS OF 1985; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 12         | 11          | Manuel             | AN ACT ALLOWING COUNTY COMMISSIONERS TO SET THEIR AND ALL OTHER COUNTY OFFICIALS' SALARIES UNIFORMLY AT THE PRIOR FISCAL YEAR LEVEL; AMENDING SECTIONS 3-10-207, 7-4-2107, 7-4-2502 THROUGH 7-4-2504, AND 7-4-2510, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| 21         | 15          | Neuman             | AN ACT REQUIRING THE BOARD OF PUBLIC EDUCATION AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO TAKE STEPS TOWARD ADMINISTRATIVE AND STRUCTURAL REORGANIZATION OF THE PUBLIC SCHOOL SYSTEM THAT WOULD RESULT IN COST SAVINGS AT LOCAL AND STATE LEVELS AND TO REPORT SUCH PLANS AND ANY REQUIRED LEGISLATION TO THE 50TH LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                                                                                                                                                                                                                      |
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| 36            |                | 48 Grady                 | AN ACT TO REQUIRE THAT A BLIND PERSON BE GIVEN PREFERENCE IN THE AWARD OF SERVICE CONTRACTS FOR VENDING FACILITIES ON STATE PROPERTY WHEN A BLIND PERSON AND ANOTHER BIDDER HAVE SUBMITTED SUBSTANTIALLY EQUAL PROPOSALS AND THOSE PROPOSALS ARE THE MOST HIGHLY RATED BY THE CONTRACTING AGENCY; TO PROVIDE RULEMAKING AUTHORITY TO THE DEPARTMENT OF ADMINISTRATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                                                       |

## APPROPRIATIONS

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| 2  | Eudaily   | AN ACT APPROPRIATING MONEY FROM THE LEGISLATIVE COUNCIL MONTANA CODE ANNOTATED SPECIAL REVENUE FUND TO THE GENERAL FUND; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                                                                                                                                                  |
| 7  | Winslow   | AN ACT REDUCING THE APPROPRIATION FOR RESIDENTIAL ALCOHOL ABUSE TREATMENT FOR INDIGENT YOUTHS; AMENDING SECTION 1, HOUSE BILL 935, LAWS OF 1985; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                                                                                                                          |
| 21 | Bardanoue | AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR FISCAL YEARS ENDING JUNE 30, 1986, AND JUNE 30, 1987, WHICH WOULD USUALLY BE MADE BY BUDGET AMENDMENT; PROVIDING FOR SOME APPROPRIATIONS TO CONTINUE FROM FISCAL YEAR 1986 TO FISCAL YEAR 1987; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                  |
| 22 | Sanda     | AN ACT APPROPRIATING FUNDS FOR LOW-INCOME HOME WEATHERIZATION FROM THE EXXON CORPORATION OVERCHARGE PAYMENT; AND PROVIDING A CONTINGENT EFFECTIVE DATE.                                                                                                                                                                                              |
| 24 | J. Brown  | AN ACT REDUCING THE APPROPRIATION FOR A VOLUNTARY GENETICS PROGRAM; AMENDING SECTION 3, CHAPTER 706, LAWS OF 1985; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                                                                                                                                                        |
| 25 | J. Brown  | AN ACT REDUCING THE APPROPRIATION FOR REVIEW OF SUBDIVISIONS BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; AMENDING SECTION 3, CHAPTER 708, LAWS OF 1985; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.                                                                                                                                       |

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| 30 | Bardanoue | AN ACT TO GENERALLY REVISE APPROPRIATIONS FOR FISCAL YEAR 1987; AMENDING HOUSE BILL 500, LAWS OF 1985; AMENDING HOUSE BILL 922, LAWS OF 1985, CHANGING THE APPROPRIATIONS FOR THE GRANTS PROGRAM; AMENDING SECTION 7, HOUSE BILL 928, LAWS OF 1985; AMENDING SECTION 2, HOUSE BILL 961, LAWS OF 1985; AMENDING SECTION 75-1-1101, MCA; PROVIDING A REDUCTION IN APPROPRIATIONS FOR THE MONTANA SCIENCE AND TECHNOLOGY BOARD, FOR THE LEGISLATIVE COUNCIL FOR USE BY THE COMMITTEE ON INDIAN AFFAIRS, AND FOR THE AGRICULTURAL ASSISTANCE AND COUNSELING PROGRAM; REPEALING SECTION 10, CHAPTER 717, LAWS OF 1985; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. |

## SENATE JOINT RESOLUTIONS

| SJR | Sponsor  | Title                                                                                                                                                                                                                   |
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| 1   | Jacobson | A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE BOARD OF REGENTS TO PREPARE A REPORT ON THE LONG-TERM DIRECTION OF HIGHER EDUCATIONAL INSTITUTIONS IN MONTANA. |

## HOUSE JOINT RESOLUTIONS

| HJR | Sponsor | Title                                                                                                                                               |
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| 3   | Thomas  | A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA HONORING MARTHA ANN BURKE AS NATIONAL MOTHER OF THE YEAR. |

# SESSION LAWS

## CHAPTER NO. 1

[SB 2]

AN ACT TO REQUIRE THAT ALL INTERENTITY LOANS BE PAID WITHIN 1 CALENDAR YEAR OF THE DATE APPROVED; AMENDING SECTION 17-2-107, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-2-107, MCA, is amended to read:

**"17-2-107. Accurate accounting records and interaccount loans.**

(1) The department of administration shall record receipts and disbursements for treasury funds and for accounts within treasury funds and shall maintain records in such a manner as to reflect the total cash and invested balance of each fund and each account. The department of administration shall adopt the necessary procedures to insure that interdepartmental or intradepartmental transfers of money do not result in inflation of figures reflecting total governmental costs and revenues.

(2) When the expenditure of an appropriation is necessary and the cash balance in the account from which the appropriation was made is insufficient, the department of administration may authorize a transfer, as a temporary loan bearing no interest, of unrestricted moneys from other accounts, provided that there is reasonable evidence that the income will be sufficient to restore the amount so transferred *within 1 calendar year* and provided the loan is recorded in the state accounting records. The loan must be repaid *within 1 calendar year of the date the loan is approved* unless it is extended under subsection (3) or by specific legislative authorization. No account shall be so impaired that all proper demands thereon cannot be met even if the loan is extended.

(3) Under unusual circumstances the director of the department of administration may grant one extension of a loan for up to 1 year. The department of administration shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the general fund or the current unrestricted subfund to funds designated in subsections (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) of 17-2-102 shall bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool. Except for investment earnings on restricted donations, all designated and restricted subfund investment earnings are credited to the state general fund.

(5) No accounting entity may have a negative cash balance at fiscal yearend. The department of administration may, however, allow any entity to carry a negative balance at any point during the fiscal year subject to the following restrictions:

(a) Accounting entity negative cash balances may not exist more than 7 working days in the funds provided in subsections (1)(a) through (1)(c) of 17-2-102.

(b) Units of the university system and postsecondary vocational-technical centers must maintain positive cash balances in the subfunds provided in subsections (1)(d)(i)(A) through (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) of 17-2-102."

**Section 2. Applicability.** This act applies retroactively, within the meaning of 1-2-109, to loans processed on or after July 1, 1985.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved June 30, 1986.

## CHAPTER NO. 2

[SB 3]

AN ACT REMOVING THE LIMITATION ON THE AMOUNT OF NOTES THAT THE BOARD OF EXAMINERS MAY ISSUE IN ANTICIPATION OF REVENUE; REPEALING SECTION 17-1-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Repealer.** Section 17-1-202, MCA, is repealed.

**Section 2. Effective date.** This act is effective on passage and approval.

Approved June 30, 1986.

## CHAPTER NO. 3

[HB 15]

AN ACT REALLOCATING, UNTIL JUNE 30, 1989, 5 PERCENT OF THE COAL SEVERANCE TAX REVENUE TO THE GENERAL FUND FROM THE TRUST FUND WHOSE PURPOSE IS PARKS ACQUISITION AND MANAGEMENT AND PROTECTION OF CERTAIN WORKS OF ART; EXPANDING THE NUMBER OF PARKS THAT CAN BE OPERATED AND MAINTAINED WITH INCOME FROM THE TRUST FUND; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-35-108, MCA, is amended to read:

**"15-35-108. Disposal of severance taxes.** Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Starting July 1, 1986, and ending June 30, 1987, 6% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund. Starting July 1, 1987, and ending June 30, 1993, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

(a) 2 ½% until July 1, 1987, and thereafter 4 ½% to the state special revenue fund to the credit of the alternative energy research development and demonstration account;

(b) 26% until July 1, 1987, and thereafter 37 ½% to the state special revenue fund to the credit of the local impact and education trust fund account;

(c) 10% to the state special revenue fund for state equalization aid to public schools of the state;

(d) 1% to the state special revenue fund to the credit of the county land planning account;

(e) 1 ¼% to the credit of the renewable resource development bond fund;

(f) *starting July 1, 1986, and ending June 30, 1989, 5% to the general fund, and after June 30, 1989, 5% to a nonexpendable trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:*

(i) ⅓ for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) ⅔ for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102;

(g) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(h) ½ of 1% to the state special revenue fund for conservation districts;

(i) 1 ¼% to the debt service fund type to the credit of the water development debt service fund;

(j) 4% until July 1, 1987, to the highway reconstruction trust fund account in the state special revenue fund;

(k) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved June 30, 1986.

## CHAPTER NO. 4

[HB 16]

AN ACT TRANSFERRING EXCESS INCOME EARNED ON THE SOCIAL SECURITY CONTRIBUTION ACCOUNT AFTER JULY 1, 1987, TO THE STATE GENERAL FUND; TRANSFERRING EXCESS EARNED INCOME FROM THE CURRENT AND PREVIOUS FISCAL YEARS AS OF JUNE 30, 1986, TO THE STATE GENERAL FUND; PROVIDING ALTERNATIVE FUNDING FOR ADMINISTERING THE RETIREMENT SYSTEMS; AMENDING SECTIONS 19-1-602, 19-3-603, AND 19-3-805, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-1-602, MCA, is amended to read:

**"19-1-602. Management of account.** (1) All moneys in the account shall be mingled and undivided.

(2) Subject to the provisions of this chapter, the state agency is vested with full power, authority, and jurisdiction over the account, including all moneys and property or securities belonging thereto. It may perform any and all acts, whether or not specifically designated, which are necessary to the administration of the account and are consistent with the provisions of this chapter.

(3) The board of investments shall invest the account in investments of the same character as are permitted by 17-6-211 for the investment of moneys in the long-term investment fund. The state agency shall credit all interest and income earned on the account in excess of that which, in its judgment, may be needed for the purposes set forth in 19-1-603 to the *state general fund*.

(4) *No later than June 30, 1986, the state agency shall calculate an amount equal to the earned income from current and previous fiscal years in the contribution account, less all payments and credits due or owing, and transfer this amount to the state general fund."*

Section 2. Section 19-3-603, MCA, is amended to read:



**"19-3-603. Restrictions on use of fund.** (1) Except as herein provided, no member and no employee of the department of administration may:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing therefrom;

(b) directly or indirectly, for himself or as an agent or partner of others, borrow any of its funds or deposits;

(c) in any manner use the same except to make such current and necessary payments as are authorized by the department; or

(d) become an endorser or surety as to or in any manner an obligor for investments for the retirement system.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable *administrative* expenses of the retirement systems administered by the board."

Section 3. Section 19-3-805, MCA, is amended to read:

**"19-3-805. Administrative expenses.** (1) *The legislature finds that proper administration of the retirement fund benefits both employers and members and continues to benefit members after retirement.*

(2) *Effective July 1, 1986, the administrative expenses of the retirement systems administered by the board must be paid from the income earnings on the retirement fund, except as provided in subsection (3). The board shall compute the administrative expenses attributable to each retirement system administered by the board and transfer that amount from the retirement system's pension trust fund to the retirement fund.*

(3) In addition to the contributions elsewhere provided in this chapter, on January 1 of each year each employer shall contribute on behalf of each member then in its employ a membership fee of \$1. The appropriation of these fees, together with other moneys appropriated for that purpose, shall be used for the purpose of defraying the administrative expense of this chapter. Any request for an increase of spending authority for administrative expenses requires a budget amendment and is subject to Title 17, chapter 7, part 4."

Section 4. **Extension of authority.** Any existing authority of the public employees' retirement board to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 5. **Effective dates.** (1) This act, except for the amendment to 19-1-602(3), is effective on passage and approval.

(2) The amendment to 19-1-602(3) is effective July 1, 1987.

Approved June 30, 1986.

**CHAPTER NO. 5**

[HB 23]

**AN ACT APPROPRIATING COAL BOARD MONEY TO THE GENERAL FUND; AMENDING SECTION 90-6-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.***Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriation.** (1) There is appropriated to the state general fund from any money in the local impact and education trust fund account established under 90-6-202 and available to the Coal Board for grants and loans under 90-6-206:

(a) \$680,000 for the fiscal year ending June 30, 1986; and

(b) \$1,000,000 for the fiscal year ending June 30, 1987.

(2) Money appropriated in:

(a) subsection (1)(a) is for use in the fiscal year beginning July 1, 1985, and is exempt from the provisions of 17-7-304; and

(b) subsection (1)(b) is for use in the fiscal year beginning July 1, 1986, and is exempt from the provisions of 17-7-304.

**Section 2.** Section 90-6-205, MCA, is amended to read:

**"90-6-205. (Temporary) Coal board — general powers.** The board may:

(1) retain professional consultants and advisors;

(2) adopt rules governing its proceedings;

(3) consider applications for grants from the local impact and education trust fund account;

(4) consider applications for loans from the local impact and education trust fund account for periods and interest rates to be determined by the board; and

(5) award grants and loans, subject to 90-6-207, not to exceed in any one year seven-elevenths and after June 30, 1979, and before July 1, 1985, seven-fifteenths and after June 30, 1985, 23.08% of the revenue paid into the local impact and education trust fund account, less the appropriation provided in section 1, Chapter 733, Laws of 1985, and less the appropriation provided in [section 1];

(a) to local governmental units, state agencies, and governing bodies of federally recognized Indian tribes to assist local governmental units and federally recognized Indian tribes in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development; and

(b) notwithstanding the provisions of 90-6-207, to the department of highways established in 2-15-2501 to expedite the construction, repair, and maintenance of deficient sections of highway within the area designated in 90-6-210 if the deficiency is the direct result of increased traffic accompanying the development of coal resources; and

(c) provided that as used in this subsection (5), "revenue paid" does not include interest income from the account reinvested in the account in trust for the public schools and the university system. Grants and loans may be from current allocations only, and no part of the principal or income of the trust referred to in 90-6-211 may be used for this purpose. The money derived from loan repayments, including the interest thereon, must be deposited to the credit of the local impact fund referred to in 90-6-202.

(6) award a grant to a local government unit for the purpose of paying for part or all of the credit that the local government unit is obligated to give to a major new industrial facility that has prepaid property taxes under 15-16-201. The board must award the grant in accordance with 90-6-206.

**90-6-205. (Effective July 1, 1987) Coal board — general powers.** The board may:

- (1) retain professional consultants and advisors;
- (2) adopt rules governing its proceedings;
- (3) consider applications for grants from the local impact and education trust fund account;
- (4) consider applications for loans from the local impact and education trust fund account for periods and interest rates to be determined by the board; and
- (5) award grants and loans, subject to 90-6-207, not to exceed in any one year seven-elevenths and after June 30, 1979, seven-fifteenths of the revenue paid into the local impact and education trust fund account:

(a) to local governmental units, state agencies, and governing bodies of federally recognized Indian tribes to assist local governmental units and federally recognized Indian tribes in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development; and

(b) notwithstanding the provisions of 90-6-207, to the department of highways established in 2-15-2501 to expedite the construction, repair, and maintenance of deficient sections of highway within the area designated in 90-6-210 if the deficiency is the direct result of increased traffic accompanying the development of coal resources; and

(c) provided that as used in this subsection (5), "revenue paid" does not include interest income from the account reinvested in the account in trust for the public schools and the university system. Grants and loans may be from current allocations only, and no part of the principal or income of the trust referred to in 90-6-211 may be used for this purpose. The money

derived from loan repayments, including the interest thereon, must be deposited to the credit of the local impact fund referred to in 90-6-202.

(6) award a grant to a local government unit for the purpose of paying for part or all of the credit that the local government unit is obligated to give to a major new industrial facility that has prepaid property taxes under 15-16-201. The board must award the grant in accordance with 90-6-206."

**Section 3. Effective date.** This act is effective on passage and approval, and if approved after June 30, 1986, the appropriation in subsection (1)(a) of section 1 applies retroactively within the meaning of 1-2-109.

Approved June 30, 1986.

## CHAPTER NO. 6

[HB 31]

AN ACT CONTINUING FISCAL YEAR 1986 STATE EMPLOYEE COMPENSATION PLANS AND GROUP BENEFITS LEVELS FOR FISCAL YEAR 1987; AMENDING SECTIONS 2-18-301, 2-18-303 THROUGH 2-18-305, 2-18-311, 2-18-313 THROUGH 2-18-315, AND 2-18-703, MCA, AND SECTION 9, CHAPTER 740, LAWS OF 1985; REPEALING SECTION 2-18-312, MCA; AND PROVIDING EFFECTIVE DATES, A CONTINGENT TERMINATION DATE, AND CONTINGENT RETROACTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-18-301, MCA, is amended to read:

**"2-18-301. Purpose and intent of part — rules.** (1) The purpose of this part is to provide the compensation necessary to attract and retain competent and qualified employees in order to perform the services the state is required to provide to its citizens.

(2) It is the intent of the legislature that, for the biennium ending June 30, 1987, the:

(a) pay schedules provided for in 2-18-311 and 2-18-313 through 2-18-315 supersede any other plan or systems established through collective bargaining after the adjournment of the 49th legislature;

(b) pay levels provided for in 2-18-311 and 2-18-313 through 2-18-315 may not be increased through collective bargaining after adjournment of the 49th legislature; and

(c) total funds required to implement the pay schedules provided for in 2-18-311 and 2-18-313 through 2-18-315 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the 49th legislature.

(3) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(4) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part."

Section 2. Section 2-18-303, MCA, is amended to read:

**"2-18-303. Procedures for utilizing pay schedules.** (1) The pay schedule provided in 2-18-311 shall be implemented as follows:

(a) The pay schedule provided in 2-18-311 indicates the annual compensation for the fiscal years ending June 30, 1986, and June 30, 1987, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(b) Each new employee shall advance from step 1 to step 2 of a grade after successfully completing 6 months of probationary service. The anniversary date of an employee shall be established at the end of the probationary period in accordance with rules promulgated by the department.

(c) (i) The compensation of each employee on the first day of the first pay period in fiscal year 1986 shall be that amount which corresponds to the grade and step occupied on the last day of the preceding fiscal year of 1985.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1987 shall be that amount which corresponds to the grade and step occupied on the last day of the fiscal year 1985.

(2) The pay schedule provided in 2-18-311 and the provisions of subsection (1) of this section do not apply to those institutional teachers, liquor store occupations, or blue-collar occupations compensated under the pay schedules provided in 2-18-313, 2-18-314, or 2-18-315.

(3) The pay schedules provided in 2-18-313, 2-18-314, or 2-18-315 shall be implemented as follows:

(a) (i) The pay schedule provided in 2-18-313 indicates the annual compensation for the contracted school term for teachers employed by institutions under the authority of the department of institutions for fiscal years 1986 and 1987.

(ii) The compensation of each teacher on the first day of the first pay period in July, 1985, shall be that amount which corresponds to his level of academic achievement and the step occupied on June 30, 1985.

(iii) The compensation of each teacher on the first day of the first pay period in July, 1986, shall be that amount which corresponds to his level of achievement and the step occupied on June 30, 1985.

(b) (i) The pay schedule provided in 2-18-314 indicates the maximum hourly compensation for fiscal years ending June 30, 1986, and June 30, 1987, for those employees in liquor store occupations who have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1986 or 1987, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(c) (i) The pay *schedule* provided in 2-18-315 *indicates* the maximum hourly compensation for fiscal years ending June 30, 1986, and June 30, 1987, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1986 or 1987, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) No member of a bargaining unit may receive the amounts indicated in the respective pay schedules provided in 2-18-311 and 2-18-313 through 2-18-315 until the bargaining unit of which he is a member ratifies a completely integrated collective bargaining agreement covering the biennium ending June 30, 1987.

(ii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, 1985, retroactivity to that date may be negotiated.

(iii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, 1985, members of the bargaining unit involved will continue to receive the compensation they were receiving as of June 30, 1985.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules provided in 2-18-313 through 2-18-315 may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee shall not be reduced by the implementation of the pay schedules provided for in 2-18-311 and 2-18-313 through 2-18-315.

(6) The department may authorize a separate pay schedule for medical doctors if the rates provided in 2-18-311 are not sufficient to attract and retain fully licensed and qualified physicians at the state institutions.

(7) 'The department may develop programs which will enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. Insofar as the program may apply to employees within a collective bargaining unit, it shall be a negotiable subject under 39-31-305.'

Section 3. Section 2-18-304, MCA, is amended to read:

**"2-18-304. Longevity allowance.** (1) In addition to the compensation provided for in 2-18-311, 2-18-313, 2-18-314, or 2-18-315, each

employee who has completed 5 years of uninterrupted state service shall receive the larger of \$10 a month or 10% of the difference between the base compensation for his grade and step (where applicable) and the base compensation for the next highest grade and corresponding step (where applicable) multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service. Service to the state is not interrupted by authorized leaves of absence.

(2) (a) For the purpose of determining years of service under this section, an employee must be credited with 1 year of service for each period of:

(i) 2,080 hours of service following his date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which he is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 uninterrupted calendar months following his date of employment in which he was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any one month. An employee of a school at a state institution or the university system must be credited with 1 year of service if he is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, shall use the method provided in subsection (2)(a)(i) to calculate years of service under this section."

Section 4. Section 2-18-305, MCA, is amended to read:

**"2-18-305. Allocation between wages and group benefits.** (1) The dollar amounts shown in the respective pay schedules provided in 2-18-311, 2-18-313, 2-18-314, or 2-18-315, as the case may be, represent the maximum amount allocated by the state for wages and group benefits, exclusive of longevity as defined in 2-18-304. Except as provided in subsection (2) of this section, that amount specifically allocated for group benefits shall be determined by 2-18-703. An employee who elects not to be covered by a state employee group benefit plan will receive as wages the amount shown in the appropriate pay schedule less the state contribution for group benefits as determined by 2-18-703.

(2) Employees may, through collective bargaining, determine the allocation of the amounts shown in the pay schedules provided in 2-18-311, 2-18-313, 2-18-314, or 2-18-315, as the case may be, between wages and group benefits, except that in no case may the group benefits allocation be less than the amounts provided in 2-18-703."

Section 5. Section 2-18-311, MCA, is amended to read:

**"2-18-311. Statewide pay schedule for fiscal years 1986 and 1987.** The statewide classification pay schedule for fiscal years 1986 and 1987 is as follows:

Annual Hours — 2080  
Pay Matrix — State

Note: Includes Insurance  
Matrix Type — Annual

| GRADE | STEP   |        |        |        |        |        |        |        |        |        |        |        |         |
|-------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|---------|
|       | 1      | 2      | 3      | 4      | 5      | 6      | 7      | 8      | 9      | 10     | 11     | 12     | 13      |
| 1     | 9,048  | 9,729  | 9,924  | 10,122 | 10,324 | 10,530 | 10,741 | 10,956 | 11,175 | 11,399 | 11,627 | 11,860 | 12,334  |
| 2     | 9,530  | 10,247 | 10,452 | 10,661 | 10,874 | 11,091 | 11,313 | 11,539 | 11,770 | 12,005 | 12,245 | 12,490 | 12,990  |
| 3     | 10,054 | 10,811 | 11,027 | 11,248 | 11,473 | 11,702 | 11,936 | 12,175 | 12,419 | 12,667 | 12,920 | 13,178 | 13,705  |
| 4     | 10,627 | 11,427 | 11,656 | 11,889 | 12,127 | 12,370 | 12,617 | 12,869 | 13,126 | 13,389 | 13,657 | 13,930 | 14,487  |
| 5     | 11,259 | 12,106 | 12,348 | 12,595 | 12,847 | 13,104 | 13,366 | 13,633 | 13,906 | 14,184 | 14,468 | 14,757 | 15,347  |
| 6     | 11,951 | 12,850 | 13,107 | 13,369 | 13,636 | 13,909 | 14,187 | 14,471 | 14,760 | 15,055 | 15,356 | 15,663 | 16,290  |
| 7     | 12,718 | 13,675 | 13,949 | 14,228 | 14,513 | 14,803 | 15,099 | 15,401 | 15,709 | 16,023 | 16,343 | 16,670 | 17,337  |
| 8     | 13,545 | 14,564 | 14,855 | 15,152 | 15,455 | 15,764 | 16,079 | 16,401 | 16,729 | 17,064 | 17,405 | 17,753 | 18,463  |
| 9     | 14,463 | 15,552 | 15,863 | 16,180 | 16,504 | 16,834 | 17,171 | 17,514 | 17,864 | 18,221 | 18,585 | 18,957 | 19,715  |
| 10    | 15,469 | 16,633 | 16,966 | 17,305 | 17,651 | 18,004 | 18,364 | 18,731 | 19,106 | 19,488 | 19,878 | 20,276 | 21,087  |
| 11    | 16,568 | 17,815 | 18,171 | 18,534 | 18,905 | 19,283 | 19,669 | 20,062 | 20,463 | 20,872 | 21,289 | 21,715 | 22,584  |
| 12    | 17,784 | 19,123 | 19,505 | 19,895 | 20,293 | 20,699 | 21,113 | 21,535 | 21,966 | 22,405 | 22,853 | 23,310 | 24,242  |
| 13    | 19,112 | 20,551 | 20,962 | 21,381 | 21,809 | 22,245 | 22,690 | 23,144 | 23,607 | 24,079 | 24,561 | 25,052 | 26,054  |
| 14    | 20,767 | 22,330 | 22,777 | 23,233 | 23,698 | 24,172 | 24,655 | 25,148 | 25,651 | 26,164 | 26,687 | 27,221 | 28,310  |
| 15    | 22,491 | 24,184 | 24,668 | 25,161 | 25,664 | 26,177 | 26,701 | 27,235 | 27,780 | 28,336 | 28,903 | 29,481 | 30,660  |
| 16    | 24,427 | 26,266 | 26,791 | 27,327 | 27,874 | 28,431 | 29,000 | 29,580 | 30,172 | 30,775 | 31,391 | 32,019 | 33,300  |
| 17    | 26,523 | 28,519 | 29,089 | 29,671 | 30,264 | 30,869 | 31,486 | 32,116 | 32,758 | 33,413 | 34,081 | 34,763 | 36,154  |
| 18    | 28,838 | 31,009 | 31,629 | 32,262 | 32,907 | 33,565 | 34,236 | 34,921 | 35,619 | 36,331 | 37,058 | 37,799 | 39,311  |
| 19    | 31,383 | 33,745 | 34,420 | 35,108 | 35,810 | 36,526 | 37,257 | 38,002 | 38,762 | 39,537 | 40,328 | 41,135 | 41,135  |
| 20    | 34,161 | 36,732 | 37,467 | 38,216 | 38,980 | 39,760 | 40,555 | 41,366 | 42,193 | 43,037 | 43,898 | 43,898 | 43,898  |
| 21    | 37,217 | 40,018 | 40,818 | 41,634 | 42,467 | 43,316 | 44,182 | 45,066 | 45,967 | 46,886 | 46,886 | 46,886 | 46,886  |
| 22    | 40,570 | 43,624 | 44,496 | 45,386 | 46,294 | 47,220 | 48,164 | 49,127 | 50,110 | 50,110 | 50,110 | 50,110 | 50,110  |
| 23    | 44,240 | 47,570 | 48,521 | 49,491 | 50,481 | 51,491 | 52,521 | 53,571 | 53,571 | 53,571 | 53,571 | 53,571 | 53,571  |
| 24    | 48,272 | 51,905 | 52,943 | 54,002 | 55,082 | 56,184 | 57,308 | 57,308 | 57,308 | 57,308 | 57,308 | 57,308 | 57,308  |
| 25    | 52,699 | 56,666 | 57,799 | 58,955 | 60,134 | 61,337 | 61,337 | 61,337 | 61,337 | 61,337 | 61,337 | 61,337 | 61,337" |

Section 6. Section 2-18-313, MCA, is amended to read:



**"2-18-313. Institutional teachers' pay schedules.** (1) The 12-month pay schedule for institutional teachers for fiscal years 1986 and 1987 is as follows:

| Annual Hours -- 2080<br>Pay Matrix -- Teachers<br>Term -- Twelve Months |           |           |           | Note: Includes Insurance<br>Matrix Type -- Annual |           |           |
|-------------------------------------------------------------------------|-----------|-----------|-----------|---------------------------------------------------|-----------|-----------|
| Education Level                                                         |           |           |           |                                                   |           |           |
| YEARS OF<br>EXPERI-<br>ENCE                                             | BA        | BA+1      | BA+2      | BA+3                                              | MA        | MA+1      |
| (Step)                                                                  | (Grade 1) | (Grade 2) | (Grade 3) | (Grade 4)                                         | (Grade 5) | (Grade 6) |
| 0                                                                       | 18,486    | 19,067    | 19,663    | 19,954                                            | 20,244    | 20,840    |
| 1                                                                       | 19,170    | 19,817    | 20,466    | 20,789                                            | 21,114    | 21,761    |
| 2                                                                       | 19,851    | 20,567    | 21,266    | 21,626                                            | 21,983    | 22,683    |
| 3                                                                       | 20,534    | 21,319    | 22,068    | 22,461                                            | 22,854    | 23,604    |
| 4                                                                       | 21,216    | 22,068    | 22,870    | 23,295                                            | 23,724    | 24,526    |
| 5                                                                       | 21,899    | 22,820    | 23,673    | 24,133                                            | 24,594    | 25,448    |
| 6                                                                       | 22,579    | 23,569    | 24,473    | 24,969                                            | 25,463    | 26,367    |
| 7                                                                       | 23,263    | 24,321    | 25,276    | 25,806                                            | 26,334    | 27,289    |
| 8                                                                       | 23,944    | 25,070    | 26,078    | 26,640                                            | 27,205    | 28,210    |
| 9                                                                       | 24,627    | 25,822    | 26,880    | 27,475                                            | 28,073    | 29,131    |
| 10                                                                      | 25,311    | 26,572    | 27,681    | 28,313                                            | 28,944    | 30,052    |

(2) The 9-month pay schedule for institutional teachers for fiscal years 1986 and 1987 is as follows:

|                                                                    |           |           |           |                                                  |           |           |
|--------------------------------------------------------------------|-----------|-----------|-----------|--------------------------------------------------|-----------|-----------|
| Annual Hours — 1480<br>Pay Matrix — Teachers<br>Term — Nine Months |           |           |           | Note: Includes Insurance<br>Matrix Type — Annual |           |           |
| Education Level                                                    |           |           |           |                                                  |           |           |
| YEARS OF<br>EXPERI-<br>ENCE                                        | BA        | BA+1      | BA+2      | BA+3                                             | MA        | MA+1      |
| (Step)                                                             | (Grade 1) | (Grade 2) | (Grade 3) | (Grade 4)                                        | (Grade 5) | (Grade 6) |
| 0                                                                  | 14,195    | 14,630    | 15,077    | 15,296                                           | 15,513    | 15,960    |
| 1                                                                  | 14,708    | 15,193    | 15,680    | 15,922                                           | 16,166    | 16,651    |
| 2                                                                  | 15,218    | 15,755    | 16,280    | 16,550                                           | 16,817    | 17,342    |
| 3                                                                  | 15,731    | 16,319    | 16,881    | 17,176                                           | 17,471    | 18,033    |
| 4                                                                  | 16,242    | 16,881    | 17,483    | 17,801                                           | 18,123    | 18,725    |
| 5                                                                  | 16,754    | 17,445    | 18,085    | 18,430                                           | 18,776    | 19,416    |
| 6                                                                  | 17,264    | 18,007    | 18,685    | 19,057                                           | 19,427    | 20,105    |
| 7                                                                  | 17,777    | 18,571    | 19,287    | 19,685                                           | 20,081    | 20,797    |
| 8                                                                  | 18,288    | 19,133    | 19,889    | 20,310                                           | 20,734    | 21,488    |
| 9                                                                  | 18,800    | 19,697    | 20,490    | 20,936                                           | 21,385    | 22,178    |
| 10                                                                 | 19,313    | 20,259    | 21,091    | 21,565                                           | 22,038    | 22,869"   |

Section 7. Section 2-18-314, MCA, is amended to read:

**"2-18-314. Liquor store occupations pay schedule.** The pay schedule for liquor store occupations for fiscal years 1986 and 1987 is as follows:

Annual Hours — 2080  
Pay Matrix — Retail Clerk

Note: With Insurance  
Matrix Type — Hourly

| Grade | \$/Hour<br>W/Ins. |
|-------|-------------------|
| L1    | 0.000             |
| L2    | 7.404             |
| L3    | 7.904             |
| L4    | 8.183             |
| L5    | 8.474             |
| L6    | 9.084             |
| L7    | 9.748             |
| L8    | 10.492"           |

Section 8. Section 2-18-315, MCA, is amended to read:

**"2-18-315. Blue-collar pay schedule.** The pay schedule for blue-collar workers for fiscal years 1986 and 1987 is as follows:

Annual Hours — 2080  
Pay Matrix — Blue-Collar

Note: With Insurance  
Matrix Type — Hourly

| Grade | \$/Hour<br>W/Ins. |
|-------|-------------------|
| B1    | 7.836             |
| B2    | 8.236             |
| B3    | 8.636             |
| B4    | 9.036             |
| B5    | 9.436             |
| B6    | 9.836             |
| B7    | 10.236            |
| B8    | 10.636            |
| B9    | 11.036            |
| B10   | 11.436            |
| B11   | 11.836            |
| B12   | 12.236            |
| B00   | 12.636"           |

Section 9. Section 2-18-703, MCA, is amended to read:

**"2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, shall contribute the amount specified in this section towards the group benefits cost.

(2) For employees defined in 2-18-701, other than members of collective bargaining units, and for members of the legislature, the employer contribution for group benefits shall be \$105 per month for the fiscal year ending June 30, 1986, and for each fiscal year thereafter. Permanent part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution as wages. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act of 1965,

as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than \$10 per month.

(4) Unused employer contributions for any state employee shall be transferred to an account established for this purpose by the department and upon such transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member."

Section 10. Section 9, Chapter 740, Laws of 1985, is amended to read:

"Section 9. **Appropriation.** There is appropriated to the office of budget and program planning \$8,400,000 from the general fund for the biennium ending June 30, 1987, to carry out the provisions of this act as it pertains to the legislative, judicial, and executive branch agencies. The office of budget and program planning is authorized to increase the expenditure authority of the legislative, judicial, and executive branch agencies by \$5,200,000 for the biennium ending June 30, 1987, from funds other than the general fund which accrue under provisions of law to the respective agencies to carry out the provisions of this act."

Section 11. **Statewide pay schedule for fiscal year 1987.** The statewide classification pay schedule for fiscal year 1987 is as follows:

| Annual Hours — 2080<br>Pay Matrix — State |        |        |        |        |        |        |        | Note: Includes Insurance<br>Matrix Type — Annual |        |        |        |        |        |  |
|-------------------------------------------|--------|--------|--------|--------|--------|--------|--------|--------------------------------------------------|--------|--------|--------|--------|--------|--|
| STEP                                      |        |        |        |        |        |        |        |                                                  |        |        |        |        |        |  |
| GRADE                                     | 1      | 2      | 3      | 4      | 5      | 6      | 7      | 8                                                | 9      | 10     | 11     | 12     | 13     |  |
| 1                                         | 9,392  | 10,099 | 10,301 | 10,507 | 10,717 | 10,931 | 11,150 | 11,373                                           | 11,600 | 11,832 | 12,069 | 12,310 | 12,802 |  |
| 2                                         | 9,874  | 10,617 | 10,829 | 11,046 | 11,267 | 11,492 | 11,722 | 11,956                                           | 12,195 | 12,439 | 12,688 | 12,942 | 13,460 |  |
| 3                                         | 10,398 | 11,181 | 11,405 | 11,633 | 11,866 | 12,103 | 12,345 | 12,592                                           | 12,844 | 13,101 | 13,363 | 13,630 | 14,175 |  |
| 4                                         | 10,971 | 11,797 | 12,033 | 12,274 | 12,519 | 12,769 | 13,024 | 13,284                                           | 13,550 | 13,821 | 14,097 | 14,379 | 14,954 |  |
| 5                                         | 11,603 | 12,476 | 12,726 | 12,981 | 13,241 | 13,506 | 13,776 | 14,052                                           | 14,333 | 14,620 | 14,912 | 15,210 | 15,818 |  |
| 6                                         | 12,295 | 13,220 | 13,484 | 13,754 | 14,029 | 14,310 | 14,596 | 14,888                                           | 15,186 | 15,490 | 15,800 | 16,116 | 16,761 |  |
| 7                                         | 13,062 | 14,045 | 14,326 | 14,613 | 14,905 | 15,203 | 15,507 | 15,817                                           | 16,133 | 16,456 | 16,785 | 17,121 | 17,806 |  |
| 8                                         | 13,889 | 14,934 | 15,233 | 15,538 | 15,849 | 16,166 | 16,489 | 16,819                                           | 17,155 | 17,498 | 17,848 | 18,205 | 18,933 |  |
| 9                                         | 14,807 | 15,922 | 16,240 | 16,565 | 16,896 | 17,234 | 17,579 | 17,931                                           | 18,290 | 18,656 | 19,029 | 19,410 | 20,186 |  |
| 10                                        | 15,813 | 17,003 | 17,343 | 17,690 | 18,044 | 18,405 | 18,773 | 19,148                                           | 19,531 | 19,922 | 20,320 | 20,726 | 21,555 |  |
| 11                                        | 16,912 | 18,185 | 18,549 | 18,920 | 19,298 | 19,684 | 20,078 | 20,480                                           | 20,890 | 21,308 | 21,734 | 22,169 | 23,056 |  |
| 12                                        | 18,128 | 19,493 | 19,883 | 20,281 | 20,687 | 21,101 | 21,523 | 21,953                                           | 22,392 | 22,840 | 23,297 | 23,763 | 24,714 |  |
| 13                                        | 19,464 | 20,929 | 21,348 | 21,775 | 22,211 | 22,655 | 23,108 | 23,570                                           | 24,041 | 24,522 | 25,012 | 25,512 | 26,532 |  |
| 14                                        | 21,140 | 22,731 | 23,186 | 23,650 | 24,123 | 24,605 | 25,097 | 25,599                                           | 26,111 | 26,633 | 27,166 | 27,709 | 28,817 |  |
| 15                                        | 22,885 | 24,608 | 25,100 | 25,602 | 26,114 | 26,636 | 27,169 | 27,712                                           | 28,266 | 28,831 | 29,408 | 29,996 | 31,196 |  |
| 16                                        | 24,846 | 26,716 | 27,250 | 27,795 | 28,351 | 28,918 | 29,496 | 30,086                                           | 30,688 | 31,302 | 31,928 | 32,567 | 33,870 |  |
| 17                                        | 26,967 | 28,997 | 29,577 | 30,169 | 30,772 | 31,387 | 32,015 | 32,655                                           | 33,308 | 33,974 | 34,653 | 35,346 | 36,760 |  |
| 18                                        | 29,312 | 31,518 | 32,148 | 32,791 | 33,447 | 34,116 | 34,798 | 35,494                                           | 36,204 | 36,928 | 37,667 | 38,420 | 39,957 |  |
| 19                                        | 31,888 | 34,288 | 34,974 | 35,673 | 36,386 | 37,114 | 37,856 | 38,613                                           | 39,385 | 40,173 | 40,976 | 41,796 | 43,451 |  |
| 20                                        | 34,701 | 37,313 | 38,059 | 38,820 | 39,596 | 40,388 | 41,196 | 42,020                                           | 42,860 | 43,717 | 44,591 | 45,481 | 47,251 |  |
| 21                                        | 37,795 | 40,640 | 41,453 | 42,282 | 43,128 | 43,991 | 44,871 | 45,768                                           | 46,683 | 47,617 | 47,617 | 47,617 | 47,617 |  |
| 22                                        | 41,191 | 44,291 | 45,177 | 46,081 | 47,003 | 47,943 | 48,902 | 49,880                                           | 50,878 | 50,878 | 50,878 | 50,878 | 50,878 |  |
| 23                                        | 44,906 | 48,286 | 49,252 | 50,237 | 51,242 | 52,267 | 53,312 | 54,378                                           | 54,378 | 54,378 | 54,378 | 54,378 | 54,378 |  |
| 24                                        | 48,988 | 52,675 | 53,729 | 54,804 | 55,900 | 57,018 | 58,158 | 58,158                                           | 58,158 | 58,158 | 58,158 | 58,158 | 58,158 |  |
| 25                                        | 53,471 | 57,496 | 58,646 | 59,819 | 61,015 | 62,235 | 62,235 | 62,235                                           | 62,235 | 62,235 | 62,235 | 62,235 | 62,235 |  |

Section 12. **Repealer.** Section 2-18-312, MCA, is repealed.

**Section 13. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 14. Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

**Section 15. Extension of authority.** Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 16. Effective dates — contingent termination.** (1) Sections 1 through 10 and 12 through 16 are effective on passage and approval.

(2) Section 11 is effective July 18, 1986, and applies retroactively, within the meaning of 1-2-109, to July 1, 1986, if by that date the department of administration certifies to the governor that at least 95% of the collectively bargained agreements with the state of Montana have not been renegotiated to include the continuation of the fiscal year 1986 state employee compensation plan.

(3) If by July 18, 1986, the department of administration certifies to the governor that at least 95% of the collectively bargained agreements with the state of Montana have not been renegotiated to include the continuation of the fiscal year 1986 state employee compensation plan, sections 1 through 9 and 13 through 15 terminate and such termination applies retroactively, within the meaning of 1-2-109, to July 1, 1986.

Approved June 30, 1986.

## CHAPTER NO. 7

[SB 9]

AN ACT TO ADJUST THE MAXIMUM GENERAL FUND BUDGET SCHEDULES FOR ELEMENTARY SCHOOLS AND HIGH SCHOOLS FOR FISCAL YEAR 1987; TO ESTABLISH THE BASE YEAR FOR SCHEDULES AT THE FISCAL YEAR 1987 LEVEL; AMENDING SECTIONS 20-9-318 AND 20-9-319, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-9-318, MCA, is amended to read:

**“20-9-318. Elementary school maximum budget schedule for 1986-87 and succeeding years.** For 1986-87 and succeeding school years, the elementary school maximum budget schedule is as follows:

(1) For each elementary school having an ANB of nine or fewer pupils, the maximum shall be \$20,158 if said school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be \$20,158 plus \$842.50 per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of at least 14 pupils but less than 18 pupils that qualify for instructional aide funding under 20-9-322, the maximum shall be \$33,042 plus \$842.50 per pupil on the basis of the average number belonging over 14.

(4) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be \$27,741 plus \$842.50 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(5) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be \$44,290 plus \$527.60 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(6) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of \$1,957 shall be decreased at the rate of \$1.90 for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of \$1,843 shall be decreased at the rate of \$1.74 for each additional pupil until the ANB shall have reached 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum shall not exceed \$1,496 for each pupil.

(7) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule."

Section 2. Section 20-9-319, MCA, is amended to read:

**"20-9-319. High school maximum budget schedule for 1986-87 and succeeding years.** For 1986-87 and succeeding school years, the high school maximum budget schedule is as follows:

(1) For each high school having an ANB of 24 or fewer pupils, the maximum shall be \$114,845.

(2) For a secondary school having an ANB of more than 24 pupils, the maximum \$4,785 shall be decreased at the rate of \$26.10 for each additional pupil until the ANB shall have reached a total of 40 such pupils.

(3) For a school having an ANB of more than 40 pupils, the maximum of \$4,368 shall be decreased at the rate of \$26.10 for each additional pupil until the ANB shall have reached 100 pupils.

(4) For a school having an ANB of more than 100 pupils, a maximum of \$2,802 shall be decreased at the rate of \$4.37 for each additional pupil until the ANB shall have reached 200 pupils.

(5) For a school having an ANB of more than 200 pupils, the maximum of \$2,365 shall be decreased by \$2.40 for each additional pupil until the ANB shall have reached 300 pupils.

(6) For a school having an ANB of more than 300 pupils, the maximum of \$2,125 shall be decreased at the rate of 44 cents until the ANB shall have reached 600 pupils.

(7) For a school having an ANB over 600 pupils, the maximum shall not exceed \$1,993 per pupil.

(8) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town, shall be treated as one school for the purpose of this schedule."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved June 30, 1986.

## CHAPTER NO. 8

[HB 39]

AN ACT GENERALLY REVISING THE RENEWABLE ENERGY SOURCES RESEARCH AND DEVELOPMENT STATUTES; PROVIDING FOR THE ADOPTION OF RULES FOR THE REPAYMENT OF GRANTS TO STATE GOVERNMENTAL UNITS; REQUIRING A BIENNIAL REPORT FOR GRANTS TO STATE GOVERNMENTAL UNITS; REQUIRING THAT GRANTS TO STATE GOVERNMENTAL UNITS EITHER BE REPAYED OR THAT AGENCY BUDGETS BE REDUCED COMMENSURATE WITH DOCUMENTED ENERGY SAVINGS; REQUIRING THAT GRANTS TO STATE GOVERNMENTAL UNITS BE ADMINISTERED ACCORDING TO TITLE 18, CHAPTER 2, MCA, BY THE DEPARTMENT OF ADMINISTRATION; ESTABLISHING AN ANNUAL ALLOCATION OF FUNDS; TRANSFERRING MONEY TO THE GENERAL FUND FROM THE ALTERNATIVE ENERGY AND ENERGY CONSERVATION RESEARCH DEVELOPMENT AND DEMONSTRATION ACCOUNT; AMENDING SECTIONS 90-4-104, 90-4-109, AND 90-4-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 90-4-104, MCA, is amended to read:

**"90-4-104. General powers of department.** The department may:

(1) employ a staff adequate to administer this part;

- (2) retain professional consultants and advisors;
- (3) adopt rules governing applications, granting, administration, and repayment of funds;
- (4) adopt rules governing applications for and administration and awarding of loans;
- (5) adopt rules governing the application for and administration and awarding of grants to state governmental units under 90-4-109;
- (6) *adopt rules governing the repayment of grants to state governmental units and the reduction of agency budgets under 90-4-109;*
- (7) consider applications and award grants or loans, subject to the availability of funds and to the appropriation of such funds by the legislature, from the alternative energy and energy conservation research development and demonstration funds for projects that will further the purposes of this part;
- (8) appoint an alternative energy advisory committee composed of representatives of state agencies and citizen members with expertise in alternative energy and energy conservation matters. The appointment of any such advisory committee shall be in keeping with 2-15-122."

Section 2. Section 90-4-109, MCA, is amended to read:

**"90-4-109. State governmental unit grants.** (1) (a) *The department may award grants from the alternative energy and energy conservation research development and demonstration account to state governmental units. These grants must be used to further the purposes of this part by providing money for state governmental units for energy conservation measures.*

(b) *State governmental units must apply to the department for grants.*

(c) *The department shall prescribe the form for applications and develop criteria for awarding grants under this section, including provisions requiring matching funds or repayment of grant funds to the alternative energy and energy conservation research development and demonstration account.*

(d) *Each agency awarded a grant shall either repay the grant or reduce its budget commensurate with the documented energy savings resulting from the grant.*

(2) *All grants awarded under this section must be administered by the department of administration according to Title 18, chapter 2."*

Section 3. Section 90-4-111, MCA, is amended to read:

**"90-4-111. Biennial report.** The department shall monitor the grants awarded under 90-4-106 and 90-4-109 and shall report its expenditures and other information concerning the implementation and effectiveness of specific projects or programs for which grants were awarded under

this part to the legislature at the beginning of each regular legislative session."

**Section 4. Annual allocation of funds.** (1) Each fiscal year the department shall allocate the funds appropriated from the alternative energy and energy conservation research development and demonstration account for the following:

- (a) grants under 90-4-104 and 90-4-106;
- (b) loans under 90-4-104 and 90-4-106;
- (c) grants to state governmental units under 90-4-109;
- (d) program administration; and
- (e) matching federal energy programs and petroleum violation escrow account money if consistent with the purposes of this chapter.

(2) To assure that the program offers the greatest possible benefits during the fiscal year, the department may reallocate funds among the categories specified in this section based on the availability of funds or the applications it receives and the department's evaluation of the relative merits of each project.

(3) From July 1, 1986, through June 30, 1987, the department may elect not to allocate any funds or accept any applications for the purpose of making grant or loan awards under this part.

**Section 5. Transfer.** (1) On June 30, 1986, \$1,000,000 of the money available to the department of natural resources and conservation in the alternative energy and energy conservation research development and demonstration account of the state special revenue fund must be transferred to the general fund.

(2) On or before June 30, 1987, \$350,000 of the money available to the department of natural resources and conservation in the alternative energy and energy conservation research development and demonstration account of the state special revenue fund must be transferred to the general fund.

**Section 6. Extension of authority.** Any existing authority of the department of natural resources and conservation or the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 7. Codification instruction.** Section 4 is intended to be codified as an integral part of Title 90, chapter 4, part 1, and the provisions of Title 90, chapter 4, part 1, apply to section 4.

**Section 8. Effective date.** This act is effective on passage and approval.

Approved June 30, 1986.



**CHAPTER NO. 9**

[HB 3]

AN ACT RETURNING THE SALARY OF LEGISLATORS TO THE LEVEL IN EFFECT PRIOR TO THE JANUARY 1, 1987, EFFECTIVE DATE OF THE SALARY RAISE ENACTED BY SECTION 3, CHAPTER 693, LAWS OF 1985; AMENDING SECTION 5-2-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 5-2-301, MCA, is amended to read:

**"5-2-301. Compensation and expenses for members while in session.** (1) Legislators are entitled to a salary commensurate to that of the daily rate of a grade 8, step 2, classified state employee *in effect when the regular session of the legislature in which they serve is convened under 5-2-103* for those days during which the legislature is in session. The president of the senate and the speaker of the house shall receive an additional \$5 a day in salary for those days during which the legislature is in session.

(2) Legislators may serve for no salary.

(3) Legislators are entitled to \$50 a day, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments shall stop when the legislature recesses for more than 3 days and shall resume when the legislature reconvenes.

(4) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel to the place of the holding of the session and to return to their place of residence at the conclusion of the session.

(5) In addition to the mileage allowance provided for in subsection (4), legislators, upon submittal of an appropriate claim for such mileage reimbursement to the office of the legislative council, are entitled to:

(a) three additional round trips to their place of residence during each regular session; and

(b) such additional round trips as are authorized by the legislature during special session.

(6) Legislators are not entitled to any additional mileage allowance under subsection (4) for a special session if it is convened within 7 days of a regular session."

Section 2. **Effective date.** This act is effective January 2, 1987.

Approved June 30, 1986.

**CHAPTER NO. 10**

[HB 33]

AN ACT REVISING LAWS RELATING TO PUBLIC ASSISTANCE; LIMITING THE DURATION OF ASSISTANCE PROVIDED TO ABLE-BODIED PERSONS; LIMITING THE AMOUNT OF MONTHLY GENERAL ASSISTANCE; REVISING INCOME ELIGIBILITY STANDARDS FOR GENERAL RELIEF MEDICAL ASSISTANCE; AMENDING SECTIONS 53-3-108, 53-3-109, 53-3-205, 53-3-206, AND 53-3-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-3-108, MCA, is amended to read:

**“53-3-108. Purpose.** (1) The legislature, in order to implement the provisions of Article XII, section 3, of the Montana constitution, finds that certain persons are in need of assistance because of misfortune and must be provided with certain assistance through programs for general relief. These programs are to be efficiently administered by local county welfare boards or, whenever responsibility for local welfare programs has been assumed by the state of Montana, by the department of social and rehabilitation services. General relief, along with other assistance programs, is made available to provide basic necessities that provide minimum subsistence compatible with decency and health and to provide financial assistance for medical services necessary for serious medical conditions. General relief medical assistance is not intended to provide catastrophic medical insurance to nonindigent persons.

(2) The legislature finds that assistance under the general relief program should not be available to those persons who have either adequate income or resources of their own or who are able-bodied. When benefits and services are available through other federal or state assistance programs, general relief should not be provided in duplication of such other assistance.

(3) *The legislature, in recognition of the need to expand the employment opportunities available to able-bodied persons who do not have dependent minor children, will provide 2 months of general relief so that such able-bodied persons may be eligible for the job readiness training authorized in 53-3-304(3).*

(4) The legislature further finds that the purposes of the general relief program must be implemented only to the extent necessary and allowable by the mandates of Article VIII, sections 12 and 14, of the Montana constitution, regarding financial accountability and expenditure by appropriation.”

Section 2. Section 53-3-109, MCA, is amended to read:

**“53-3-109. Definitions.** For the purposes of this chapter, the following definitions apply:

- (1) "Able-bodied" means the condition of a person who is not infirm.
- (2) "Basic necessities" means food, shelter, utilities, and personal needs.
- (3) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.
- (4) "General relief" means, in accordance with this chapter, a program of public assistance for basic necessities and medical needs to those persons determined to be eligible for that assistance.
- (5) "Household" means all persons who by choice, necessity, or legal relationship are mutually dependent upon each other for basic necessities and who reside in the same residence.
- (6) "Income" means the value of all property of any nature, earned, unearned, or in-kind, including benefits reasonably certain to be received by or available to a household during the month of the receipt of the income.
- (7) "Indigent" or "misfortunate" means a person who is lacking the means, financial or otherwise, by which to prevent destitution for himself and others dependent upon him for basic necessities and who is otherwise eligible for assistance under this chapter. Except as provided otherwise in 53-3-205 and 53-3-209, the terms do not include able-bodied persons unless they have dependent minor children living in the household.
- (8) "Infirm" means the condition of a person who is diagnosed by a licensed medical practitioner and confirmed by an expert medical review to have a physical or mental handicap that significantly impairs the person's ability to be employed.
- (9) "Lump-sum income" means a nonrecurring source of income received in a single payment by a household during any eligibility period, including but not limited to proceeds from a lawsuit, insurance settlement, inheritance, lump-sum retirement, veterans' or unemployment benefits; benefits received under the federal Social Security Act; prizes; and tax refunds.
- (10) "Resource" means all real and personal property retained after the calendar month of its receipt and which the household or a member of the household has a legal right to sell or liquidate.
- (11) "Secure facility" means any facility in which a person may be lawfully held against his will by federal, state, or local authorities.
- (12) "Serious medical condition" means a physical condition that causes a serious health risk to a person and for which treatment is medically necessary, including pregnancy. Diagnosis and determination of necessary treatment must be made by a licensed medical practitioner, and the department may confirm it through an expert medical review. Necessary treatment includes prenatal care and such other elective treatments as determined by department rule to be medically necessary."

Section 3. Section 53-3-205, MCA, is amended to read:

**"53-3-205. Eligibility for general relief.** (1) A person or persons constituting a household may receive general relief assistance for basic

necessities if the household is determined to be eligible under the provisions of this section and is in need of such assistance as a result of their infirmity, misfortune, or indigency.

(2) A household is eligible for general relief if the household income does not exceed that set forth in the following table:

| Number of Persons<br>in Household | Monthly Income Standard |
|-----------------------------------|-------------------------|
| 1                                 | \$212                   |
| 2                                 | 282                     |
| 3                                 | 354                     |
| 4                                 | 426                     |
| 5                                 | 501                     |
| 6                                 | 570                     |
| 7                                 | 642                     |
| 8                                 | 713                     |
| 9                                 | 785                     |
| 10 or more                        | 857                     |

(3) Able-bodied persons without dependent minor children living in the household are not eligible for nonmedical general relief assistance, *except as provided in 53-3-209*.

(4) (a) When the household's income exceeds the monthly income standard for a household of that size because of receipt of lump-sum income, the household will be ineligible for general relief for the full number of months, beginning with the month of receipt, derived by dividing the total of the lump-sum income and other income by the monthly income standard for a household of that size. Any income remaining from this calculation will be considered as income in the first month following the period of ineligibility.

(b) The period of ineligibility may be recalculated if the household size changes or if a portion of the lump sum was used to pay medical bills for a serious medical condition.

(c) Ineligibility due to the receipt of a lump sum does not preclude eligibility for general relief medical assistance.

(5) All applicants for and recipients of general relief assistance who reside in the same residence are considered as one household.

(6) Prospective income that is reasonably certain to be received by the household during an eligibility period must be considered when determining eligibility.

(7) The following resources of a household must be excluded from consideration of resources for eligibility purposes:

(a) the domicile of the household, including necessary appurtenant land not exceeding 10 acres;

(b) a motor vehicle that has no more than \$1,500 in equity value;

(c) personal items, clothing, household furniture, appliances, and other essential household items, the total equity value of which does not exceed resource eligibility limits established by rule; and

(d) tools of a trade that are essential to the current or future employment of a household member.

(8) A person who is committed or sentenced by legal process to a state institution or a secure facility or who is incarcerated in a secure facility pending resolution of legal process is not eligible for general relief.

(9) A person who resides for a period of 1 day or more in any state or federally operated institution or residence is not eligible for general relief for the period of that residency.

(10) For the purposes of an eligibility determination, an applicant for or recipient of general relief may be requested to produce all financial and other information concerning the household.

(11) Whenever practical, an eligibility determination must be made within 30 days of the date of application and the applicant must be notified in writing of the eligibility determination and the reasons for the determination.

(12) An alien determined to be illegally within the United States is not eligible for general relief."

Section 4. Section 53-3-206, MCA, is amended to read:

**"53-3-206. Eligibility for general relief medical assistance.** (1) In order to be considered for eligibility for general relief medical assistance, a person must be found to have a serious medical condition.

(2) Eligibility for general relief medical assistance must be determined as provided in this section and 53-3-205. A person with a serious medical condition must apply for general relief medical assistance prior to the provision of medical services or within 90 days of the date the medical service is first provided. Eligibility is determined as of the date medical service is first provided.

(3) All persons who reside in the same residence and are legally related to or responsible for each other are considered to be one household for purposes of determining general relief medical assistance.

(4) All individual or household resources must be used to offset medical obligations except those excluded in 53-3-205(7).

(5) To determine eligibility for county general relief medical assistance, a county welfare board may promulgate rules to establish the circumstances under which persons are unable to pay for their medical aid and hospitalization. However, no household with an income exceeding 300% of the amount set forth in 53-3-205(2) is eligible for such medical assistance.

(6) In a county with state-assumed welfare services:

(a) covered medical services must be provided at no cost to the person residing in a household if the average household monthly income that is

reasonably certain to be received in a 12-month period beginning with the month the medical service was provided does not exceed the amount in 53-3-205(2);

(b) a person is not eligible for medical services if the household in which he resides has an average monthly income reasonably certain to be received in a 12-month period beginning with the month the medical service was provided in excess of that set forth in the following table:

| Family Size | Monthly<br>Income Level |
|-------------|-------------------------|
| 1           | \$ 287                  |
| 2           | 433                     |
| 3           | 526                     |
| 4           | 618                     |
| 5           | 714                     |
| 6           | 804                     |
| 7           | 896                     |
| 8           | 988                     |
| 9           | 1,081                   |
| 10          | 1,173                   |
| 11          | 1,194                   |
| 12          | 1,215                   |
| 13          | 1,236                   |
| 14          | 1,256                   |
| 15          | 1,277                   |
| 16 or more  | 1,298                   |

(c) if the average household monthly income reasonably certain to be received in a 12-month period beginning with the month the medical service was provided is between the amount in 53-3-205(2) and the monthly income level set forth in subsection (b), a household must first incur covered medical costs equal to the difference between its average monthly income and the monthly income *standard* in 53-3-205(2) before medical assistance is provided."

Section 5. Section 53-3-209, MCA, is amended to read:

**"53-3-209. Period of eligibility.** (1) The period of eligibility for receipt of general relief for basic necessities is 1 month, except as provided in subsections (2) and (3). A person may seek to establish eligibility for the succeeding month prior to the end of the current month of eligibility.

(2) Able-bodied persons without dependent minor children living in the household are eligible for no more than 2 months of nonmedical general relief assistance within any 12-month period, except that assistance received prior to *November 1, 1986*, shall not be counted.

(3) Eligibility for general relief medical assistance terminates when the serious medical condition of the person has been treated.

(4) The period of eligibility for any type of general assistance terminates at any time the county welfare board or the department determines that the household:

- (a) no longer meets the applicable eligibility requirements; or
- (b) received general relief by means of fraud or mistake.”

**Section 6. Extension of authority.** Any existing authority of the department of social and rehabilitation services to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 7. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 8. Effective date.** This act is effective on passage and approval.

Approved June 30, 1986.

## CHAPTER NO. 11

[HB 6]

AN ACT TO ELIMINATE THE PROGRAM AT MOUNTAIN VIEW SCHOOL FOR THE DETENTION OF A YOUTH ALLEGED TO BE DELINQUENT; AMENDING SECTION 41-5-306, MCA; REPEALING SECTIONS 1 AND 3 THROUGH 6, CHAPTER 737, LAWS OF 1985; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 41-5-306, MCA, is amended to read:

**“41-5-306. Place of shelter care or detention.** (1) A youth alleged to be a delinquent youth or youth in need of supervision may be sheltered only in:

- (a) a licensed youth foster home as defined in 41-3-1102;
- (b) a facility operated by a licensed child welfare agency; or
- (c) a licensed youth group home as defined in 41-3-1102.

(2) A youth alleged to be a delinquent youth may be detained in a jail or other facility for the detention of adults only if:

(a) the facilities in subsection (1) are not available or do not provide adequate security;

(b) the detention is in an area physically and visually separate and removed from those of adults;

(c) it appears to the satisfaction of the court that public safety and protection reasonably require detention; and

(d) the court so orders.

(3) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of 18 years is received at the facility. Such official shall bring the person before the court upon request or deliver him to a detention facility designated by the court.

(4) A youth alleged to be in need of care shall be placed only in the facilities stated in subsection (1) of this section and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses."

**Section 2. Repealer.** Sections 1 and 3 through 6, Chapter 737, Laws of 1985, are repealed.

**Section 3. Effective date.** This act is effective on passage and approval.

Approved July 1, 1986.

## CHAPTER NO. 12

[HB 11]

AN ACT ALLOWING COUNTY COMMISSIONERS TO SET THEIR AND ALL OTHER COUNTY OFFICIALS' SALARIES UNIFORMLY AT THE PRIOR FISCAL YEAR LEVEL; AMENDING SECTIONS 3-10-207, 7-4-2107, 7-4-2502 THROUGH 7-4-2504, AND 7-4-2510, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 3-10-207, MCA, is amended to read:

**"3-10-207. Salaries.** (1) The board of county commissioners shall set salaries for justices of the peace by resolution *and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level if that does not result in a reduction in salary.* Salaries must meet the minimum requirements established by this section.

(2) If the salary of the justice of the peace was determined on a fee basis for the years 1971 and 1972, he shall receive a monthly salary of not less than one-eighteenth of the total fees, civil and criminal, collected by the justice or his predecessor in office during the 2 years 1971 and 1972.

(3) If the salary of the justice of the peace was determined on a nonfee basis for the years 1971 and 1972, the justice shall be paid not less than the highest salary earned by the justice or his predecessor for the years 1971 and 1972.

(4) The salary of the justice of the peace may not be less than the salary for the district clerk of the court in that county, except as provided for in *subsections (1) and (5).*



(5) In the event his court is not open for business full time, the justice's salary shall be commensurate to the workload and office hours of the court."

Section 2. Section 7-4-2107, MCA, is amended to read:

**"7-4-2107. Compensation of county commissioners.** (1) Each member of the board of county commissioners in counties of the first, second, third, and fourth class shall receive an annual salary equal to the annual salary established in 7-4-2503 for the clerk and recorder plus \$2,000, *but the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level if that level is lower than the level required by this subsection.*

(2) Each member of the board in all other counties is entitled to a salary for each day in which he is actually and necessarily engaged in the performance of board duties as set by resolution of the board. For the fiscal year beginning July 1, 1985, the salary is \$60 a day. Thereafter, on or before July 1 of each year, the county commission shall fix a cost-of-living adjusted daily salary by adding to the amount of \$60 an increment calculated as provided in 7-4-2504, *but the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level if that level is lower than the level required by this subsection.*

(3) This section does not apply to counties that have adopted a charter form of government."

Section 3. Section 7-4-2502, MCA, is amended to read:

**"7-4-2502. Payment of salaries of county officials and assistants.** (1) Except as provided in subsection (2), the salaries of the county officers and their assistants may be paid monthly, twice monthly, or every 2 weeks out of the general fund of the county and upon the order of the board of county commissioners.

(2) (a) The salaries of the county attorney and deputy county attorneys authorized by 7-4-2703 are payable monthly, with the salaries of the county attorney and no more than two deputies payable one-half from the general fund of the county and the other one-half from the state treasury upon the warrant of the state auditor. Such salaries for the deputy county attorneys include the longevity increases provided by 7-4-2503(3)(d).

(b) The county commissioners of each county shall, within 30 days after the election or appointment to fill a vacancy for any cause in the office of county attorney or within 30 days after the appointment of a deputy county attorney authorized by 7-4-2703, certify the election or appointment to the state auditor, who shall thereafter draw warrants for such salary in the same manner as for state officers. In case of a vacancy, the county commissioners shall immediately notify the state auditor, and the auditor shall compute the salary due on the basis of the notification.

(3) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to fix the compensation of all county

officers not otherwise fixed by law and to provide for the payment of the same and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level."

Section 4. Section 7-4-2503, MCA, is amended to read:

**"7-4-2503. Salary schedule for certain county officers.** (1) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, and county sheriff; the county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812; and the county auditor in all counties wherein such office is authorized, for the fiscal year beginning July 1, 1981, is computed by adding the annual base salary of:

(a) \$14,000 for the counties of the first through fifth class to the population increment of \$10 for each 100 persons or major fraction thereof included in the county's population as determined by the 1980 federal decennial census; or

(b) \$12,000 for counties of the sixth and seventh class to the population increment of \$20 per 100 persons or major fraction thereof in the county's population as determined by the 1980 federal decennial census.

(2) (a) An elected county superintendent of schools shall receive, in addition to the salary based upon subsection (1), the sum of \$400 per year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to \$2,000 per year.

(b) The county sheriff shall receive, in addition to the salary based upon subsection (1), the sum of \$2,000 per year.

(3) (a) In each county with a population in excess of 30,000, the county attorney shall be a full-time official under 7-4-2704, and his salary for the fiscal year beginning July 1, 1981, shall be \$36,500. In counties with a population less than 30,000, the county attorney who is a part-time official for a county of the first, second, or third class is entitled to receive an annual salary equal to 60% of the annual salary of a full-time county attorney. A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney for the fiscal year beginning July 1, 1981, shall be \$36,500.

(c) Beginning on July 1, 1982, and on July 1 of each succeeding year, each county attorney shall be entitled to an increase in salary calculated by adding to his annual salary on July 1, 1981, an increment of 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the

bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. *However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set the salary at the prior fiscal year level if that level is lower than the level required by this subsection (3)(c).* The cost-of-living increment for the fiscal year beginning July 1, 1983, and for each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years *unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. In such case the cost-of-living increment that would have been received for such fiscal year, computed on the prior fiscal year, may not be added to previous increments.*

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of \$1,000 on the anniversary date of his employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of \$1,500 on the anniversary date of his employment. After completing 6 years of service as deputy county attorney and for each year of service thereafter up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of \$500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase, *but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases.*

(4) For each 10th year after the fiscal year beginning July 1, 1981, the latest federal decennial census statistics shall be the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year shall be based on the last calendar year's annual estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify."

Section 5. Section 7-4-2504, MCA, is amended to read:

**"7-4-2504. Salaries to be fixed by resolution — cost-of-living increments.** (1) The county governing body shall by resolution, on or before July 1, 1982, and on or before July 1 of each year thereafter adjust and uniformly fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, and the clerk of the district court; the county auditor (if there is one); and the county surveyor (if he receives a salary) for cost-of-living increase by adding to the annual salary computed under 7-4-2503 an increment calculated by applying to the annual salary established by 7-4-2503(1) plus previous cost-of-living increments, 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. *The county governing body may, however, for all or the remainder*

*of each fiscal year, in conjunction with setting salaries for the same action on the salaries of justices of the peace (if applicable), the county governing body, county attorney, and coroner, set the salary at the prior fiscal year level if that level is lower than the level required by this subsection. The cost-of-living increment for the fiscal year beginning July 1, 1983, and for each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. In such case the cost-of-living increment that would have been received for such fiscal year, computed on the prior fiscal year, may not be added to previous increments.*

(2) If the application of 7-4-2503 does not qualify a county official for a salary increase of at least 7% on July 1, 1981, his salary on that date shall be increased by an amount sufficient to provide him total salary equal to 7% more than during the previous year.

(3) The county governing body shall by resolution, prior to July 1 of each year, establish the salary of the coroner and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in subsection (1), set the salary at the prior fiscal year level. The salary must be in effect upon the first day of each ensuing fiscal year."

Section 6. Section 7-4-2510, MCA, is amended to read:

**"7-4-2510. Sheriff's department — longevity payments.** Beginning on the date of his first anniversary of employment with the department and adjusted annually, a deputy sheriff or undersheriff is entitled to receive a longevity payment amounting to 1% of the minimum base annual salary for each year of service with the department, *but years of service during any year in which the salary was set at the same level as the salary of the prior fiscal year may not be included in any calculation of longevity increases.* This payment shall be made in equal monthly installments."

Section 7. **Effective date.** This act is effective on passage and approval.

Approved July 3, 1986.

## CHAPTER NO. 13

[HB 32]

AN ACT TO PROVIDE THAT DURING FISCAL YEARS 1987 THROUGH 1989 PENALTIES AND INTEREST ON OVERDUE EMPLOYER CONTRIBUTIONS APPROPRIATED TO THE DEPARTMENT OF LABOR AND INDUSTRY MUST BE USED TO ADMINISTER THE UNEMPLOYMENT INSURANCE LAW AND FOR JOB TRAINING PROGRAMS; AMENDING SECTION 39-51-1301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-51-1301, MCA, is amended to read:

**"39-51-1301. Penalty and interest on past-due contributions.**  
(1) Contributions unpaid on the date on which they are due and payable,

as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, that are paid within 20 days after the due date shall be subject to a penalty assessment of \$10 or 10% of the contribution due, whichever is greater. If the contributions are not paid within 20 days after the due date, the employer shall be subject to a penalty assessment of \$15 or 15% of the contributions due, whichever is greater. All past-due contributions shall bear interest at the rate of 18% a year, to be prorated on a daily basis.

(2) A penalty of \$40 shall be assessed whenever, as the result of a willful refusal of an employer to furnish wage information or pay contributions on time, the department issues a subpoena to obtain wage information or makes a summary or jeopardy assessment pursuant to 39-51-1302.

(3) *There is an account in the federal special revenue fund. Penalties and interest collected under this section must be deposited in that account. Money deposited in that account and appropriated to the department must be used by the department to administer this chapter and for programs to train and retrain unemployed and underemployed persons. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.*

(4) When failure to pay contributions on time was not caused by willful intent of the employer, the department may abate the penalty and interest.

(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due contributions must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose."

**Section 2. Extension of authority.** Any existing authority of the department of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date — termination date.** This act is effective on passage and approval and terminates July 1, 1989.

Approved July 3, 1986.

## CHAPTER NO. 14

[HB 36]

AN ACT TO DISCONTINUE STATE OPERATION OF THE MONTANA YOUTH TREATMENT CENTER; TO AUTHORIZE THE SALE OF THE FACILITY BY THE BOARD OF LAND COMMISSIONERS; TO GENERALLY REVISE THE LAWS RELATING TO OPERATION OF THE MONTANA YOUTH TREATMENT CENTER; AND TO STUDY THE FEASIBILITY OF SELLING OTHER FACILITIES; AMENDING SECTIONS 41-5-207, 41-5-403, 41-5-523, 53-1-104, 53-1-202, 53-1-402, 53-21-112, AND 53-30-211, MCA; REPEALING SECTIONS 53-21-164, 53-21-501, 53-21-502, AND 53-21-505, MCA; AND PROVIDING EFFECTIVE DATES.

WHEREAS, it is the desire of the State of Montana to provide effective treatment for appropriate seriously mentally ill adolescents in inpatient hospital settings; and

WHEREAS, the State of Montana desires to sell the Montana Youth Treatment Center to a private health care provider specializing in adolescent psychiatric treatment; and

WHEREAS, there are many nationally known groups that have shown interest in the purchase of the Montana Youth Treatment Center and all such groups should have a chance to submit a proposal to purchase.

THEREFORE, when an appropriate buyer can be found to offer quality care for Montana youth, the State of Montana will discontinue the state operation of the Montana Youth Treatment Center and hereby authorizes the Board of Land Commissioners to sell the facility as provided in this act.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Authority to discontinue operation.** Pursuant to 53-1-202, the legislature authorizes the department of institutions to discontinue operation of the Montana youth treatment center located in Billings, Montana.

**Section 2. Sale of youth treatment center.** (1) The board of land commissioners is authorized to sell the Montana youth treatment center to a private health care provider who has documented experience in providing specialized adolescent psychiatric treatment that includes an educational component. The sale is made pursuant to 77-2-302, except that the 60-day public notice requirement of that section is waived.

(2) The department of institutions shall advertise the proposed sale in at least one nationally distributed trade publication and shall notify in writing those health care providers that could potentially meet the conditions of the proposed sale. Interested parties must be allowed 60 days to submit proposals for purchase from the date the advertisement is published. Each proposal must contain an agreement to purchase the facility for cash at a sale price of no less than the appraised value of \$3,275,000, plus reimbursement of \$103,000 to the state for a prepaid special improvement district assessment.

(3) To protect and indemnify the state against failure or refusal of a prospective purchaser to consummate the sale, each proposal must be accompanied by security in the amount of 2% of the appraised value contained in subsection (2). The security shall consist of cash, cashier's check, certified check, bank money order, or bank draft, in any case drawn on a bank located in the state of Montana, or a bond or bonds executed by a surety authorized to do business in the state of Montana. If a prospective purchaser fails or refuses to consummate the sale, the security is forfeited to the state and must be deposited in the general fund. The security must be returned to a prospective purchaser whose proposal is not accepted by the state.

(4) (a) A committee shall review the proposals for purchase and recommend a purchaser to the board of land commissioners after meeting and discussing the factors set forth in subsection (4)(b). The review committee

must make such a recommendation within 60 days after close of advertising set forth in [section 2]. The committee is comprised of:

(i) the director of the department of institutions, who shall chair the committee;

(ii) the directors of the departments of health and environmental sciences and social and rehabilitation services;

(iii) two members of the senate, one from each party, to be appointed by the committee on committees, one of whom must represent a district in Yellowstone County and the other from a district representing a different county;

(iv) two members of the house of representatives, one from each party, appointed by the speaker in consultation with the republican leader of the house, one of whom must represent a district in Yellowstone County and the other from a district representing a different county;

(v) a representative of the mental health care community from Yellowstone County, appointed by the governor; and

(vi) a representative, appointed by the governor, from an organization representing mental health centers.

(b) The review committee shall consider:

(i) various proposals for purchase;

(ii) conditions of the sale of the Montana youth treatment center, including the quality of care to be provided, continued state responsibilities, treatment costs, accreditation standards, contractual relationships with the state and other governmental entities and the terms of those contracts, and other matters pertaining to the administration of the Montana youth treatment center; and

(iii) other matters relating to the sale and subsequent services and costs of a privately operated facility.

(c) The review committee may not show any partiality or favoritism in making its decision.

(5) Any sale of furnishings and movable equipment is in addition to the amounts stated for the land and facility.

(6) Proceeds of the sale must be deposited in the general fund.

**Section 3. Exempt from certificate of need review.** The sale of the Montana youth treatment center and subsequent transfer of ownership to a private health care provider is exempt from the certificate of need review provisions of Title 50, chapter 5, part 3. The review provided for in [section 2] and the need to expedite transfer of the facility to prevent deterioration of staff morale and quality of care provided justify the exemption of the sale and transfer of the Montana youth treatment center from the certificate of need review provision of Title 50, chapter 5, part 3.

**Section 4. Treatment of mentally ill youth.** The operation of the Montana youth treatment center by the buyer is subject to the laws of

Montana, including the provisions of Title 53, chapter 21, regarding the treatment of mentally ill youth, and the provisions of the Montana Youth Court Act, Title 41, chapter 5.

**Section 5. Conditions of sale.** The sale of the Montana youth treatment center is subject to the following conditions:

(1) The buyer shall agree that as long as it holds title to the Montana youth treatment center it will accept those youth who are committed to the facility by the district courts pursuant to the Montana Youth Court Act, Title 41, chapter 5, and Title 53, chapter 21. The buyer shall agree to make available a minimum of 40 beds for treatment of such youth. The buyer or any subsequent transferee shall keep reasonable documentation of compliance with this condition. Failure to comply with the provisions of this section may result in the loss of hospital licensure.

(2) The buyer shall agree to maintain a license as a psychiatric hospital pursuant to Title 50, chapter 5, part 2, and to operate the facility as defined in 53-21-102(6) as a mental health treatment facility. The buyer shall also agree to comply with state requirements relating to review and recommendations by the mental disabilities board of visitors.

(3) The buyer shall enter a written contract with the board of land commissioners providing that the buyer will bind by written agreement any purchaser or successor to its interest by transfer of the property to the conditions contained in [this act]. The board of land commissioners may make an exception to these conditions in any subsequent sale or transfer.

(4) If the buyer of the facility proposes to sell the facility at any time, the state of Montana has the first option to repurchase the facility and land at its appraised value at the time of such sale. The buyer and the state shall each commission an appraisal by a qualified appraiser at the time of sale. The appraised value is the average of the two appraisals.

(5) The buyer shall demonstrate that it is able to meet, at the time it proposes to purchase, the standards of the joint commission on accreditation of hospitals for adolescent psychiatric facilities and the certification standards of the health care financing administration of the United States department of health and human services for inpatient psychiatric services for individuals under age 21. The buyer shall demonstrate successful participation in the early survey option program of the joint commission on accreditation of hospitals.

(6) The buyer shall provide services to medicaid-eligible and indigent patients and shall receive no per diem reimbursement from the department of institutions for services provided to youth ordered to the facility by the courts. Such services become the financial responsibility of the buyer, who may bill medicaid or private insurers when appropriate.

(7) The buyer shall accept emergency psychiatric admissions pursuant to 53-21-129 regardless of ability to pay and subject only to its licensure limitations.

(8) The buyer shall accept applications of all Montana youth treatment center employees who desire to continue employment with the purchaser.



Among the substantially qualified applicants, present employees of the Montana youth treatment center must be given preference in hiring by the purchaser.

(9) Montana youth treatment center employees who wish to remain state employees shall be provided relocation assistance of up to \$1,000 and any training necessary to qualify for similar vacant positions within the department of institutions.

Section 6. Section 41-5-207, MCA, is amended to read:

**"41-5-207. Court costs and expenses.** The following expenses shall be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:

(1) the costs of medical and other examinations and treatment of a youth ordered by the court;

(2) reasonable compensation for services and related expenses for counsel appointed by the court for a party;

(3) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses, and other like expenses incurred in any proceeding under the Montana Youth Court Act as provided for by law;

(4) reasonable compensation of a guardian ad litem appointed by the court;

(5) cost of transcripts and printing briefs on appeal; and

(6) cost of detention as provided for in 41-5-306(4). (Subsection (1)(f) (now (6)) terminates July 1, 1987—sec. 5, Ch. 737, L. 1985.)"

Section 7. Section 41-5-403, MCA, is amended to read:

**"41-5-403. Disposition permitted under informal adjustment.**

(1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth for substitute care into a youth care facility as defined in 41-3-1102 or into a home approved by the court;

(c) placement of the youth in a private agency responsible for the care and rehabilitation of such a youth;

(d) transfer of legal custody to the department of institutions for a period of 6 months, which period may be extended for 6 months upon further order of the court after notice and hearing;

(e) restitution upon approval of the youth court judge.

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

- (c) ability of the parents or legal guardian to pay;
- (d) amount of damage to the victim; and
- (e) legal remedies of the victim; however, the ability of the victim or his insurer to stand any loss may not be considered in any case.

(3) If the court finds that placement in a youth care facility other than a youth group home or youth foster home is necessary and in the best interests of the youth and the community, the court shall determine if the youth can receive appropriate treatment in a youth care facility located in Montana as follows:

(a) If the court finds the youth can receive appropriate treatment in a youth care facility located in Montana that will accept the youth, the court may not place the youth in a youth care facility located outside this state unless an out-of-state facility can provide appropriate treatment that:

(i) can be obtained at a cost less than that offered by any available facility in this state; and

(ii) is available in closer proximity to the youth's place of residence than any facility located in this state.

(b) When the department of social and rehabilitation services is ordered to pay the costs of caring for the child in a youth care facility other than a youth foster home or youth group home, the court shall provide the department with at least 5 days' written notice and opportunity to be heard before ordering the placement of the youth.

(4) If the youth violates his aftercare agreement as provided for in 53-30-226, he must be returned to the court for further disposition. No youth may be placed in a state youth correctional facility under informal adjustment."

Section 8. Section 41-5-523, MCA, is amended to read:

**"41-5-523. Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

- (a) place the youth on probation;
- (b) place the youth for substitute care into a youth care facility as defined in 41-3-1102 or a home approved by the court;
- (c) place the youth in a private agency responsible for the care and rehabilitation of such a youth;
- (d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;
- (e) such further care and treatment or evaluation that the court considers beneficial to the youth; or

(f) order restitution by the youth.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department of institutions for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths.

(3) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(4) If the court finds that placement in a youth care facility other than a youth group home or youth foster home is necessary and in the best interests of the youth and the community, the court shall determine if the youth can receive appropriate treatment in a youth care facility located in Montana as follows:

(a) If the court finds the youth can receive appropriate treatment in a youth care facility located in Montana that will accept the youth, the court may not place the youth in a youth care facility located outside this state unless an out-of-state facility can provide appropriate treatment that:

(i) can be obtained at a cost less than that offered by any available facility in this state; and

(ii) is available in closer proximity to the youth's place of residence than any facility located in this state.

(b) When the department of social and rehabilitation services is ordered to pay the costs of caring for the child in a youth care facility other than a youth foster home or youth group home, the court shall provide the department at least 5 days' written notice and opportunity to be heard before ordering the placement of the youth.

(5) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes.

(6) Any order of the court may be modified at any time. In the case of a youth committed to the department of institutions, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(7) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(8) The order of commitment to the department of institutions shall read as follows:

## ORDER OF COMMITMENT

State of Montana )

) ss.

County of ..... )

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ....., a minor of this county, .... years of age, was brought before me charged with ....., Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

It is ordered that .... be committed to the department of institutions until .....

The names, addresses, and occupations of the parents are:

| Name  | Address | Occupation |
|-------|---------|------------|
| ..... | .....   | .....      |
| ..... | .....   | .....      |

The names and addresses of their nearest relatives are:

.....

.....

Witness my hand this .... day of ...., A.D. 19...

.....  
Judge"

Section 9. Section 53-1-104, MCA, is amended to read:

**"53-1-104. Release of arsonist — notification of department of justice.** (1) Each of the following institutions or facilities having the charge or custody of a person convicted of arson or of a person acquitted of arson on the ground of mental disease or defect shall give written notification to the department of justice whenever such a person is admitted or released by it:

- (a) Montana state hospital;
- (b) State prison;
- (c) Mountain View school;
- (d) Pine Hills school;
- (e) Swan River youth forest camp; *or*
- (f) Any county or city detention facility.
- (2) The notification shall disclose:
  - (a) the name of the person;
  - (b) where the person is or will be located; and
  - (c) the type of fire the person was involved in."

Section 10. Section 53-1-202, MCA, is amended to read:

**"53-1-202. Institutions in department.** (1) The following institutions are in the department:

- (a) Montana state hospital;
- (b) Montana veterans' home;
- (c) State prison;
- (d) Mountain View school;
- (e) Pine Hills school;
- (f) Montana developmental center;
- (g) Montana center for the aged;
- (h) Swan River youth forest camp;
- (i) Eastmont human services center; *and*
- (j) Any other institution which provides care and services for juvenile delinquents, including but not limited to youth forest camps and juvenile reception and evaluation centers.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature."

Section 11. Section 53-1-402, MCA, is amended to read:

**"53-1-402. Residents subject to per diem and ancillary charges.** The department shall collect and process per diem and ancillary payments for the care of residents in the following institutions:

- (1) Montana state hospital;
- (2) Montana developmental center;
- (3) Montana veterans' home;
- (4) Montana center for the aged;
- (5) Eastmont human services center."

Section 12. Section 53-21-112, MCA, is amended to read:

**"53-21-112. Voluntary admission of minors.** (1) Notwithstanding any other provision of law, a minor who is 16 years of age or older may consent to receive mental health services to be rendered by:

- (a) a facility that is not a state institution; or
- (b) a person licensed to practice medicine or psychology in this state.

(2) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

(3) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment shall be for the same period of time as that for an adult. A minor voluntarily

admitted shall have the right to be released within 5 days of his request as provided in 53-21-111(3). The minor himself may make such request. Unless there has been a periodic review and a voluntary readmission consented to by the minor patient and his counsel, voluntary admission terminates at the expiration of 1 year. Counsel shall be appointed for the minor at the minor's request or at any time he is faced with potential legal proceedings.

(4) If, in any application for voluntary admission for any period of time to a mental health facility, a minor fails to join in the consent of his parents or guardian to the voluntary admission, then the application for admission shall be treated as a petition for involuntary commitment. Notice of the substance of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous location on any form or application used for the voluntary admission of a minor to a mental health facility. The notice shall be explained to the minor."

Section 13. Section 53-30-211, MCA, is amended to read:

**"53-30-211. Transfer of child to other facility or institution — notice.** The department of institutions upon recommendation of the superintendent of a facility may transfer a child resident in one of its juvenile facilities to any other facility or institution under the jurisdiction and control of the department."

Section 14. **Department study of sale feasibility of other facilities.** The department of institutions shall study the feasibility of selling other facilities under its jurisdiction and transferring those facilities and the programs operated there to private entities. It shall submit to the legislature a report of this study, along with its recommendations, by January 15, 1987.

Section 15. **Repealer.** Sections 53-21-164, 53-21-501, 53-21-502, and 53-21-505, MCA, are repealed.

Section 16. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 17. **Extension of authority.** Any existing authority of the department of institutions to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 18. **Effective dates.** Sections 1 through 5, 14, and this section are effective on passage and approval. All other sections are effective on the date the deed of sale of the Montana youth treatment center from the board of land commissioners is delivered to the buyer.

Approved July 3, 1986.

**CHAPTER NO. 15**

[HB 47]

AN ACT TO MAKE VOLUNTARY THE RECORDING OF MATERIAL SAFETY DATA SHEETS BY EMPLOYERS AND TO REVISE THE INFORMATION REQUIREMENTS OF THE WORKPLACE CHEMICAL LIST; AMENDING SECTIONS 50-78-202 AND 50-78-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-78-202, MCA, is amended to read:

**"50-78-202. Workplace chemical list.** (1) Each employer shall compile and maintain a workplace chemical list. *Except as provided in 50-78-205, the workplace chemical list must contain the chemical name of each hazardous chemical in the workplace, cross-referenced to any generally used common name. For chemical mixtures, the chemical name of each hazardous constituent indicated on the material safety data sheet must be provided in parentheses along with the chemical name. The chemical abstracts service registry number, if available from the material safety data sheet, must accompany all chemical names on the workplace chemical list.*

(2) *The workplace chemical list must indicate the work area in which each hazardous chemical is normally stored or used.*

(3) The workplace chemical list may be prepared for the workplace as a whole or for each work area, provided the list is readily available to employees and their designated representatives.

(4) New or newly assigned employees must be made aware of the workplace chemical list before working with or in a work area containing hazardous chemicals.

(5) The workplace chemical list must be updated as necessary but not less than annually."

Section 2. Section 50-78-301, MCA, is amended to read:

**"50-78-301. Emergency and community information.** (1) An employer normally having hazardous chemicals in the workplace of his employees shall *record* the following information *with* the clerk and recorder of the county in which the workplace is located:

(a) an acknowledged copy of each new annual workplace chemical list; and

(b) a list acknowledged by the employer of the names or titles and telephone numbers of knowledgeable representatives of the employer or the

chemical manufacturer who can be contacted for further information or in case of an emergency.

(2) *An employer may record a copy of a material safety data sheet for any hazardous chemical in the workplace.*

(3) The county clerk and recorder shall record the information provided under subsection (1). The county clerk and recorder shall index the information provided under subsection (1) by workplace name, and all entries for a workplace must be grouped together in the index. The index must not be combined with any other type of index.

(4) All information submitted under subsection (1) is public information and must be available at the office of the county clerk and recorder during normal working hours to any person for inspection and copying at the expense of the person requesting copies.

(5) The local fire chief shall inspect all information maintained by the county clerk and recorder on workplace hazardous chemicals.

(6) The local fire chief must be permitted onsite inspection of hazardous chemicals in any workplace, including workplaces under the control of a state agency, for the purposes of planning fire department activities in case of an emergency and reviewing compliance with this chapter. For a workplace that employs fire safety personnel, the local fire chief shall consult with the responsible fire safety official to clarify respective roles and response procedures in the event of an emergency.

(7) As a result of an inspection, the local fire chief may note and report for possible action by the county attorney or other appropriate law enforcement official any violation by an employer of a provision of this chapter or any other law pertaining to hazardous chemicals or fire safety.

(8) The local fire chief shall consult at least annually on safety and emergency considerations with each person responsible for the operation of any research, educational, or testing laboratory workplace. The consultation may result in recommendations or, under the provisions of 50-62-108, orders by the fire chief to be implemented by the laboratory operator to enhance public safety, to reduce the likelihood of emergency incidents, or to improve emergency response in the event of an accident. The person responsible for the operation of the laboratory shall contact the local fire chief at any time there is a significant change in the location or nature of the hazardous chemicals in the workplace, initiation of any new and potentially dangerous method of processing or reacting hazardous chemicals, or any other operational change affecting emergency response considerations."

**Section 3. Effective date.** This act is effective on passage and approval.

Approved July 3, 1986.



**CHAPTER NO. 16**

[SB 1]

AN ACT ALLOWING A SHERIFF WHO OPERATES A COUNTY JAIL TO APPOINT NONSWORN INDIVIDUALS AS JAILERS; PROVIDING THAT NONSWORN JAILERS NEED NOT RECEIVE THE SAME SALARY AS DEPUTY SHERIFFS; AMENDING SECTION 7-32-2123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-32-2123, MCA, is amended to read:

**"7-32-2123. Appointment of jailer.** A sheriff who operates a county jail pursuant to 7-32-2121 may appoint deputy sheriffs or nonsworn individuals as jailers. A nonsworn individual appointed as a jailer need not receive the same salary as a deputy sheriff."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved July 10, 1986.

**CHAPTER NO. 17**

[SB 7]

AN ACT REVISING THE DISTRIBUTION OF THE CHARGE IMPOSED ON A PERSON CONVICTED OF A CRIMINAL OFFENSE OR WHO FORFEITS BOND OR BAIL; MAKING DEPUTY COUNTY ATTORNEYS' SALARIES PAYABLE FROM COUNTY FUNDS; AMENDING SECTIONS 7-4-2502, 46-9-301, AND 46-18-236, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-4-2502, MCA, is amended to read:

**"7-4-2502. Payment of salaries of county officials and assistants.** (1) Except as provided in subsection (2), the salaries of the county officers and their assistants may be paid monthly, twice monthly, or every 2 weeks out of the general fund of the county and upon the order of the board of county commissioners.

(2) (a) The salaries of the county attorney and deputy county attorneys authorized by 7-4-2703 are payable monthly, with the salary of the county attorney payable one-half from the general fund of the county and the other one-half from the state treasury upon the warrant of the state auditor.

(b) The county commissioners of each county shall, within 30 days after the election or appointment to fill a vacancy for any cause in the office of county attorney, certify the election or appointment to the state auditor, who shall thereafter draw warrants for such salary in the same manner as for state officers. In case of a vacancy, the county commissioners shall immediately notify the state auditor, and the auditor shall compute the salary due on the basis of the notification.

(3) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to fix the compensation of all county officers not otherwise fixed by law and to provide for the payment of the same."

Section 2. Section 46-9-301, MCA, is amended to read:

**"46-9-301. Determining the amount of bail.** In all cases that bail is determined to be necessary, bail must be reasonable in amount and the amount shall be:

- (1) sufficient to ensure the presence of the defendant in a pending criminal proceeding;
- (2) sufficient to assure compliance with the conditions set forth in the bail;
- (3) sufficient to protect any person from bodily injury;
- (4) not oppressive;
- (5) commensurate with the nature of the offense charged;
- (6) considerate of the financial ability of the accused;
- (7) considerate of the defendant's prior record;
- (8) considerate of the length of time the defendant has resided in the community and of his ties to the community;
- (9) considerate of the defendant's family relationships and ties;
- (10) considerate of the defendant's employment status; and
- (11) *sufficient to include the charge imposed in 46-18-236.*"

Section 3. Section 46-18-236, MCA, is amended to read:

**"46-18-236. Imposition of charge upon conviction or forfeiture — administration.** (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a defendant upon his conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

- (a) \$10 for each misdemeanor charge; and
- (b) the greater of \$20 or 10% of the fine levied for each felony charge.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the defendant is not able to pay the fine and costs or that he is unable to pay within a reasonable time, the court must waive payment of the charge imposed by this section.

(3) The charge imposed by this section is not a fine *and must be imposed in addition to any fine* and may not be used in determining the jurisdiction of any court.

(4) *When the payment of a fine is to be made in installments over a period of time, the charge imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charge.*

(5) The charges collected under subsection (1) must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a justice's court or district court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. *If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.*

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsection (1) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and his deputies.

(b) *Each county finance officer or treasurer may retain the charges collected under subsection (1) by district or justices' courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for such salaries may be used for the payment of any other county salaries."*

Section 4. **Effective date.** This act is effective July 1, 1986.

Approved July 10, 1986.

## CHAPTER NO. 18

[SB 10]

AN ACT PROVIDING THAT THE FIRST PAYMENT OF STATE EQUALIZATION AID TO SCHOOL DISTRICTS BE DISTRIBUTED BY JULY 15 OF THE SCHOOL FISCAL YEAR AND BE BASED ON AN ESTIMATE OF 20 PERCENT OF EACH DISTRICT'S ENTITLEMENT; AMENDING SECTION 20-9-344, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-9-344, MCA, is amended to read:

**"20-9-344. Purpose of state equalization aid and duties of the board of public education for distribution — conditions of first payment.** (1) The money available for state equalization aid shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues

required for debt service and for the payment of any and all costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings, new grounds, and transportation.

(2) The board of public education shall administer and distribute the state equalization aid in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(a) adopt policies for regulating the distribution of state equalization aid in accordance with the provisions of law *and in a manner that would most effectively meet the financial needs of districts;*

(b) have the power to require such reports from the county superintendents, budget boards, county treasurers, and trustees as it may deem necessary; and

(c) order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to such aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of public education shall not increase or decrease the state equalization aid distribution to any district on account of any difference which may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(3) Should a district receive more state equalization aid than it is entitled to, the county treasurer must return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the department of commerce.

(4) *The first payment of state equalization aid must be:*

(a) *based on an estimate of 20% of each district's entitlement; and*

(b) *distributed by July 15 of the school fiscal year."*

**Section 2. Contingent effective date.** (1) Subject to the provisions of subsection (2), this act is effective on passage and approval.

(2) This act is effective if the maximum budget schedules for school fiscal year 1987 in 20-9-318 and 20-9-319 are reduced or repealed by the June 1986 special session of the legislature.

Approved July 10, 1986.

## CHAPTER NO. 19

[SB 13]

**AN ACT TO REDIRECT COAL TAX REVENUE FROM THE LOCAL IMPACT AND EDUCATION TRUST FUND TO THE SCHOOL FOUNDATION PROGRAM FOR FISCAL YEAR 1987; AMENDING SECTIONS 15-35-108 AND 90-6-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-35-108, MCA, is amended to read:

**"15-35-108. Disposal of severance taxes.** Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Starting July 1, 1986, and ending June 30, 1987, 6% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund. Starting July 1, 1987, and ending June 30, 1993, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

(a) 2 ½% until July 1, 1987, and thereafter 4 ½% to the state special revenue fund to the credit of the alternative energy research development and demonstration account;

(b) 6% until July 1, 1987, and thereafter 37 ½% to the state special revenue fund to the credit of the local impact and education trust fund account;

(c) 30% until July 1, 1987, and thereafter 10% to the state special revenue fund for state equalization aid to public schools of the state;

(d) 1% to the state special revenue fund to the credit of the county land planning account;

(e) 1 ¼% to the credit of the renewable resource development bond fund;

(f) 5% to a nonexpendable trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) ⅓ for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) starting July 1, 1985, and ending June 30, 1989, ⅔ for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102 and, after June 30, 1989, ⅔ for the acquisition of sites and areas described in 23-1-102 and the development, operation, and maintenance of sites acquired with funds allocated under this subsection;

(g) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(h) ½ of 1% to the state special revenue fund for conservation districts;

(i) 1 ¼% to the debt service fund type to the credit of the water development debt service fund;

(j) 4% until July 1, 1987, to the highway reconstruction trust fund account in the state special revenue fund;

(k) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 2. Section 90-6-205, MCA, is amended to read:

**"90-6-205. (Temporary) Coal board — general powers.** The board may:

- (1) retain professional consultants and advisors;
- (2) adopt rules governing its proceedings;
- (3) consider applications for grants from the local impact and education trust fund account;
- (4) consider applications for loans from the local impact and education trust fund account for periods and interest rates to be determined by the board; and

(5) award grants and loans, subject to 90-6-207, not to exceed in any one year the revenue paid into the local impact and education trust fund account. *After June 30, 1987, the board may not exceed in any one year seven-fifteenths of the revenue paid into the local impact and education trust fund account. The board may award grants and loans:*

(a) to local governmental units, state agencies, and governing bodies of federally recognized Indian tribes to assist local governmental units and federally recognized Indian tribes in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development; and

(b) notwithstanding the provisions of 90-6-207, to the department of highways established in 2-15-2501 to expedite the construction, repair, and maintenance of deficient sections of highway within the area designated in 90-6-210 if the deficiency is the direct result of increased traffic accompanying the development of coal resources; and

(c) provided that as used in this subsection (5), "revenue paid" does not include interest income from the account reinvested in the account in trust for the public schools and the university system. Grants and loans may be from current allocations only, and no part of the principal or income of the trust referred to in 90-6-211 may be used for this purpose. The money derived from loan repayments, including the interest thereon, must be deposited to the credit of the local impact fund referred to in 90-6-202.

(6) award a grant to a local government unit for the purpose of paying for part or all of the credit that the local government unit is obligated to give to a major new industrial facility that has prepaid property taxes under 15-16-201. The board must award the grant in accordance with 90-6-206."

Section 3. **Effective date — applicability — termination.** This act is effective on passage and approval and applies to coal mined after April 1, 1986.

Approved July 10, 1986.

## CHAPTER NO. 20

[SB 14]

AN ACT TO GENERALLY REVISE HIGHWAY DEPARTMENT FUNDING; TO INCREASE THE GASOLINE LICENSE TAX BY 2 CENTS; TO TRANSFER MINERAL ROYALTIES TO THE SCHOOL FOUNDATION PROGRAM; TO TRANSFER COAL TAX FUNDS TO THE HIGHWAY RECONSTRUCTION TRUST FUND ACCOUNT IN THE STATE SPECIAL REVENUE FUND; TO TRANSFER INTEREST AND INVESTMENT EARNINGS ON THE HIGHWAY REVENUE ACCOUNT TO THE GENERAL FUND; TO PROVIDE THAT ALL EXPENSES OF THE HIGHWAY PATROL BE PAID OUT OF THE HIGHWAY REVENUE ACCOUNT; AMENDING SECTIONS 15-70-204, 17-5-911, 20-9-343, 44-1-501, AND 60-3-216, MCA; REPEALING SECTION 17-3-201, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-70-204, MCA, is amended to read:

**"15-70-204. Gasoline license tax — rate.** (1) Every distributor shall pay to the department of revenue a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to 1 cent for each gallon of aviation gasoline, which shall be allocated to the department of commerce as provided by 67-1-301, as amended, and 17 cents for each gallon of all other gasoline distributed by him within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported or sold for export out of the state shall not be included in the measure of the distributor's license tax.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1)."

Section 2. Section 20-9-343, MCA, is amended to read:

**"20-9-343. Definition of and revenue for state equalization aid.** (1) As used in this title, the term "state equalization aid" means those moneys deposited in the state special revenue fund as required in this section plus any legislative appropriation of moneys from other sources for distribution to the public schools for the purpose of equalization of the foundation program.

(2) The legislative appropriation for state equalization aid shall be made in a single sum for the biennium. The superintendent of public instruction has authority to spend such appropriation, together with the earmarked revenues provided in subsection (3), as required for foundation program purposes throughout the biennium.

(3) The following shall be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) 25% of all moneys received from the collection of income taxes under chapter 30 of Title 15;

(b) 25% of all moneys, except as provided in 15-31-702, received from the collection of corporation license taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) 10% of the moneys received from the collection of the severance tax on coal under chapter 35 of Title 15;

(d) 100% of the moneys received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income moneys described in 20-9-341 and 20-9-342;

(f) income from the local impact and education trust fund account; and

(g) in addition to these revenues, the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333 shall be paid into the same state special revenue fund.

(4) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce the appropriation required for the next succeeding biennium [or may be transferred to the state permissive account if revenues in that fund are insufficient to meet the state's permissive amount obligation]."

Section 3. Section 17-5-911, MCA, is amended to read:

**"17-5-911. Highway revenue bond debt service account — deposit of bond proceeds.** (1) There is in the debt service fund a highway revenue bond debt service account. Subject only to the prior pledge and appropriation made by 17-5-507, the state treasurer must deposit such highway revenues as may be pledged to the payment of particular bonds, to the credit of the highway revenue bond debt service account as required by resolution or indenture.

(2) All proceeds of an issue of bonds must be deposited in a separate account in the state special revenue fund, except that any premiums and accrued interest received may be deposited in a separate account in the debt service fund established for that bond issue by resolution or indenture. No more than the principal and interest on the bonds due in any year may be retained in the highway revenue bond debt service account for the payment of bonds. The remainder of pledged revenues is available for authorized purposes of the department. Money deposited in such separate accounts in the state special revenue fund until spent for project purposes



may be pledged and appropriated for the payment of bonds, which are a first lien and prior charge upon such funds, and such funds may be used for payment of bonds to the extent highway revenues deposited in the highway revenue bond debt service account are not sufficient for such purpose.

(3) Interest and investment earnings on the separate accounts named in subsections (1) and (2) shall be retained in the separate accounts referred to in subsection (2)."

Section 4. Section 44-1-501, MCA, is amended to read:

**"44-1-501. Payment of salaries.** All *expenses* of the highway patrol shall be paid out of the highway department's account in the state special revenue fund."

Section 5. Section 60-3-216, MCA, is amended to read:

**"60-3-216. Highway reconstruction trust account.** (1) There is a highway reconstruction trust account created in the state special revenue fund.

(2) The highway reconstruction trust fund account consists of allocations:

(a) from the taxes collected pursuant to 15-35-103 for each fiscal year beginning on or after July 1, 1986, and ending on or before June 30, 1993, the amounts allocated to the account pursuant to 15-35-108; and

(b) from the taxes collected pursuant to 15-70-204 and 15-70-321, for each fiscal year beginning on or after July 1, 1983, and ending on or before June 30, 1993, in an amount that will equal appropriated expenditures. **(Terminates July 1, 1993—sec. 7, Ch. 541, L. 1983.)"**

Section 6. **Repealer.** Section 17-3-201, MCA, is repealed.

Section 7. **Effective dates.** (1) Section 1 is effective August 1, 1986.

(2) Sections 2 through 7 are effective July 1, 1986.

Approved July 10, 1986.

## CHAPTER NO. 21

[SB 15]

AN ACT REQUIRING THE BOARD OF PUBLIC EDUCATION AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO TAKE STEPS TOWARD ADMINISTRATIVE AND STRUCTURAL REORGANIZATION OF THE PUBLIC SCHOOL SYSTEM THAT WOULD RESULT IN COST SAVINGS AT LOCAL AND STATE LEVELS AND TO REPORT SUCH PLANS AND ANY REQUIRED LEGISLATION TO THE 50TH LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Legislative purpose — request for school cost savings plan.** (1) The legislature recognizes that the recent and predicted shortfalls in state and local revenues may result in serious impacts on the ability of

the state and the public school system to meet the constitutional mandate for quality public education in Montana. As part of this recognition, the legislature desires information and plans concerning potential cost savings, particularly cost savings related to the reorganization of school administration and school districts.

(2) The legislature requests the board of public education and the superintendent of public instruction to:

(a) formulate plans and options for reorganization of the public school system that would result in cost savings; and

(b) report such plans and any required legislation to the 50th legislature.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved July 10, 1986.

## CHAPTER NO. 22

[SB 22]

AN ACT REVISING LIMITS OF RECOVERY IN TORT SUITS AGAINST THE STATE AND LOCAL GOVERNMENTS; AMENDING SECTION 2-9-101, MCA; REPEALING SECTIONS 2-9-106 AND 2-9-107, MCA; PROVIDING AN APPLICABILITY DATE; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-9-101, MCA, is amended to read:

**"2-9-101. Definitions.** As used in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Claim" means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state. For purposes of this section and the limit of liability contained in [section 2], all claims which arise or derive from personal injury to or death of a single person, or damage to property of a person, regardless of the number of persons or entities claiming damages thereby, are considered one claim.

(2) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or

without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.

(3) "Governmental entity" means and includes the state and political subdivisions as herein defined.

(4) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest, any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for which the state may be held liable.

(5) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or any other political subdivision or public corporation.

(6) "Property damage" means injury or destruction to tangible property, including loss of use thereof, caused by an occurrence for which the state may be held liable.

(7) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof."

**Section 2. Limitation on governmental liability for damages in tort.** (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of \$750,000 for each claim and \$1.5 million for each occurrence.

(2) No insurer is liable for excess damages unless such insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of a limitation stated in this section, in which case the insurer may not claim the benefits of the limitation specifically waived.

**Section 3.** Section 2-9-101, MCA, is amended to read:

**"2-9-101. Definitions.** As used in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Claim" means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state. For purposes of this section, all claims which arise or derive from personal injury to or death of a single person, or damage to property of a person, regardless of the number of persons or entities claiming damages thereby, are considered one claim.

(2) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on

behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.

(3) "Governmental entity" means and includes the state and political subdivisions as herein defined.

(4) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest, any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for which the state may be held liable.

(5) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or any other political subdivision or public corporation.

(6) "Property damage" means injury or destruction to tangible property, including loss of use thereof, caused by an occurrence for which the state may be held liable.

(7) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof."

**Section 4. Repealer.** Sections 2-9-106 and 2-9-107, MCA, are repealed.

**Section 5. Codification instruction.** Section 2 is intended to be codified as an integral part of Title 2, chapter 9, parts 1 through 3, and the provisions of Title 2, chapter 9, parts 1 through 3, apply to section 2.

**Section 6. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 7. Applicability.** This act, except section 3, applies to all claims, lawsuits, and causes of action arising after the effective date of sections 1, 2, and 4 through 9 of this act.

**Section 8. Two-thirds vote.** Since this act imposes limited immunity on governmental entities, Article II, section 18, of the Montana Constitution requires a vote of two-thirds of the members of each house of the legislature to be effective.

**Section 9. Effective dates — termination date.** This act is effective on passage and approval, except that section 3 is effective July 1, 1987. Sections 1 and 2 of this act terminate on June 30, 1987.

Approved July 10, 1986.

**CHAPTER NO. 23**

[HB 37]

AN ACT INCREASING THE AMOUNT OF INCENTIVE AWARDS FOR STATE EMPLOYEE SUGGESTIONS OR INVENTIONS RESULTING IN MONETARY SAVINGS TO THE STATE; PROVIDING FOR PAYMENT OF SUCH AWARDS; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO REQUEST AN APPROPRIATION FOR PAYMENT OF CERTAIN AWARDS; AMENDING THE DUTIES OF THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 2-18-1103 AND 2-18-1106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-18-1103, MCA, is amended to read:

**"2-18-1103. Powers and duties of the department.** The department shall:

(1) adopt rules to equitably administer the employee incentive award program;

(2) provide an opportunity for all employees to participate in the program;

(3) assist agencies in making incentive awards under the program;

(4) grant or deny incentive awards in consultation with the incentive awards advisory council and determine the amount of each incentive award based on first-year monetary savings;

(5) hear appeals from employees on the operation of the program;

(6) prepare a biennial report to the legislature containing a list of incentive awards and the corresponding savings to the state resulting from each employee's suggestion or invention and providing a general review of and recommendations for improving the program; and

(7) *send a copy of all suggestions or inventions submitted under this program to the office of the legislative fiscal analyst."*

Section 2. Section 2-18-1106, MCA, is amended to read:

**"2-18-1106. Agency head to grant award — amount and source of award.** (1) After an agency implements an employee's suggestion or invention and the monetary savings to the state is estimated, an agency head, upon written application to and approval from the department and the incentive awards advisory council, may grant an incentive award to an employee whose proposal meets the requirements enumerated in 2-18-1105.

(2) The incentive award *shall* be 10% of the savings resulting from implementing the employee's proposal for 1 year up to a maximum of

\$10,000. Larger awards may be proposed and submitted to the legislature for consideration.

(3) The agency head shall pay the employee from the savings in the agency's budget in a single, lump-sum award. *If the money saved as a result of the employee's proposal is restricted or unavailable for payment of this kind of award, then the award must be paid by the department from money appropriated for that purpose.* This award is in addition to the recipient's regular compensation."

**Section 3. Request for appropriation.** During the 50th Legislature, the Department of Administration shall request an appropriation to pay awards approved as provided in section 2.

**Section 4. Applicability.** This act applies to employee suggestions or inventions submitted to the department prior to November 1, 1986. To allow time for evaluation of those suggestions or inventions, awards may be granted pursuant to section 2 until June 30, 1987.

**Section 5. Effective date — termination.** This act is effective on passage and approval, and section 2 terminates November 1, 1986.

Approved July 10, 1986.

## CHAPTER NO. 24

[HB 38]

AN ACT REVISING THE TAX RATE APPLICABLE TO CLASS 15 RAILROAD TRANSPORTATION PROPERTY; AMENDING SECTION 15-6-145, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-6-145, MCA, is amended to read:

**"15-6-145. Class fifteen property — description — taxable percentage.** (1) Class fifteen property includes all railroad transportation property as described in the Railroad Revitalization and Regulatory Reform Act of 1976 as it read on January 1, 1986.

(2) For the taxable year beginning January 1, 1986, and for each taxable year thereafter, class fifteen property is taxed at the percentage rate "R", to be determined by the department as provided in subsection (3), *or 12%, whichever is less.*

(3)  $R = A/B$  where:

(a) A is the total statewide taxable value of all commercial property, except class fifteen property, as commercial property is described in 15-1-101(1)(d), including class 1 and class 2 property; and

(b) B is the total statewide market value of all commercial property, except class fifteen property, as commercial property is described in 15-1-101(1)(d), including class 1 and class 2 property.

(4) (a) For the taxable year beginning January 1, 1986, and for every taxable year thereafter, the department shall conduct a sales assessment ratio study of all commercial and industrial real property and improvements. The study must be based on:

(i) assessments of such property as of January 1 of the year for which the study is being conducted; and

(ii) a statistically valid sample of sales using data from realty transfer certificates filed during the same taxable year or from the immediately preceding taxable year, but only if a sufficient number of certificates is unavailable from the current taxable year to provide a statistically valid sample.

(b) The department shall determine the value-weighted mean sales assessment ratio "M" for all such property and reduce the taxable value of property described in subsection (4) only, by multiplying the total statewide taxable value of property described in subsection (4) by "M" prior to calculating "A" in subsection (3).

(c) The adjustment referred to in subsection (4)(b) will be made beginning January 1, 1986, and in each subsequent tax year to equalize the railroad taxable values.

(5) For the purpose of complying with the Railroad Revitalization and Regulatory Reform Act of 1976, as it read on January 1, 1986, the rate "R" referred to in this section is the equalized average tax rate generally applicable to commercial and industrial property, except class fifteen property, as commercial property is defined in 15-1-101(1)(d)."

**Section 2. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Effective date — applicability.** This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to the tax year beginning January 1, 1986.

Approved July 10, 1986.

## CHAPTER NO. 25

[HB 46]

AN ACT AUTHORIZING THE LEGISLATIVE FISCAL ANALYST TO INVESTIGATE AND EXAMINE REVENUES OF STATE GOVERNMENT ACTIVITIES; PROVIDING THAT THE FISCAL ANALYST'S OFFICE MAY OBTAIN COPIES OF STATE AGENCY RECORDS THAT IT IS AUTHORIZED TO EXAMINE, EXCEPT PROTECTED INDIVIDUAL INCOME TAX RECORDS; CLARIFYING THAT THE LEGISLATIVE FISCAL ANALYST'S OFFICE MAY NOT DISCLOSE INFORMATION OBTAINED IN ITS INVESTIGATIONS WHEN PUBLICATION IS PROHIBITED BY LAW AND IS SUBJECT TO APPROPRIATE PENALTIES FOR UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL RECORDS OBTAINED FROM STATE AGENCIES; AMENDING SECTION 5-12-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 5-12-303, MCA, is amended to read:

**"5-12-303. Fiscal analysis information from state agencies. (1)** The legislative fiscal analyst has the authority to investigate and examine

the costs and revenues of state government activities and may examine and obtain copies of the records, books, and files of any state agency, including confidential records. This section does not authorize publication or public disclosure of information if the law prohibits such publication or disclosure. The legislative fiscal analyst may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by a masking method that conceals the identity of the taxpayer. The masking method may not destroy the statistical integrity of the individual income tax records. The masking method, including how data is masked, must be disclosed to the legislative fiscal analyst. When confidential records and information are obtained from a state agency, the legislative fiscal analyst and staff must be subject to the same penalties for unauthorized disclosure of such confidential records and information provided for under the laws administered by the state agency. The legislative fiscal analyst shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies.

(2) Every state agency shall furnish the legislative fiscal analyst with copies of all budget requests, at the time of submission to the budget director as provided by law, and if requested, all underlying and supporting documentation.

(3) In the year preceding each legislative session, the budget director shall furnish the legislative fiscal analyst on a confidential basis:

(a) by December 1, a copy of the documents which reflect the anticipated receipts and other means of financing the budget for each fiscal year of the ensuing biennium;

(b) by December 1, a preliminary budget which shall meet the statutory requirements for submission of the budget to the legislature; and

(c) by December 15, all amendments to the preliminary budget."

**Section 2. Effective date.** This act is effective on passage and approval.

Approved July 10, 1986.

## CHAPTER NO. 26

[HB 44]

AN ACT REVISING THE PROCEDURES FOR THE PAYMENT OF A MONTANA TAX OR LICENSE FEE UNDER PROTEST; REVISING THE PROCEDURES FOR THE FIXING OF TAX LEVIES AS AFFECTED BY TAX PROTESTS; AMENDING SECTIONS 7-6-2321, 7-6-4232, 7-6-4453, 15-1-402, 15-10-202, AND 20-9-142, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-1-402, MCA, is amended to read:

**"15-1-402. Payment of taxes under protest — action to recover.** (1) The person upon whom a tax or license fee is being imposed



may proceed under 15-1-406 or may, before the tax or license fee becomes delinquent, pay under written protest that portion of the tax or license fee protested. The payment must:

- (a) be made to the officer designated and authorized to collect it;
- (b) specify the grounds of protest; and
- (c) *not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which grounds may include but are not limited to changes in assessment due to reappraisal under 15-7-111.*

(2) After having exhausted the administrative appeals available under Title 15, chapters 2 and 15, a person or his legal representative may bring an action in any court of competent jurisdiction against the officers to whom said tax or license fee was paid or against the county or municipality in whose behalf the same was collected and the department of revenue.

(3) Both the officers to whom the tax or license fee was paid or the county or municipality in whose behalf the same was collected and the department of revenue must be served with timely summons and complaint within the time prescribed.

(4) Any action instituted to recover any such portions of tax or license fee paid under protest shall be commenced and summons timely served within 60 days after the date of the final decision of the state tax appeal board.

(5) When any protested tax or license fee is payable in installments, then any subsequent installment portion considered unlawful by the state tax appeal board need not be paid and no action or suit need be commenced to recover the same, but the determination of the action or suit commenced to recover the first installment portion paid under protest shall determine the right of the party paying such subsequent installment to have the same or any part thereof refunded to him or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(6) All portions of taxes and license fees paid under protest to a county or municipality shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and shall be retained in such protest fund until the final determination of any action or suit to recover the same *unless released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (7).* Nothing contained herein prohibits the investment of the money of this fund in the state unified investment program *or in any manner provided in Title 7, chapter 6.* The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(7) *The governing board of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest*

*payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.*

(8) (a) If no action is commenced within the time herein specified or if such action is commenced and finally determined in favor of the county or municipality or treasurer thereof, the amount of the protested portions of the tax or license fee shall be taken from the protest fund and deposited to the credit of the fund or funds to which the same property belongs, *less a pro rata deduction for the costs of administration of the protest fund and related expenses charged the local government units.*

(b) If such action is finally determined adversely to a county or municipality or the treasurer thereof, then the treasurer shall, upon receiving a certified copy of the final judgment in said action from the state tax appeal board, or from the district or supreme court, as appropriate, if the final action of the state tax appeal board is appealed in the time prescribed, refund to the person in whose favor such judgment is rendered the amount of such protested portions of the tax or license fee *deposited in the protest fund, and not released pursuant to subsection (7), as the person holding such judgment is entitled to recover, together with interest thereon at the rate of 6% a year from the date of payment under protest. If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then interest owed, and lastly to costs.*

(c) *If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments, interest, and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments, interest, and costs, for which the taxing jurisdiction is proratably responsible.*

(d) *In satisfying the requirements of subsection (8)(c), the taxing jurisdiction is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the rate of 6% a year from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus four percentage points, from the date of final resolution of the protest until refund is made.*

(9) *A taxing jurisdiction may satisfy the requirements of this section by use of funds from one or more of the following sources:*

(a) *imposition of a property tax to be collected by a special tax protest refund levy;*

(b) *the general fund, except that amount generated by the all-purpose mill levy, or any other funds legally available to the governing body; and*

*(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is hereby authorized to issue such bonds pursuant to procedures established by law. Property taxes may be levied to amortize such bonds, provided the levy for payment of any such bonds may not exceed, in the aggregate, 10 mills annually."*

Section 2. Section 7-6-4453, MCA, is amended to read:

**"7-6-4453. Certain special mill levies also available.** (1) The all-purpose mill levy shall not and may not include the levies imposed for bonded indebtedness, to pay judgments or *tax protest refunds*, or for special improvement district revolving funds of municipalities, which levies may be made in addition to the all-purpose levy, as provided in subsection (2). Sections 7-6-4451 through 7-6-4455 shall not be construed as repealing those statutes providing for multiple separate levies.

(2) Extraordinary levies otherwise authorized to pay for bonded indebtedness, judgments, *tax protest refunds*, or special improvement district revolving funds may be made by such municipalities in addition to such all-purpose levy provided for in 7-6-4451 through 7-6-4455.

(3) In a third-class city or town, the all-purpose mill levy may not include the special tax levy for the firefighters' disability and pension fund provided for in 19-11-503. This special tax levy must be made in addition to the all-purpose mill levy."

Section 3. Section 7-6-2321, MCA, is amended to read:

**"7-6-2321. Fixing of tax levy.** (1) On the second Monday in August and after the approval and adoption of the final budget, the board of county commissioners shall fix the tax levy for each fund at a rate which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for the fund during the current fiscal year. *The taxable valuation of the county for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund. Each tax levy shall be at a rate no higher than is required on that basis, without including any amount for anticipated tax delinquency, to produce the amount set out in the budget, without including any amount for anticipated tax delinquency, as being the amount to be raised by tax levy.*

(2) The tax levy shall be made in the manner provided by 15-10-201."

Section 4. Section 7-6-4232, MCA, is amended to read:

**"7-6-4232. Fixing of tax levy.** (1) On the second Monday in August and after the approval and adoption of the final budget, the council shall fix the tax levy for each fund at a rate, not exceeding limits prescribed by law, which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for that fund during the current fiscal year. *The taxable valuation of the city for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund, and each tax levy shall be at a rate no higher than is required on that basis, without*

including any amount for anticipated tax delinquency, to raise the amount set out in the budget.

(2) If the council considers that a levy made for a bond sinking or interest fund will not provide a sufficient amount to pay all bond principal and interest becoming due during the current fiscal year or within 6 months after the current fiscal year because of anticipated tax delinquency, the council may fix the levy at a rate it considers necessary to raise the amount for making the payments of principal and interest over and above the anticipated tax delinquency.

(3) Each levy shall be made in the manner provided by 15-10-201."

Section 5. Section 15-10-202, MCA, is amended to read:

**"15-10-202. Certification of taxable values and millage rates.** At the time that the assessment roll is prepared and published, the department of revenue shall certify to each taxing authority the taxable value within the jurisdiction of the taxing authority. The department shall also send to each taxing authority a written statement of its best estimate of the total assessed value of all new construction and improvements not included on the previous assessment roll and the value of deletions from the previous assessment roll. Exclusive of such new construction, improvements, and deletions, the department shall certify to each taxing authority a millage rate which will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the department shall use 95% of the taxable value appearing on the roll, exclusive of properties appearing for the first time on the assessment roll."

Section 6. Section 20-9-142, MCA, is amended to read:

**"20-9-142. Fixing and levying taxes by board of county commissioners.** On the second Monday in August, the county superintendent shall place before the board of county commissioners the final adopted budget of the district and any emergency budget adopted by the district during the previous school fiscal year. It shall be the duty of the board of county commissioners to fix and levy on all the taxable value of all the real and personal property within the district all district and county taxation required to finance, within the limitations provided by law, the final budget and any emergency budget of the district."

Section 7. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 8. **Effective date — applicability.** This act is effective on passage and approval and applies to any appeal or tax paid under protest on or after the effective date of this act.

Approved July 15, 1986.

**CHAPTER NO. 27**

[SB 8]

AN ACT TO CHANGE FROM PERMISSIVE TO MANDATORY THE COUNTY 1 ½ MILL LEVY IN A COUNTY WITH A VOCATIONAL-TECHNICAL CENTER; CLARIFYING AND AMENDING SECTION 20-7-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-7-324, MCA, is amended to read:

**“20-7-324. Sources of financing for postsecondary vocational-technical center budgets — superintendent of public instruction administration.** (1) The total of the budgets approved by the superintendent of public instruction shall constitute the total maximum approved statewide *vocational-technical center system* budget which shall be financed as follows:

(a) The primary source of financing is to be those funds specifically designated by legislative enactment or referendum by the people for financing postsecondary vocational-technical education in Montana.

(b) The board of county commissioners of each county in which a designated postsecondary vocational-technical center is located *shall* levy a tax in each calendar year of 1 ½ mills on the dollar of all taxable property, real and personal, within the county for the support and maintenance of the postsecondary vocational-technical center located within the county.

(c) Designated postsecondary vocational-technical centers shall be eligible to receive such funds from the federal government as the superintendent of public instruction may provide pursuant to applicable acts of congress.

(d) The board of trustees of any designated high school district or county high school district where a postsecondary vocational-technical center is located may be required, as a condition for the construction in that district of a postsecondary vocational-technical center, or any part thereof, to furnish up to 50% of the amount of funds required for any such construction. The percentage of construction funds to be furnished by the designated district shall be derived, in whole or in part, from any of the following sources:

(i) the sale of bonds issued by that district (such bonds shall be issued in conformity with the requirements of chapter 9, part 4, of this title in the case of high school and county high school district);

(ii) any other funds available to that district which may be legally and properly applied toward such construction;

(iii) the reasonable value of land, buildings, fixtures, or equipment furnished by that district, subject to the approval of the superintendent of public instruction.

(2) The superintendent of public instruction shall direct the distribution of the funds specified in subsections (1)(a) *through* (1)(c) on the basis of the budgets approved by the superintendent of public instruction. The funds earned by the mill levy specified in subsection (1)(b) shall be credited to the postsecondary vocational-technical center *account in the unrestricted subfund of the current fund in the state treasury.*

(3) The superintendent of public instruction shall determine the amount of financing available from these four sources of revenue and may approve budgets for *instruction, plant operations and maintenance, equipment, and support.* The aggregate amount of the budgets so approved by the superintendent of public instruction for postsecondary vocational-technical centers shall not exceed the moneys determined to be available."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved July 16, 1986.

## CHAPTER NO. 28

[SB 17]

### AN ACT CHANGING THE REPORTING AND PAYMENT PERIODS FOR WITHHOLDING INCOME TAXES; AMENDING SECTION 15-30-204, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-30-204, MCA, is amended to read:

**"15-30-204. Quarterly or weekly payment.** (1) *Except as provided in subsection (3), on or before the last day of April, July, October, and January, every employer subject to the provisions of 15-30-202 and 15-30-203 shall file a return in such form and containing such information as may be required by the department and, except as provided in subsection (2), shall pay therewith the amount required by 15-30-202 to be deducted and withheld by the employer from wages paid during the preceding quarter. Quarterly returns for employers paying weekly shall be used to summarize and adjust payments and request refunds of overpayments.*

(2) *An employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for withholdings equalled or exceeded \$300,000 for the preceding calendar year shall remit a weekly payment to the department for the amount required by 15-30-202 to be deducted and withheld by the employer from wages paid during the preceding week. The weekly payment must be submitted on or before the date on which federal income tax weekly withholding payments are due.*

(3) If the total amount of the tax withheld by an employer under the provisions of 15-30-202 upon the wages of all employees of any employer is less than \$10 in each quarterly period of any year, such employer shall not be required to file the quarterly returns or to make the quarterly payments as provided in subsection (1), but in lieu thereof such employer shall, on or before February 15 of the year succeeding that in which such wages were paid, file an annual return in such form as may be required by the department and shall pay therewith the amount required to be deducted and withheld by the employer from all wages paid during the preceding calendar year.

(4) If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under 15-30-312 with respect to jeopardy assessments of income tax."

**Section 2. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 3. Applicability.** This act applies to the reporting and payment period beginning April 1, 1987, and thereafter.

Approved July 16, 1986.

## CHAPTER NO. 29

[SB 19]

AN ACT TO REQUIRE COUNTY TAX APPEAL BOARD REVIEW OF EXCEPTIONAL INCREASES IN ASSESSMENTS MADE UNDER SECTION 15-7-111, MCA, BEFORE PLACEMENT ON ASSESSMENT BOOKS; TO REQUIRE THE DEPARTMENT OF REVENUE TO STANDARDIZE PROPERTY TAX CLASSIFICATION AND APPRAISAL NOTICES; TO REQUIRE THE DEPARTMENT TO SEND A STANDARD NOTICE TO TAXPAYERS WITH EXCEPTIONAL INCREASES IN 1986 ASSESSMENTS; TO EXTEND THE APPLICATION DEADLINE FOR REDUCTION IN 1986 VALUATIONS; AMENDING SECTIONS 15-7-102 AND 15-8-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the Department of Revenue should carry the burden of substantiating exceptional increases in assessments made under section 15-7-111, MCA, before placement on assessment books; and

WHEREAS, each property taxpayer in the state should be properly notified regarding the classification and value of the taxpayer's property for property tax purposes; and

WHEREAS, the lack of a standardized property tax classification and appraisal notice results in a variety of notices being sent by the counties with a wide range in the clarity of the notices; and

WHEREAS, incomplete or incomprehensible tax classification and appraisal notices create much confusion and misunderstanding regarding the property tax system and, in particular, the property revaluation process as implemented in the 1986 tax year.

THEREFORE, the Legislature of the State of Montana finds it appropriate to direct the Department of Revenue to submit assessments made under section 15-7-111, MCA, with exceptional increases for review by the county tax appeal boards before placement on assessment books, to adopt a standardized property tax classification and appraisal notice and to send such notice to taxpayers with exceptional increases in 1986 assessments, and to extend the application deadline for reduction in 1986 valuations.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Review of exceptional increases in 1986 property assessments.** Each property assessment assigned by the department to the tax rolls for the 1986 tax year must be submitted by the department to the county tax appeal board for review if the assessment exceeds the 1985 assessment by 180% or more. The board shall review such assessments in the aggregate.

Section 2. Section 15-8-112, MCA, is amended to read:

**"15-8-112. Assessments to be made on classification and appraisal.** (1) The assessments of all lands, city and town lots, and all improvements must be made on the classification and appraisal as made or caused to be made by the department of revenue.

(2) The percentage basis of assessed value as provided for in chapter 6, part 1, is determined and assigned by the department when it makes its annual assessment of the property which it is required to assess centrally under the laws of this state. The department shall transmit such determination and assignment to its agents in the various counties with the assessments so made, and, *except as provided in [section 1],* its determination is final except as to the right of review in the state tax appeal board or the proper court."

Section 3. Section 15-7-102, MCA, is amended to read:

**"15-7-102. Notice of classification and appraisal to owners — appeals.** (1) It shall be the duty of the department of revenue to cause to be mailed to each owner and purchaser under contract for deed a notice of the classification of the land owned or being purchased by him and the appraisal of the improvements thereon only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

- (a) change in ownership;
- (b) change in classification;
- (c) change in valuation; or
- (d) addition or subtraction of personal property affixed to the land.



(2) *The notice of classification and appraisal provided by the department under subsection (1) must be on a standardized form adopted by the department containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of his property and of changes over the prior tax year.*

(3) If the owner of any land and improvements is dissatisfied with the appraisal or classification of his land or improvements, he may submit his objection in writing to the department's agent. The department shall give reasonable notice to such taxpayer of the time and place of hearing and hear any testimony or other evidence which the taxpayer may desire to produce at such time and afford the opportunity to other interested persons to produce evidence at such hearing. Thereafter, the department shall determine the true and correct appraisal and classification of such land or improvements and forthwith notify the taxpayer of its determination. In the notification, the department must state its reasons for revising the classification or appraisal. When so determined, the land shall be classified and improvements appraised in the manner ordered by the department.

(4) Whether a hearing as provided in subsection (3) is held or not, the department or its agent may not adjust an appraisal or classification upon taxpayer's objection unless:

- (a) the taxpayer has submitted his objection in writing; and
- (b) the department or its agent has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. Each county appraiser shall make such records available for inspection during regular office hours.

(6) If any property owner shall feel aggrieved at the classification and/or the appraisal so made by the department, he shall have the right to appeal to the county tax appeal board and then to the state tax appeal board, whose findings shall be final subject to the right of review in the proper court or courts."

**Section 4. Renotification to taxpayers with exceptional increases in 1986 assessments.** The department of revenue shall send a revised standard property tax classification and appraisal notice as described in 15-7-102 to each property taxpayer whose 1986 assessment on class four property increased as a result of reappraisal of class four property by 180% or more when compared with his 1985 assessment.

**Section 5. Application deadline for reduction in 1986 valuation.** Notwithstanding the provisions of 15-15-102, the application deadline for reduction in 1986 taxable valuations is August 1, 1986, or 15 days after receipt by the taxpayer of a revised notice of classification and appraisal, whichever is later.

Section 6. **Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 7. **Effective date — applicability.** This act is effective on passage and approval and applies to tax year 1986.

Approved July 16, 1986.

## CHAPTER NO. 30

[HB 14]

AN ACT PROVIDING FOR GENERAL FISCAL AND CERTIFYING MODIFICATIONS OF THE LOCAL GOVERNMENT BLOCK GRANT PROGRAM; PROVIDING A CONTINGENT APPROPRIATION FROM THE GENERAL FUND TO THE LOCAL GOVERNMENT BLOCK GRANT ACCOUNT; PROVIDING AUTHORITY TO PRORATE AVAILABLE FUNDS IF REVENUES ARE NOT SUFFICIENT FOR FULL FUNDING; CHANGING RESPONSIBILITY FOR CERTIFICATION OF THE NUMBER OF VEHICLES FROM INDIVIDUAL COUNTY TREASURERS TO THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 7-6-302 THROUGH 7-6-306, 7-6-309, AND 61-3-536, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-6-302, MCA, is amended to read:

**"7-6-302. Local government block grant account created — source of funds.** (1) There is a local government block grant account within the state special revenue fund.

(2) Funds in this account, *to the extent they are available*, must be used to provide payments from the local government block grant program to eligible jurisdictions.

(3) Thirty-three and one-third percent of the oil severance tax collected under the provisions of 15-36-101 and all funds appropriated to the account must be deposited in the account."

Section 2. Section 7-6-303, MCA, is amended to read:

**"7-6-303. Local government block grant program.** (1) The department of commerce shall administer the local government block grant program and *shall, to the extent they are available*, distribute funds from the local government block grant account.

(2) The local government block grant program is comprised of three parts:

(a) a general purpose block grant for municipalities, counties, school districts, and other jurisdictions;

- (b) a general services block grant for counties; and
- (c) a general services block grant for municipalities."

Section 3. Section 7-6-304, MCA, is amended to read:

**"7-6-304. Division of block grant funds.** The division of funds within the local government block grant account is as follows:

(1) Except as provided in 7-6-309(1), the general purpose block grant for municipalities, counties, school districts, and other jurisdictions must be funded, before any other distributions are made from the account, in an amount sufficient to cover the reimbursements required by 61-3-536, *to the extent funds are available.*

(2) (a) The general services block grant for counties must be funded from a percentage of the remaining funds deposited in the account equal to the ratio of the unincorporated population to the state population.

(b) The general services block grant for municipalities must be funded from a percentage of the remaining funds deposited in the account equal to the ratio of the incorporated population to the total state population."

Section 4. Section 7-6-305, MCA, is amended to read:

**"7-6-305. Distribution of general purpose block grant funds.** The general purpose block grant for municipalities, counties, school districts, and other jurisdictions must be distributed, *to the extent funds are available*, by the state to counties pursuant to 61-3-536 and by counties to other jurisdictions pursuant to 61-3-509."

Section 5. Section 7-6-306, MCA, is amended to read:

**"7-6-306. Distribution of general services block grant funds to counties.** Funds in the general services block grant for counties must be distributed, *to the extent funds are available*, as follows:

(1) One-half of each county's share is determined by the ratio of the county's population to the total county population in the state.

(2) The remaining one-half is distributed according to the following formula where CMV = average mill value per capita of all counties; IMV = individual county mill value per capita; ICP = individual county population; CG =  $\frac{1}{2}$  total county grant:

$$\frac{\text{CMV}}{\text{IMV}} \times \text{ICP} = \text{county tax base factor (TBF)}$$

$$\text{CG} \times \frac{\text{individual county TBF}}{\text{sum of all county TBFs}} = \frac{1}{2} \text{ individual county share}"$$

Section 6. Section 7-6-309, MCA, is amended to read:

**"7-6-309. Disposition and use of funds.** Disbursements from the local government block grant account shall be made as follows:

(1) On October 1, 1983, a disbursement must be made from the general services block grant that is the lesser of:

- (a) \$2 million; or

(b) one-third of the total general fund appropriation to the account for the biennium ending June 30, 1985.

(2) On March 1, 1984, and March 1 of each succeeding year the reimbursement required by 61-3-536 must be distributed, *to the extent funds are available*.

(3) On June 30, 1984, a disbursement must be made from the general services block grants for municipalities and counties that equals the amount which is the lesser of the difference between the account balance on that date and:

(a) \$3 million dollars; or

(b) one-half of the total general fund appropriation to the account for the biennium ending June 30, 1985.

(4) On June 30, 1985, and June 30 of each succeeding year, all funds remaining in the account must be distributed.

(5) The funds distributed by this part may be used for any purpose authorized by law."

Section 7. Section 61-3-536, MCA, is amended to read:

**"61-3-536. (Temporary) State aid for local government.** (1) Each county treasurer shall compute:

(a) the total amount received during the period from January 1, 1981, to December 31, 1981, for property taxes on automobiles and trucks having a rated capacity of three-quarters of a ton or less, denoted CT;

(b) the total amount that would have been received during the same period if the license fee system, excluding the block grant fee allocated to local governments under 61-3-509(3), had been in effect, denoted CF; and

(c) the number of light vehicles registered in the county on December 31, 1981, denoted NC.

(2) The three quantities, CT, CF, and NC, shall be certified to the department of revenue by February 1, 1982. The department shall compute for each county a quantity called county revenue loss, denoted CRL, and county loss per vehicle, denoted CLV, and defined as follows:

(a)  $CRL = \text{larger of:}$

(i) 0; or

(ii)  $CT - CF$ ;

(b)  $CLV = CRL/NC$ .

(3) In order to be eligible for reimbursement payment, a light vehicle must be such that it would have been subject to ad valorem tax if it had been registered prior to January 1, 1982.

(4) Prior to February 1 of year denoted Y, the *department of justice* shall determine and certify to the department the number of eligible light vehicles registered in *each* county on December 31 of the prior year,

denoted NC(Y). Prior to March 1 of year Y, the department of revenue shall transmit to the department of commerce the amount of  $CLV \times NC(Y)$  for each county.

(5) On March 1 of year Y, the department of commerce shall, *to the extent funds are available*, transmit to each county treasurer a warrant in the amount of  $CLV \times NC(Y)$ . *If revenues are not sufficient to fully fund the general purpose block grant, the department of commerce shall prorate the available funds against the amount of  $CLV \times NC(Y)$  certified by all counties.*

(6) Upon receipt of the payment provided for in subsection (5), the county treasurer shall credit the payment to a motor vehicle suspense fund and, at some time between March 15 and March 30, shall distribute the payment in the same manner as funds are distributed to the taxing jurisdictions as provided in 61-3-509.

**61-3-536. (Effective July 1, 1987) State aid for local government.** (1) Each county treasurer shall compute:

(a) the total amount received during the period from January 1, 1981, to December 31, 1981, for property taxes on automobiles and trucks having a rated capacity of three-quarters of a ton or less, denoted CT;

(b) the total amount that would have been received during the same period if the license fee system had been in effect, denoted CF; and

(c) the number of light vehicles registered in the county on December 31, 1981, denoted NC.

(2) The three quantities, CT, CF, and NC, shall be certified to the department of revenue by February 1, 1982. The department shall compute for each county a quantity called county revenue loss, denoted CRL, and county loss per vehicle, denoted CLV, and defined as follows:

(a)  $CRL = \text{larger of:}$

(i) 0; or

(ii)  $CT - CF$ ;

(b)  $CLV = CRL/NC$ .

(3) In order to be eligible for reimbursement payment, a light vehicle must be such that it would have been subject to ad valorem tax if it had been registered prior to January 1, 1982.

(4) Prior to February 1 of year denoted Y, the *department of justice* shall determine and certify to the department the number of eligible light vehicles registered in *each* county on December 31 of the prior year, denoted NC(Y). Prior to March 1 of year Y, the department of revenue shall transmit to the department of commerce the amount of  $CLV \times NC(Y)$  for each county.

(5) On March 1 of year Y, the department of commerce shall, *to the extent funds are available*, transmit to each county treasurer a warrant in the amount of  $CLV \times NC(Y)$ . *If revenues are not sufficient to fully fund*

*the general purpose block grant, the department of commerce shall prorate the available funds against the amount of  $CLV \times NC(Y)$  certified by all counties.*

(6) Upon receipt of the payment provided for in subsection (5), the county treasurer shall credit the payment to a motor vehicle suspense fund and, at some time between March 15 and March 30, shall distribute the payment in the same manner as funds are distributed to the taxing jurisdictions as provided in 61-3-509."

**Section 8. Appropriation.** There is appropriated \$6.5 million from the general fund to the local government block grant account for fiscal year 1987.

**Section 9. Effective date — coordination.** (1) Sections 1 through 7 and this section are effective on passage and approval.

(2) Section 8 of this act is effective only if Senate Bill 17 is passed and approved.

Approved July 16, 1986.

## CHAPTER NO. 31

[HB 40]

AN ACT TO IDENTIFY AND CONSOLIDATE DUPLICATIVE SERVICES PROVIDED BY THE DEPARTMENTS OF SOCIAL AND REHABILITATION SERVICES, HEALTH AND ENVIRONMENTAL SCIENCES, LABOR AND INDUSTRY, AND INSTITUTIONS; TO PROVIDE FOR A SURVEY OF EMPLOYEES TO IDENTIFY DUPLICATIVE SERVICES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Declaration of policy and purpose.** It is the public policy of this state and the purpose of [this act] to provide for the social and health needs of Montana citizens in the most direct and economical manner practicable.

**Section 2. Consolidation of services — report to legislature.** (1) Pursuant to the declaration of state policy and purpose to eliminate overlapping and duplication of effort within the executive branch of state government set forth in 2-15-101, and the policymaking authority and administrative powers of the governor enumerated in 2-15-103, the departments of social and rehabilitation services, health and environmental sciences, labor and industry, and institutions shall each identify any function or program administered by that department which is similar to or duplicates a function or program administered by another department for the purpose of consolidating overlapping services.

(2) If consolidation or elimination of a service provided by a department does not require a statutory change or involve an issue of legislative

policy, the department director shall implement the change if he considers it practicable. If consolidation or elimination of a service involves a statutory change or an issue of legislative policy, the department director, prior to taking any action to consolidate an overlapping function, shall prepare a statement for the legislature describing the duplication of such service or function and suggesting the most effective and economical way to provide the service. These statements must be included in the report required by subsection (3).

(3) On or before December 1, 1986, the department directors shall deliver to the legislative council for mailing to legislators 150 copies of a joint report:

(a) describing any function or program administered by a department that has been identified as similar to or duplicative of a function or program administered by another department;

(b) describing any consolidation or elimination of a service implemented by a department;

(c) explaining why other services identified as duplicative have not been consolidated or eliminated; and

(d) recommending any consolidation or elimination which the department directors consider practicable but which requires a statutory change or involves an issue of legislative policy.

(4) The department directors shall cooperate with one another in identifying duplicative functions, implementing consolidation of duplicative functions, and preparing the report for the legislature.

**Section 3. Survey of employees.** (1) As a means of identifying any overlapping function or program, the directors of the departments of social and rehabilitation services, health and environmental sciences, labor and industry, and institutions shall conduct a survey of their department's employees. The survey shall request that department employees:

(a) identify any duplicative functions or programs;

(b) recommend practical methods for consolidating duplicative functions or programs; and

(c) recommend methods of providing money and services more directly to department clients.

(2) The directors shall conduct these surveys using established means of intradepartmental communication so as to avoid any excessive or unnecessary cost to the departments.

(3) An employee may respond to the survey without identifying himself.

(4) An employee shall respond directly to the department director.

(5) The director of each department shall prepare a written response to each recommendation, stating whether the recommendation will be implemented by the department. If the recommendation will not be implemented, the director shall explain why it is not practicable to do so.

(6) A summary of the employee recommendations and the directors' responses must be included in the report given to the legislature on or before December 1, 1986. The original employee recommendations and directors' responses shall be open to inspection by any person at all times during office hours.

**Section 4. Effective date.** This act is effective on passage and approval.

Approved July 16, 1986.

## CHAPTER NO. 32

[HB 45]

AN ACT PROVIDING FOR FUNDING THE DEPARTMENT OF PUBLIC SERVICE REGULATION BY FEES LEVIED ON REGULATED COMPANIES; PROVIDING FOR LEGISLATIVE REVIEW AND A REPORT TO EACH LEGISLATURE; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** As used in [sections 2 through 5], the following definitions apply:

(1) "Department" means the department of public service regulation provided for in Title 2, chapter 15, part 26.

(2) "Regulated companies" means all organizations, corporations, associations, or other public or private entities which now are or may hereafter become subject to regulation in any manner by the department of public service regulation, the public service commission, or any successor agency. The term does not include motor carriers regulated pursuant to Title 69, chapter 12.

**Section 2. Funding of the department of public service regulation.** (1) There is an account in the state special revenue fund to which all fees collected under this section must be deposited and from which all appropriations to the department must be paid. An appropriation to the department may consist of a base appropriation for regular operating expenses and a contingency appropriation for expenses due to an unanticipated caseload.

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall, within 90 days after the close of each calendar quarter, pay to the department of revenue a fee based on a percentage of gross operating revenue reported pursuant to 69-1-223(2)(a), as determined by the department of revenue under [section 3].

(3) The amount of money that may be raised by the fee on the regulated companies during a fiscal year may not be increased from the amount appropriated to the department by the legislature for that fiscal year,



including both base and contingency appropriations. Any additional money required for operation of the department must be obtained from other sources in a manner authorized by the legislature.

**Section 3. Determination and collection of fee.** (1) The fee provided for in [section 2] to be paid by regulated companies must be determined in the manner set forth in 69-1-224 for determining the consumer counsel fee.

(2) The fee provided for in [section 2] may be computed and collected in the manner provided in 69-1-225 through 69-1-227.

(3) All fees paid by a regulated company pursuant to this section are immediately recoverable by the regulated company in its rates and charges. Within 30 days after the issuance by the department of revenue of notices required by 69-1-224(1) and (2), the public service commission shall by separate order authorize each regulated company to fully recover in its rates and charges, on an annual basis, the fees levied by [this act].

**Section 4. Determination of fee to be paid during fiscal year 1987.** (1) For purposes of funding the department, to compute the percentage described in 69-1-224(1)(b) for fiscal year 1987, the department of revenue shall determine the total gross operating revenue generated by all regulated activities within this state for all regulated companies during the first three quarters of fiscal year 1986, based on the information filed pursuant to 69-1-223(2)(a).

(2) The department of revenue shall then compute the percentage, subject to revision as provided in 69-1-224(3), of the amount determined in subsection (1) that will produce an amount equal to the base appropriation to the department for fiscal year 1987, except that no regulated company owned and operated by any municipal corporation within this state may be required to pay a sum in excess of 0.06 of 1% of its gross operating revenue. The fiscal year 1987 appropriation to the department must be collected through the three quarterly installments of fees collected hereunder during fiscal year 1987.

(3) The department of revenue shall by August 15, 1986, give notice by mail to each regulated company of the percentage determined under subsection (2) to be applied to the gross operating revenue reported under 69-1-223(2)(a) to determine the amount of the fee to be paid in fiscal year 1987.

(4) All fees paid by a regulated company pursuant to this section must be immediately recoverable by the regulated company in its rates and charges. Within 30 days after the issuance by the department of revenue of notices required by subsection (3), the public service commission shall by separate order authorize each regulated company to fully recover in its rates and charges, on an annual basis, the fees levied by [this act].

**Section 5. Annual review by legislative finance committee.** (1) The legislative finance committee shall annually review the department's budget and the calculations made by the department of revenue in the determination of the fee pursuant to [section 3].

(2) The legislative finance committee shall report the results of its review to each regular session of the legislature and shall include in its report any recommendations concerning the manner of funding the department.

**Section 6. Codification instruction.** Sections 1 through 3 and section 5 are intended to be codified as an integral part of Title 69, chapter 1, and the provisions of Title 69, chapter 1, apply to sections 1 through 3 and section 5.

**Section 7. Effective date — termination date.** This act is effective July 1, 1986. This act terminates July 1, 1987.

Approved July 16, 1986.

## CHAPTER NO. 33

[HB 10]

### AN ACT TRANSFERRING AND APPROPRIATING MONEY IN THE CAPITAL PROJECTS FUND TO THE LONG-RANGE BUILDING DEBT SERVICE FUND; AMENDING SECTION 17-5-422, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature, by Chapter 600, Laws of 1981, authorized the issuance of \$5 million principal amount long-range building program bonds to finance costs of improvements to the state capitol; and

WHEREAS, the bonds, with other long-range building program bonds for other purposes, were issued and sold in 1981; and

WHEREAS, unexpended proceeds of the bonds and investment income thereon remain in the capital projects fund for the capitol; and

WHEREAS, improvements to the capitol, to the extent presently agreed upon, have been completed or are near completion; and

WHEREAS, approximately \$5.1 million remains in the capital projects fund and is not required to pay the costs of such improvements.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-5-422, MCA, is amended to read:

**"17-5-422. Bonds for state capitol improvements.** (1) The board of examiners is authorized to issue and sell long-range building program bonds, upon the conditions and in the manner stated in this part, in the principal amount not to exceed \$5 million, for the purpose of financing costs of improvements to the state capitol. *Proceeds of the bonds and investment income thereon unexpended as of October 1, 1986, must be applied to the payment of principal and interest next due on outstanding long-range building program bonds of the state.*

(2) There is appropriated to the debt service account established pursuant to 17-5-405 from the revenues of the capitol building land grant (exclusive of income derived from investment of accumulated revenues) in each fiscal year during the term of the bonds authorized by subsection (1) an amount sufficient to pay the principal of and interest on the bonds as due and to establish and maintain required reserves therefor. The appropriation shall be reduced in each fiscal year by the amount, if any, of income received in that year from investment of the reserve attributable to the bonds. The appropriation made by this section is solely for the benefit of the state and is not enforceable by the holders of the bonds. *The appropriation terminates October 1, 1986.*"

**Section 2. Transfer of funds.** The balance of the capital renovation account within a capital projects fund, for improvements to the state capitol, is transferred from that account to the long-range building debt service fund and appropriated for the payment of principal and interest on bonds payable from that debt service fund.

**Section 3. Two-thirds vote required.** Because the bond authority contained in 17-5-422 required enactment by a two-thirds vote of each house, as mandated by Article VIII, section 8, of the Montana Constitution, the amendment provided by this bill requires a vote of two-thirds of the members of each house for passage.

**Section 4. Effective date.** This act is effective October 1, 1986.

Approved July 21, 1986.

## CHAPTER NO. 34

[HB 35]

AN ACT ESTABLISHING A NEW CLASS EIGHTEEN PROPERTY FOR NONPRODUCTIVE PATENTED MINING CLAIMS OUTSIDE THE LIMITS OF AN INCORPORATED CITY OR TOWN; VALUING THAT PROPERTY AS IT WOULD BE VALUED AS AGRICULTURAL GRAZING LAND; TAXING SUCH PROPERTY AT THE RATE GENERALLY APPLICABLE TO CLASS THREE PROPERTY; AMENDING SECTION 15-8-111, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in 1978 mining claims were taxed at "the price paid to the United States . . ."; and

WHEREAS, in 1979 Montana law was changed to tax mining claims as any other property; and

WHEREAS, in 1985 Montana law was further changed to require proof of \$1,500 in agricultural income before a parcel of property could be classified as agricultural; and

WHEREAS, most mining claims are in mountainous, remote terrain that is unfit for agriculture; and

WHEREAS, owners of mining claims are receiving assessment notices increasing the valuation of their property as much as 600%; and

WHEREAS, mining claims were valued at a minimal amount under the philosophy that once they began producing, the owner would pay proceeds taxes; and

WHEREAS, the current revaluation will discourage production because owners will not be able to pay the taxes.

THEREFORE, the Legislature of the State of Montana finds it appropriate to create a separate class of property for mining claims and to tax them at a different tax rate.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Class eighteen property — description — taxable percentage.** (1) Class eighteen property includes all nonproductive patented mining claims outside the limits of an incorporated city or town held by an owner for the ultimate purpose of developing the mineral interests on the property. Class eighteen does not include any property that is used for residential, recreational as described in 70-16-301, or commercial as defined in 15-1-101, purposes, or if the surface is being used for other than mining purposes or has a separate and independent value for such other purposes.

(2) Improvements to class eighteen property that would not disqualify the parcel from designation as class eighteen property are taxed as otherwise provided in this title, including that portion of the land upon which such improvements are located and which is reasonably required for the use of such improvements.

(3) Class eighteen property must be valued as if such land were devoted to agricultural grazing use and is taxed at 30% of its value.

**Section 2. Application for classification as class eighteen property.** A person applying for classification of property as class eighteen property shall make an affidavit to the department of revenue, on a form provided by the department without cost, stating:

(1) the fact that the mining claim is not presently being used for mining purposes but is being held for that use;

(2) that the mineral interests of the mining claim have not been depleted; and

(3) such other information as the department may require to determine an applicant's eligibility and to determine if the surface is being used for other than mining purposes or has a separate and independent value for such other purposes.

**Section 3.** Section 15-8-111, MCA, is amended to read:

**"15-8-111. Assessment — market value standard — exceptions.** (1) All taxable property must be assessed at 100% of its market value except as provided in subsection (5) of this section and in 15-7-111 through 15-7-114.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) Except as provided in subsection (3), the market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to aircraft and boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in 15-6-134 through 15-6-140, 15-6-145 through 15-6-147, and [section 1], except:

(a) the wholesale value for agricultural implements and machinery is the loan value as shown in the Official Guide, Tractor and Farm Equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri; and

(b) for agricultural implements and machinery not listed in the official guide, the department shall prepare a supplemental manual where the values reflect the same depreciation as those found in the official guide.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property in classes four through eleven and fifteen through *eighteen* is the percentage of market value established for each class of property in 15-6-134 through 15-6-141, 15-6-145 through 15-6-147, and [section 1].

(6) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-143, under class thirteen, are assessed at 100% of the combined appraised value of the standing timber and grazing productivity of the land when valued as timberland.

(7) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(8) The taxable value of all property in 15-6-131 and classes two, three, and thirteen is the percentage of assessed value established in 15-6-131(2), 15-6-132, 15-6-133, and 15-6-143 for each class of property. (Subsections (3)(a) and (3)(b) applicable to tax years beginning after December 31, 1985—sec. 4, Ch. 463, L. 1985. Subsection (6)(d) and references in (8) to class thirteen and 15-6-143 terminate January 1, 1991—sec. 10, Ch. 681, L. 1985.)"

**Section 4. Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 15, chapter 6, part 1, and the provisions of Title 15 apply to sections 1 and 2.

**Section 5. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 6. Applicability.** This act applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1985.

**Section 7. Effective date.** This act is effective on passage and approval.

Approved July 21, 1986.

## CHAPTER NO. 35

[SB 20]

AN ACT TO REVISE THE CRITERIA FOR CLASSIFICATION OF CERTAIN PROPERTY AS CLASS FOUR; TO ESTABLISH A NEW CLASS EIGHTEEN PROPERTY FOR REAL PROPERTY CONTAINING LESS THAN 20 ACRES AND THAT IS RENDERED NON-PRODUCTIVE BY LAND USE LAWS; TO REVISE THE ELIGIBILITY OF LAND FOR VALUATION AS AGRICULTURAL; TO EXTEND THE APPLICATION DEADLINE FOR REDUCTION IN 1986 VALUATIONS; AMENDING SECTIONS 15-6-144, 15-7-202, AND 15-8-111, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-7-202, MCA, is amended to read:

**"15-7-202. Eligibility of land for valuation as agricultural.** (1) *Contiguous parcels of land totaling 20 acres or more under one ownership shall be eligible for valuation, assessment, and taxation as agricultural land*

*each year that none of the parcels is devoted to a commercial or industrial use.*

(2) Contiguous or noncontiguous parcels of land *totaling less than 20 acres* under one ownership that are actively devoted to agricultural use shall be eligible for valuation, assessment, and taxation as herein provided each year the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than \$1,500 in annual gross income from the raising of livestock, poultry, field crops, fruit, and other animal and vegetable matter for food or fiber; or

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(3) Parcels that do not meet the qualifications set out in *subsections (1) and (2)* shall not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(4) Land shall not be classified or valued as agricultural if it is subdivided with stated restrictions prohibiting its use for agricultural purposes.

(5) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise shall not be considered a bona fide agricultural operation.

(6) If land has been valued, assessed, and taxed as agricultural land in any year, it shall continue to be so valued, assessed, and taxed until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111.

(7) For the purposes of this part, growing timber is not an agricultural use. (Subsection (6) (now (7)) terminates January 1, 1991—sec. 10, Ch. 681, L. 1985.)"

Section 2. Section 15-6-144, MCA, is amended to read:

**"15-6-144. Class fourteen property — description — taxable percentage.** (1) Class fourteen property includes all improvements on land *that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(2)*. Class fourteen property includes 1 acre of real property beneath the agricultural improvements. The 1 acre shall be valued at market value.

(2) Class fourteen property is taxed at 80% of the taxable percentage applicable to class four property."

Section 3. **Class eighteen property — description — taxable percentage.** (1) Class eighteen property includes parcels of nonproductive real property containing less than 20 acres that are precluded from being developed for residential, commercial, or industrial purposes because of subdivision or zoning laws, regulations, or ordinances or that are precluded from being so developed for other reasons.

(2) Improvements to class eighteen property are taxed as class four property.

(3) Class eighteen property is taxed at 2% of its market value.

**Section 4. Application for classification as class eighteen property.** A person applying for classification of property as class eighteen property shall make an affidavit to the department of revenue, on a form provided by the department without cost, stating:

(1) that the property is precluded from being developed for residential, commercial, or industrial purposes because of subdivision or zoning laws, regulations, or ordinances or for other reasons;

(2) what law, regulation, or ordinance or other reason precludes such use;

(3) what determinations, if any, by a governmental entity have been made to substantiate the application for classification as class eighteen property; and

(4) such other information as is relevant to the application or as may be required by the department.

**Section 5.** Section 15-8-111, MCA, is amended to read:

**"15-8-111. Assessment — market value standard — exceptions.** (1) All taxable property must be assessed at 100% of its market value except as provided in subsection (5) of this section and in 15-7-111 through 15-7-114.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) Except as provided in subsection (3), the market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to aircraft and boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in 15-6-134 through 15-6-140, 15-6-145 through 15-6-147, and [sections 1 and 2], except:

(a) the wholesale value for agricultural implements and machinery is the loan value as shown in the Official Guide, Tractor and Farm Equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri; and

(b) for agricultural implements and machinery not listed in the official guide, the department shall prepare a supplemental manual where the values reflect the same depreciation as those found in the official guide.



(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property in classes four through eleven and fifteen through *eighteen* is the percentage of market value established for each class of property in 15-6-134 through 15-6-141, 15-6-145 through 15-6-147, and [sections 1 and 2].

(6) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-143, under class thirteen, are assessed at 100% of the combined appraised value of the standing timber and grazing productivity of the land when valued as timberland.

(7) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(8) The taxable value of all property in 15-6-131 and classes two, three, and thirteen is the percentage of assessed value established in 15-6-131(2), 15-6-132, 15-6-133, and 15-6-143 for each class of property. (Subsections (3)(a) and (3)(b) applicable to tax years beginning after December 31, 1985—sec. 4, Ch. 463, L. 1985. Subsection (6)(d) and references in (8) to class thirteen and 15-6-143 terminate January 1, 1991—sec. 10, Ch. 681, L. 1985.)"

**Section 6. Codification instruction.** Sections 3 and 4 are intended to be codified as an integral part of Title 15, chapter 6, part 1, and the provisions of Title 15 apply to sections 3 and 4.

**Section 7. Application deadline for reduction in 1986 valuation.** Notwithstanding the provisions of 15-15-102, the application deadline for reduction in 1986 taxable valuations is August 1, 1986, or 15 days after receipt by the taxpayer of a revised notice of classification and appraisal, whichever is later.

**Section 8. Land valued in excess of average county land value — renotification to taxpayer.** For persons paying taxes on real property

containing more than 5 acres but less than 20 acres, the department of revenue shall notify each taxpayer whose land value for 1986 due to reclassification to class four by application of 15-7-202 exceeds the average value per acre for such land in the taxpayer's county. The new notice must fully inform the taxpayer as to the reasons for the new notice, including the cause of the increase in value, the right to appeal to the county tax appeal board, and the extension of time for appeal.

**Section 9. Extension of authority.** Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

**Section 10. Applicability.** This act applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1985.

**Section 11. Effective date.** This act is effective on passage and approval.

Approved July 23, 1986.

## CHAPTER NO. 36

[HB 48]

AN ACT TO REQUIRE THAT A BLIND PERSON BE GIVEN PREFERENCE IN THE AWARD OF SERVICE CONTRACTS FOR VENDING FACILITIES ON STATE PROPERTY WHEN A BLIND PERSON AND ANOTHER BIDDER HAVE SUBMITTED SUBSTANTIALLY EQUAL PROPOSALS AND THOSE PROPOSALS ARE THE MOST HIGHLY RATED BY THE CONTRACTING AGENCY; TO PROVIDE RULEMAKING AUTHORITY TO THE DEPARTMENT OF ADMINISTRATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** For purposes of [sections 1 through 5], the following definitions apply:

(1) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision in the better eye to such a degree that the widest diameter of the visual field subtends an angle no greater than 20 degrees as determined by an ophthalmologist or a physician skilled in diseases of the eye.

(2) "Department" means the department of administration.

(3) "Purchasing agency" means any state agency authorized by Title 18, chapter 4, to enter into contracts.

(4) "Responsible bidder" means a person who has the capability in all respects to fully perform the requirements of a contract and has the integrity and reliability that assures good faith performance.

(5) (a) "State property" means a building or portion of a building or other real property that is:

- (i) owned or leased by the state or an agency of the state;
- (ii) utilized in the conduct of state matters; and
- (iii) occupied principally by state employees.

(b) State property does not include vocational institutions or institutions of higher education.

(6) "Vending facility" means the area and equipment, including vending machines, on state property which are utilized in providing a food or beverage service to employees and other persons present on the property.

(7) "Vending machine" means a device for the dispensing of foodstuffs, liquids, or other products when money is inserted into the device. Vending machine does not include a postage stamp machine, photocopy machine, or coin-operated telephone.

**Section 2. Preference to blind persons.** (1) Whenever state property is proposed to be made available to private persons for use as a vending facility, if two or more substantially equal proposals submitted by responsible bidders are determined to most closely meet the purchasing agency's specifications and if one of the proposals has been submitted by a blind person, the contract must be awarded to the blind person.

(2) For purposes of this section, proposals are substantially equal if their overall ratings, as determined by the purchasing agency in accordance with the request for proposal, do not differ by more than 3%.

(3) Any contract awarded pursuant to this section to a blind person must prohibit transfer of the contract by sublease, assignment, or any other method.

**Section 3. Applicability.** A contract for the operation of a vending facility entered into prior to July 1, 1986, is not subject to [sections 1 through 5] while the contract remains in effect. In addition, this part may not be interpreted to require or authorize the failure to renew any contract for a vending facility on state property in effect on July 1, 1986, if the contract contains a provision permitting the renewal of the contract for a specific term at the option of the vendor or the state or both.

**Section 4. Application of state procurement law.** Procurement under [sections 1 through 5] is subject to all other statutes governing state procurement except that in case of conflict [sections 1 through 5] apply.

**Section 5. Blind preference rules.** The department shall adopt rules to implement [sections 1 through 4].

**Section 6. Codification instruction.** Sections 1 through 5 are intended to be codified as an integral part of Title 18, chapter 5.

**Section 7. Effective date.** This act is effective on passage and approval.

Approved July 23, 1986.



# **APPROPRIATIONS**

ENACTED BY THE

**Forty-Ninth Legislature**

IN SPECIAL

SESSION

STATE OF MONTANA

**June 1986**



# APPROPRIATIONS

## HOUSE BILL NO. 1

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE SPECIAL SESSION OF THE FORTY-NINTH LEGISLATURE CONVENING ON JUNE 16, 1986; APPROPRIATING MONEY FOR CONTINUING THE STUDY ON THE LOCATION OF THE LAW ENFORCEMENT ACADEMY; APPROPRIATING MONEY FOR CONDUCTING A COMPREHENSIVE STUDY OF MONTANA TAXATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Operations appropriation.** (1) The following amounts are appropriated from the general fund for fiscal years 1986 and 1987 for the operation of the Special Session of the Forty-Ninth Legislature convening on June 16, 1986:

|                          |           |
|--------------------------|-----------|
| House of Representatives | \$468,567 |
| Senate                   | 258,942   |
| Legislative Council      | 104,085   |

(2) Any unexpended funds appropriated in this section must revert to the general fund on October 1, 1986.

Section 2. **Appropriation — law enforcement academy committee.** There is appropriated \$4,000 from the general fund to the Legislative Council for the biennium ending June 30, 1987, for the purpose of continuing the study requested by House Joint Resolution No. 50, Laws of 1985.

Section 3. **Appropriation — comprehensive tax study.** There is appropriated from the general fund to the Legislative Council for the biennium ending June 30, 1987, \$25,000 for the purpose of the Revenue Oversight Committee conducting a comprehensive study of Montana taxation.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved June 24, 1986.

## HOUSE BILL NO. 2

AN ACT APPROPRIATING MONEY FROM THE LEGISLATIVE COUNCIL MONTANA CODE ANNOTATED SPECIAL REVENUE FUND TO THE GENERAL FUND; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appropriation.** There is appropriated \$500,000 from the Legislative Council Montana Code Annotated special revenue fund to the general fund for fiscal year 1987.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved June 30, 1986.

## HOUSE BILL NO. 7

AN ACT REDUCING THE APPROPRIATION FOR RESIDENTIAL ALCOHOL ABUSE TREATMENT FOR INDIGENT YOUTHS; AMENDING SECTION 1, HOUSE BILL 935, LAWS OF 1985; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 1, House Bill 935, Laws of 1985, is amended to read:

"Section 1. **Appropriation.** The following money is appropriated from the general fund to the Department of Social and Rehabilitation Services for residential alcohol abuse treatment for indigent youths:

|                  |           |
|------------------|-----------|
| Fiscal year 1986 | \$225,000 |
|------------------|-----------|

|                  |          |
|------------------|----------|
| Fiscal year 1987 | 213,750" |
|------------------|----------|

Section 2. **Effective date.** This act is effective on passage and approval.

Approved July 10, 1986.

## HOUSE BILL NO. 21

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR FISCAL YEARS ENDING JUNE 30, 1986, AND JUNE 30, 1987, WHICH WOULD USUALLY BE MADE BY BUDGET AMENDMENT; PROVIDING FOR SOME APPROPRIATIONS TO CONTINUE FROM FISCAL YEAR 1986 TO FISCAL YEAR 1987; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Time limits.** The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the years for which the appropriations are made. The unspent balance of any appropriation shall revert to the fund from which it was appropriated unless the appropriation is continued by this act.

Section 2. **Governor's power to reduce appropriations.** In the event of a shortfall in revenue, the Governor may reduce any appropriation in this act by not more than 15%.

Section 3. **Totals not appropriations.** The totals shown in this act are for informational purposes only and are not appropriations.



Section 4. **Appropriations.** The following money is appropriated, subject to the terms and conditions of this act:

| <u>Agency and Program</u>     | <u>FY</u> | <u>Amount</u> | <u>Fund</u>                     |
|-------------------------------|-----------|---------------|---------------------------------|
| <b>GOVERNOR'S OFFICE</b>      |           |               |                                 |
| Executive Program             | 1986      | \$21,000      | Federal & Other Special Revenue |
| <b>DEPARTMENT OF JUSTICE</b>  |           |               |                                 |
| Agency Legal Services         | 1986      | 30,964        | Proprietary                     |
| Highway Patrol                | 1987      | 49,000        | Federal & Other Special Revenue |
| Criminal Investigation        | 1987      | 15,000        | Federal & Other Special Revenue |
| HIGHWAY TRAFFIC SAFETY        | 1987      | 5,000         | Federal & Other Special Revenue |
| <b>DEPARTMENT OF HIGHWAYS</b> |           |               |                                 |
| Maintenance                   | 1986      | 448,416       | Federal & Other Special Revenue |

Fiscal year 1986 unexpended balance is reauthorized for fiscal year 1987.

The following budget amendments (BA) were approved in fiscal year 1986. This act reauthorizes the fiscal year 1986 unexpended balances for these amendments in fiscal year 1987:

**BOARD OF CRIME CONTROL**

|                                                                     |      |       |                                 |
|---------------------------------------------------------------------|------|-------|---------------------------------|
| Statewide Jail Information - FY 1986 BA # 1219                      |      |       |                                 |
| Youth Services Reorganization - FY 1986 BA # 0378                   |      |       |                                 |
| Juvenile Policy and Development - FY 1986 BA # 0379                 |      |       |                                 |
| Juvenile Justice Information System Enhancement - FY 1986 BA # 0627 |      |       |                                 |
| Board of Crime Control                                              | 1987 | 5,645 | Federal & Other Special Revenue |

**MONTANA UNIVERSITY SYSTEM**

|                                 |      |           |                                 |
|---------------------------------|------|-----------|---------------------------------|
| Commissioner's Office           |      |           |                                 |
| Federal Indirect Cost           | 1987 | 11,186    | Federal & Other Special Revenue |
| Group Insurance                 | 1987 | 8,302,000 | Proprietary                     |
| Education for Economic Security | 1987 | 65,000    | Federal & Other Special Revenue |
| Carl Perkins Scholarship        | 1987 | 50,000    | Federal & Other Special Revenue |

**MONTANA STATE LIBRARY**

|                     |              |         |                                 |
|---------------------|--------------|---------|---------------------------------|
| Library Development | 1986         | 162,916 | Federal & Other Special Revenue |
| Library Development | 1986 (cont.) | 73,200  | Federal & Other Special Revenue |

The \$73,200 appropriation is for the biennium ending June 30, 1987.

**MONTANA HISTORICAL SOCIETY**

|         |      |       |                                 |
|---------|------|-------|---------------------------------|
| Library | 1987 | 7,000 | Federal & Other Special Revenue |
|---------|------|-------|---------------------------------|

| <u>Agency and Program</u> | <u>FY</u> | <u>Amount</u> | <u>Fund</u>                        |
|---------------------------|-----------|---------------|------------------------------------|
| Archives                  | 1987      | 4,921         | Federal & Other<br>Special Revenue |

**DEPARTMENT OF STATE LANDS**

|                        |                 |         |                       |
|------------------------|-----------------|---------|-----------------------|
| Central Administration | 1986            | 58,075  | Proprietary           |
| Reclamation Division   | 1986<br>(cont.) | 305,000 | State Special Revenue |

The \$305,000 appropriation in the Reclamation Division is for the biennium ending June 30, 1987.

**DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION**

|                               |      |         |                                    |
|-------------------------------|------|---------|------------------------------------|
| Centralized Services Division | 1987 | 54,507  | Federal & Other<br>Special Revenue |
| Energy Division               | 1987 | 226,950 | Federal & Other<br>Special Revenue |

**DEPARTMENT OF AGRICULTURE**

|                                   |      |        |                                    |
|-----------------------------------|------|--------|------------------------------------|
| Environmental Management Division | 1986 | 1,250  | Federal & Other<br>Special Revenue |
|                                   | 1987 | 1,750  | Federal & Other<br>Special Revenue |
| Plant Industry                    | 1986 | 33,708 | State Special Revenue              |
|                                   | 1987 | 74,912 | State Special Revenue              |

**DEPARTMENT OF MILITARY AFFAIRS**

|                     |      |         |                                    |
|---------------------|------|---------|------------------------------------|
| Army National Guard | 1986 | 249,700 | Federal & Other<br>Special Revenue |
|---------------------|------|---------|------------------------------------|

**DEPARTMENT OF LABOR AND INDUSTRY**

|                              |                 |         |                                    |
|------------------------------|-----------------|---------|------------------------------------|
| Job Training Partnership Act | 1986<br>(cont.) | 250,000 | Federal & Other<br>Special Revenue |
|                              | 1987            | 70,000  | Federal & Other<br>Special Revenue |

The fiscal year 1986 JTPA appropriation of \$250,000 is for the biennium ending June 30, 1987.

|                              |                 |         |                                    |
|------------------------------|-----------------|---------|------------------------------------|
| Job Training Partnership Act | 1987            | 73,368  | Federal & Other<br>Special Revenue |
| Unemployment Insurance       | 1986<br>(cont.) | 100,000 | Federal & Other<br>Special Revenue |

The fiscal year 1986 Unemployment Insurance appropriation of \$100,000 is for the biennium ending June 30, 1987. The \$100,000 shall be requisitioned and used pursuant to available funds under Section 903 of the Social Security Act and 39-51-404, MCA, for administrative expenses of the Unemployment Insurance Division. These funds must be expended by June 15, 1987.

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES**

| <u>Agency and Program</u>                                    | <u>FY</u>    | <u>Amount</u>       | <u>Fund</u>                        |
|--------------------------------------------------------------|--------------|---------------------|------------------------------------|
| Environmental Sciences                                       | 1987         | 21,000              | Federal & Other<br>Special Revenue |
| Health Services & Medical<br>Services                        | 1987         | 83,197              | Federal & Other<br>Special Revenue |
| <b>DEPARTMENT OF SOCIAL AND REHABILITATION<br/>SERVICES</b>  |              |                     |                                    |
| Community Services                                           | 1987         | 51,300              | Federal & Other<br>Special Revenue |
|                                                              | 1987         | 60,000              | State Special Rev-<br>enue         |
| Eligibility Determination                                    | 1987         | 202,426             | Federal & Other<br>Special Revenue |
| Vocational Rehabilitation                                    | 1987         | 290,000             | Federal & Other<br>Special Revenue |
|                                                              | 1987         | 200,000             | State Special Rev-<br>enue         |
| Developmental Disabilities<br>Planning Advisory Coun-<br>cil | 1987         | 99,944              | Federal & Other<br>Special Revenue |
| Disability Determination                                     | 1987         | 462,156             | Federal & Other<br>Special Revenue |
| <b>STATEWIDE TOTAL</b>                                       | 1986         | 89,039              | Proprietary                        |
|                                                              | 1986         | 33,708              | State Special Rev-<br>enue         |
|                                                              | 1986         | 1,008,066           | Federal & Other<br>Special Revenue |
|                                                              | <b>Total</b> | <b>\$1,130,813</b>  |                                    |
|                                                              | 1987         | 8,302,000           | Proprietary                        |
|                                                              | 1987         | 324,682             | State Special Rev-<br>enue         |
|                                                              | 1987         | 1,665,830           | Federal & Other<br>Special Revenue |
|                                                              | <b>Total</b> | <b>\$10,292,512</b> |                                    |

Section 5. **Effective date.** This act is effective on passage and approval.

Approved July 3, 1986.

## HOUSE BILL NO. 22

AN ACT APPROPRIATING FUNDS FOR LOW-INCOME HOME WEATHERIZATION FROM THE EXXON CORPORATION OVERCHARGE PAYMENT; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appropriation.** There is appropriated to the Department of Social and Rehabilitation Services for fiscal year 1987 \$1,666,000 from the Exxon Corporation overcharge payment contained in the federal special

revenue fund for use in the low-income home weatherization program provided for in 90-4-201.

**Section 2. Contingent effective date.** (1) Subject to subsection (2), this act is effective on passage and approval.

(2) No funds appropriated in section 1 may be expended until the Department of Social and Rehabilitation Services submits to the United States Department of Energy a plan for expending these funds and the plan is approved.

Approved July 16, 1986.

## HOUSE BILL NO. 24

AN ACT REDUCING THE APPROPRIATION FOR A VOLUNTARY GENETICS PROGRAM; AMENDING SECTION 3, CHAPTER 706, LAWS OF 1985; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 3, Chapter 706, Laws of 1985, is amended to read:

"Section 3. **Appropriation.** There is appropriated from the general fund to the Department of Health and Environmental Sciences \$507,000 for the biennium ending June 30, 1987, to be used for implementing and operating the voluntary genetics program established in section 1."

**Section 2. Effective date.** This act is effective on passage and approval.

Approved July 3, 1986.

## HOUSE BILL NO. 25

AN ACT REDUCING THE APPROPRIATION FOR REVIEW OF SUBDIVISIONS BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; AMENDING SECTION 3, CHAPTER 708, LAWS OF 1985; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 3, Chapter 708, Laws of 1985, is amended to read:

"Section 3. **Appropriation.** There is appropriated from the general fund \$136,787 for fiscal year 1986 and \$132,834 for fiscal year 1987 to the

Department of Health and Environmental Sciences for the subdivision review as required by Title 76, chapter 4, part 1."

**Section 2. Effective date.** This act is effective on passage and approval.

Approved July 3, 1986.

## HOUSE BILL NO. 26

AN ACT REDUCING THE APPROPRIATION TO PROVIDE TRAINING FOR FAMILY PRACTICE RESIDENT PHYSICIANS; AMENDING SECTION 5, CHAPTER 649, LAWS OF 1985; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 5, Chapter 649, Laws of 1985, is amended to read:

"Section 5. **Appropriation.** There is appropriated from the general fund \$68,250 to the Department of Health and Environmental Sciences for the biennium ending June 30, 1987, for personal services and operating expenses to provide support for family practice residency training."

**Section 2. Effective date.** This act is effective on passage and approval.

Approved July 3, 1986.

## HOUSE BILL NO. 30

AN ACT TO GENERALLY REVISE APPROPRIATIONS FOR FISCAL YEAR 1987; AMENDING HOUSE BILL 500, LAWS OF 1985; AMENDING HOUSE BILL 922, LAWS OF 1985, CHANGING THE APPROPRIATIONS FOR THE GRANTS PROGRAM; AMENDING SECTION 7, HOUSE BILL 928, LAWS OF 1985; AMENDING SECTION 2, HOUSE BILL 961, LAWS OF 1985; AMENDING SECTION 75-1-1101, MCA; PROVIDING A REDUCTION IN APPROPRIATIONS FOR THE MONTANA SCIENCE AND TECHNOLOGY BOARD, FOR THE LEGISLATIVE COUNCIL FOR USE BY THE COMMITTEE ON INDIAN AFFAIRS, AND FOR THE AGRICULTURAL ASSISTANCE AND COUNSELING PROGRAM; REPEALING SECTION 10, CHAPTER 717, LAWS OF 1985; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** House Bill 500, Laws of 1985, is amended to read:

"Section 1. **Title.** This act may be cited as the "General Appropriations Act of 1985".

**Section 2. Definitions.** For the purposes of this act, unless otherwise stated, the following definitions apply:

(1) "Agency" means each state office, department, division, board, commission, council, committee, institution, university unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government.

(2) "Approving authority" means the Governor or his designated representative for executive branch agencies; the Chief Justice of the Supreme Court for judicial branch agencies; appropriate legislative committees for legislative branch agencies; or the Board of Regents or its designated representative for the university system.

(3) "University system unit" means the board of regents, office of the Commissioner of Higher Education, University of Montana at Missoula, Montana State University at Bozeman, Montana College of Mineral Science and Technology at Butte, Eastern Montana College at Billings, Northern Montana College at Havre, Western Montana College at Dillon, the Agricultural Experiment Station with central offices at Bozeman, the Cooperative Extension Service with central offices at Bozeman, the Forestry and Conservation Experiment Station with central offices at Missoula, or the Bureau of Mines and Geology with central offices at Butte.

**Section 3. Other funds to offset general fund.** The approving authority shall decrease the general fund appropriation of the agency by the amount of funds received from other sources in excess of the appropriation provided in this act unless such action is expressly contrary to state or federal law, rule, or contract or the approving authority certifies that the services to be funded by the additional funds are significantly different from those for which the agency has received a general fund appropriation.

**Section 4. Expenditure limit.** Expenditures may not exceed appropriations.

**Section 5. Budget requests.** Sufficient funds are appropriated in this act to enable each agency to submit its 1989 biennial budget request to the Budget Director and the Legislative Fiscal Analyst pursuant to the time schedule established in section 17-7-112(1), MCA. If any agency fails to submit its final, complete budget request by the deadlines established in section 17-7-112(1), MCA, the expenditure authority granted in this act must be reduced or rescinded by the Budget Director unless the agency director certifies that an emergency situation has precluded a timely budget presentation and the Budget Director approves an extension not to exceed 30 days. Employees added through the appropriation of federal or state special revenues or proprietary funds in this act shall not be included in the current level budget presented to the 1987 Legislature if their continuance requires general fund support.

**Section 6. Detailed budget information.** Within 2 days after submission of the preliminary executive budget to the Legislative Fiscal Analyst, the Budget Director shall give the Legislative Fiscal Analyst the Governor's preliminary expenditure recommendations by object of expenditure to the second level of detail and by funding source detailed by accounting entity.

Within 1 day after the Legislative Finance Committee presents the budget analysis to the 50th Legislature, the Budget Director and the Legislative Fiscal Analyst shall mutually exchange expenditure recommendations by object of expenditure to the second level of detail and by funding sources detailed by accounting entity. This final information must be filed in the respective offices and available to members of the Legislature and the general public.

**Section 7. Operating budgets.** Expenditures may be made only in accordance with operating budgets approved by the approving authority. The respective appropriations are contingent upon approval of the operating budget by July 1 of each fiscal year. Each operating budget shall include expenditures for each agency program detailed at least by personal services, operating expenses, equipment, benefits and claims, transfers, and local assistance. However, if any agency allocates its appropriations to the second expenditure level in the state accounting system, separate operation plans need not be submitted to the approving authority.

**Section 8. Program transfers.** The approving authority may approve agency requests for program transfers, within each fiscal year, not to exceed 5% of the total agency budget unless such a transfer is specifically prohibited by this act or by statute. A request for a transfer accompanied by a justification explaining the reason for the transfer must be submitted by the requesting agency to the approving authority and the Legislative Fiscal Analyst. Upon approval of the transfer, the approving authority shall inform the fiscal analyst of the approved transfer and the justification for the transfer.

**Section 9. Reduction of appropriation.** In the event of a shortfall in revenue, the Governor may reduce any or all appropriations. No appropriation may be reduced by more than 15%. The following appropriations may not be reduced:

- (1) payment of interest and retirement of state debt;
- (2) the legislative branch;
- (3) the judicial branch;
- (4) school foundation program; or
- (5) salaries of elected officials during their terms of office.

**Section 10. Access to records of contracting entities.** (1) Unless a contract to provide a service to members of the public on behalf of the state, either written or oral, made with a nonstate entity complies with subsection (2), no money appropriated by this act may be expended for such contract.

(2) Every contract described in subsection (1) must contain a provision to allow access, for legislative audit and fiscal analysis, to the records of the contracting nonstate entity sufficient to determine whether the parties to the contract have complied with the terms of the contract. Such an audit and fiscal analysis requires access to records necessary to carry out the legislative audit and analysis functions set out in Title 5, chapters 12 and 13.

(3) The state may unilaterally terminate any contract upon refusal by the contracting nonstate entity to allow access to its records necessary to carry out such a legislative audit or analysis.

**Section 11. Coal tax trust income.** Interest income from the coal tax constitutional trust fund established under Article IX, section 5, of the Montana Constitution is hereby appropriated to the general fund for use during the biennium ending June 30, 1987. The portion of the general fund which represents this appropriation is appropriated to the Department of Commerce in House Bill 500, items 8, 9, 11, and 15, the vocational-technical centers in House Bill 500, and any funds not otherwise designated shall be considered part of the university system's appropriation in House Bill 500.

**Section 12. Severability.** If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision does not affect the validity of the remaining portions of this act.

**Section 13. Audit costs.** Amounts appropriated for audits may be transferred between fiscal years. Agencies shall reserve enough cash in each fund to pay for audit costs and shall to the maximum extent allowable under federal regulations charge audit costs to federal funds.

**Section 14. Pay plan appropriation coordination.** From the appropriation for the pay plan act in House Bill 375, the Office of Budget and Program Planning is authorized to increase the expenditure authority of the vocational-technical centers, community colleges, and the Department of Institutions for the community mental health centers.

**Section 15. Totals not appropriations.** The totals shown in this act are for informational purposes only and are not appropriations.

**Section 16. Expenditures to be restrained.** State agencies shall restrain year-end expenditures to those prudent and necessary to provide authorized services. They shall not make expenditures which would be considered trivial by reasonable people. The Office of Budget and Program Planning shall monitor year-end expenditures, and a report shall be made to the Legislative Finance Committee.

**Section 17. Appropriations.** The following money is appropriated for the respective fiscal years:



## A. GENERAL GOVERNMENT AND HIGHWAYS

| <u>Fiscal 1986</u>            |                              |                                |                    |              | <u>Fiscal 1987</u>  |                              |                                |                    |              |
|-------------------------------|------------------------------|--------------------------------|--------------------|--------------|---------------------|------------------------------|--------------------------------|--------------------|--------------|
| <u>General Fund</u>           | <u>State Special Revenue</u> | <u>Federal Special Revenue</u> | <u>Proprietary</u> | <u>Total</u> | <u>General Fund</u> | <u>State Special Revenue</u> | <u>Federal Special Revenue</u> | <u>Proprietary</u> | <u>Total</u> |
| LEGISLATIVE AUDITOR           |                              |                                |                    |              |                     |                              |                                |                    |              |
| 1. Operations                 |                              |                                |                    |              |                     |                              |                                |                    |              |
| 1,113,793                     | 901,002                      |                                |                    | 2,014,795    | 1,040,898           | 938,807                      |                                |                    | 1,979,705    |
| 2. Legislative Request Travel |                              |                                |                    |              |                     |                              |                                |                    |              |
| 5,000                         |                              |                                |                    | 5,000        |                     |                              |                                |                    |              |
| 3. Telephone Costs            |                              |                                |                    |              |                     |                              |                                |                    |              |
| 2,432                         |                              |                                |                    | 2,432        |                     |                              |                                |                    |              |
| -----                         |                              |                                |                    |              |                     |                              |                                |                    |              |
| Total                         |                              |                                |                    |              |                     |                              |                                |                    |              |
| 1,121,225                     | 901,002                      |                                |                    | 2,022,227    | 1,040,898           | 938,807                      |                                |                    | 1,979,705    |

Item 2 is for travel relating to legislative requests.

Item 3 is a biennial appropriation to move telephones if the capitol is renovated.

## LEGISLATIVE FISCAL ANALYST

|                    |         |  |  |  |         |         |  |  |  |  |         |
|--------------------|---------|--|--|--|---------|---------|--|--|--|--|---------|
| 1. Operations      |         |  |  |  |         |         |  |  |  |  |         |
|                    | 694,999 |  |  |  | 694,999 | 712,123 |  |  |  |  | 712,123 |
| 2. Data Processing |         |  |  |  |         |         |  |  |  |  |         |
|                    | 56,433  |  |  |  | 56,433  |         |  |  |  |  |         |
| 3. Consultants     |         |  |  |  |         |         |  |  |  |  |         |
|                    | 30,000  |  |  |  | 30,000  |         |  |  |  |  |         |
| Total              |         |  |  |  |         |         |  |  |  |  |         |
| 781,432            |         |  |  |  | 781,432 | 712,123 |  |  |  |  | 712,123 |

Items 2 and 3 are biennial appropriations.

## LEGISLATIVE COUNCIL

|                                                                               |           |  |  |  |           |           |  |  |  |  |           |
|-------------------------------------------------------------------------------|-----------|--|--|--|-----------|-----------|--|--|--|--|-----------|
| 1. Operations                                                                 |           |  |  |  |           |           |  |  |  |  |           |
|                                                                               | 1,606,735 |  |  |  | 1,606,735 | 2,007,879 |  |  |  |  | 2,007,879 |
| 2. Montana Code Annotated                                                     |           |  |  |  |           |           |  |  |  |  |           |
|                                                                               | 969,000   |  |  |  | 969,000   |           |  |  |  |  |           |
| 3. NCSL Dues                                                                  |           |  |  |  |           |           |  |  |  |  |           |
|                                                                               | 32,500    |  |  |  | 32,500    | 38,084    |  |  |  |  | 38,084    |
| 4. CSG Dues                                                                   |           |  |  |  |           |           |  |  |  |  |           |
|                                                                               | 31,556    |  |  |  | 31,556    | 31,933    |  |  |  |  | 31,933    |
| 5. NCSL Travel                                                                |           |  |  |  |           |           |  |  |  |  |           |
|                                                                               | 47,825    |  |  |  | 47,825    |           |  |  |  |  |           |
| 6. CSG Travel                                                                 |           |  |  |  |           |           |  |  |  |  |           |
|                                                                               | 24,567    |  |  |  | 24,567    |           |  |  |  |  |           |
| 7. Interim Studies                                                            |           |  |  |  |           |           |  |  |  |  |           |
|                                                                               | 48,325    |  |  |  | 48,325    |           |  |  |  |  |           |
| 8. Forestry Task Force                                                        |           |  |  |  |           |           |  |  |  |  |           |
|                                                                               | 19,459    |  |  |  | 19,459    |           |  |  |  |  |           |
| 9. Revenue Oversight Committee                                                |           |  |  |  |           |           |  |  |  |  |           |
|                                                                               | 25,000    |  |  |  | 25,000    |           |  |  |  |  |           |
| 10. Administrative Code Committee                                             |           |  |  |  |           |           |  |  |  |  |           |
|                                                                               | 12,700    |  |  |  | 12,700    |           |  |  |  |  |           |
| 11. Capitol Building and Planning                                             |           |  |  |  |           |           |  |  |  |  |           |
|                                                                               | 3,600     |  |  |  | 3,600     |           |  |  |  |  |           |
| 12. Five-State Biennial Conference                                            |           |  |  |  |           |           |  |  |  |  |           |
|                                                                               | 6,060     |  |  |  | 6,060     |           |  |  |  |  |           |
| 13. Water Task Force                                                          |           |  |  |  |           |           |  |  |  |  |           |
| 14. Livestock Task Force                                                      |           |  |  |  |           |           |  |  |  |  |           |
| 15. Legislative Management Consultant                                         |           |  |  |  |           |           |  |  |  |  |           |
| 16. Coal Tax Subcommittee                                                     |           |  |  |  |           |           |  |  |  |  |           |
|                                                                               | 12,000    |  |  |  | 12,000    |           |  |  |  |  |           |
| 17. Montana-Western Canadian Provinces Boundary Advisory Committee — (HB 488) |           |  |  |  |           |           |  |  |  |  |           |
|                                                                               | 4,200     |  |  |  | 4,200     |           |  |  |  |  |           |
| Total                                                                         |           |  |  |  |           |           |  |  |  |  |           |
| 1,862,527                                                                     | 981,000   |  |  |  | 2,843,527 | 2,077,896 |  |  |  |  | 2,077,896 |

Items 2 and 5 through 17 are biennial appropriations.

In the event studies in addition to those specifically assigned by bill or resolution are assigned to the Revenue Oversight Committee, the Legislative Council shall allocate funds to the committee for those studies.

## CONSUMER COUNSEL.

|                                                            | Fiscal 1986  |                       |                         |             |         | Fiscal 1987  |                       |                         |             |
|------------------------------------------------------------|--------------|-----------------------|-------------------------|-------------|---------|--------------|-----------------------|-------------------------|-------------|
|                                                            | General Fund | State Special Revenue | Federal Special Revenue | Proprietary |         | General Fund | State Special Revenue | Federal Special Revenue | Proprietary |
| 1. Operations                                              |              | 781,776               |                         |             | 781,776 |              | 752,691               |                         | 752,691     |
| 2. Contract Services                                       |              | 100,000               |                         |             | 100,000 |              | 100,000               |                         | 100,000     |
| Total                                                      |              | 881,776               |                         |             | 881,776 |              | 852,691               |                         | 852,691     |
| Item 2 is for expert witness fees for unanticipated cases. |              |                       |                         |             |         |              |                       |                         |             |

## ENVIRONMENTAL QUALITY COUNCIL

|               |         |  |  |         |         |  |  |  |         |
|---------------|---------|--|--|---------|---------|--|--|--|---------|
| 1. Operations | 232,086 |  |  | 232,086 | 220,688 |  |  |  | 220,688 |
|---------------|---------|--|--|---------|---------|--|--|--|---------|

## JUDICIARY

|                              |           |         |  |           |           |         |  |  |           |
|------------------------------|-----------|---------|--|-----------|-----------|---------|--|--|-----------|
| 1. Supreme Court Operations  |           |         |  |           |           |         |  |  |           |
| a. Operations                |           |         |  |           |           |         |  |  |           |
| 1,287,830                    |           |         |  | 1,287,830 | 1,254,877 |         |  |  | 1,254,877 |
| b. Audit                     |           |         |  |           |           |         |  |  |           |
| 11,963                       |           |         |  | 11,963    |           |         |  |  |           |
| 2. Boards and Commissions    |           |         |  |           |           |         |  |  |           |
| 202,477                      |           |         |  | 202,477   | 177,923   |         |  |  | 177,923   |
| 3. Law Library               |           |         |  |           |           |         |  |  |           |
| 497,146                      | 47,150    |         |  | 544,296   | 501,972   | 19,694  |  |  | 521,666   |
| a. Audit                     |           |         |  |           |           |         |  |  |           |
| 171                          |           |         |  | 171       |           |         |  |  |           |
| 4. District Court Operations |           |         |  |           |           |         |  |  |           |
| 2,158,880                    |           |         |  | 2,158,880 | 2,172,575 |         |  |  | 2,172,575 |
| 5. Water Courts              |           |         |  |           |           |         |  |  |           |
| 556,746                      |           |         |  | 556,746   |           | 544,111 |  |  | 544,111   |
| a. Audit                     |           |         |  |           |           |         |  |  |           |
| 1,616                        |           |         |  | 1,616     |           |         |  |  |           |
| Total                        | 4,158,296 | 605,683 |  | 4,763,979 | 4,107,347 | 563,805 |  |  | 4,671,152 |

## GOVERNOR'S OFFICE

|                                                                     |           |         |        |           |           |  |         |        |           |
|---------------------------------------------------------------------|-----------|---------|--------|-----------|-----------|--|---------|--------|-----------|
| 1. Office of Budget & Program Planning                              |           |         |        |           |           |  |         |        |           |
| a. Operations                                                       |           |         |        |           |           |  |         |        |           |
| 666,698                                                             |           |         |        | 666,698   | 672,558   |  |         |        | 672,558   |
| b. Audit                                                            |           |         |        |           |           |  |         |        |           |
| 7,000                                                               |           |         |        | 7,000     | 7,000     |  |         |        | 7,000     |
| c. Statewide Audit                                                  |           |         |        |           |           |  |         |        |           |
|                                                                     |           |         |        | 73,750    | 73,750    |  |         | 73,750 | 73,750    |
| 2. Executive Office Program                                         |           |         |        |           |           |  |         |        |           |
| a. Operations                                                       |           |         |        |           |           |  |         |        |           |
| 918,798                                                             |           | 317,500 |        | 1,234,296 | 879,797   |  | 317,502 |        | 1,197,299 |
| b. Audit                                                            |           |         |        |           |           |  |         |        |           |
| 14,077                                                              |           | 1,673   |        | 15,750    |           |  |         |        |           |
| 3. Board of Visitors                                                |           |         |        |           |           |  |         |        |           |
| 127,455                                                             |           |         |        | 127,455   | 122,155   |  |         |        | 122,155   |
| 4. Air Transportation                                               |           |         |        |           |           |  |         |        |           |
| 94,409                                                              |           |         |        | 94,409    | 105,376   |  |         |        | 105,376   |
| 5. Mansion Maintenance                                              |           |         |        |           |           |  |         |        |           |
| 60,091                                                              |           |         |        | 60,091    | 56,049    |  |         |        | 56,049    |
| 6. Pacific Northwest Electric Power & Conservation Planning Council |           |         |        |           |           |  |         |        |           |
|                                                                     |           |         |        | 433,217   |           |  | 455,207 |        | 455,207   |
| 7. Citizens' Advocate Office                                        |           |         |        |           |           |  |         |        |           |
| 47,436                                                              |           |         |        | 47,436    | 50,029    |  |         |        | 50,029    |
| 8. Lieutenant Governor                                              |           |         |        |           |           |  |         |        |           |
| 232,602                                                             |           |         |        | 232,602   | 224,824   |  |         |        | 224,824   |
| 9. Flathead                                                         |           |         |        |           |           |  |         |        |           |
| 38,698                                                              |           |         |        | 38,698    |           |  |         |        |           |
| 10. Coordinator of Aging                                            |           |         |        |           |           |  |         |        |           |
| 39,256                                                              |           |         |        | 39,256    | 38,920    |  |         |        | 38,920    |
| 11. Coal Lobby Effort                                               |           |         |        |           |           |  |         |        |           |
| 50,000                                                              |           |         |        | 50,000    | 24,500    |  |         |        | 24,500    |
| Total                                                               | 2,294,518 | 752,390 | 73,750 | 3,120,658 | 2,181,208 |  | 772,709 | 73,750 | 3,027,667 |

| General<br>Fund | Fiscal 1986                 |                               | Proprietary | Total | General<br>Fund | Fiscal 1987                 |                               | Proprietary | Total |
|-----------------|-----------------------------|-------------------------------|-------------|-------|-----------------|-----------------------------|-------------------------------|-------------|-------|
|                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |       |                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |       |

Item 1c shown in the proprietary fund column is appropriated each year of the biennium from nongeneral fund sources which the Office of Budget and Program Planning shall distribute, for the sole purpose of paying the Legislative Auditor's charges for the statewide audit, to those agencies who derive a benefit from the statewide audit.

If three FTEs are authorized for the Clark Fork River project, they will be restricted to that project and cannot be transferred to any other program within the Governor's Office.

Item 9 is a biennial appropriation.

The appropriation for the coal lobby effort (item 11) is for the purpose of defending the state's right to establish and levy a tax on coal mined within Montana's borders, to oppose federal legislation that would diminish the state's revenue through discriminatory formula or funding allocations, and to monitor federal actions regarding coal transportation and the Clean Air Act. This appropriation also funds the Legislative Oversight Committee established in HB 828, Laws of 1981. In addition, any balance remaining from item 2(c) of the Governor's Office appropriations contained in HB 447 of the 48th Legislature is reappropriated for use in fiscal 1986. The Governor's Office shall report quarterly on the coal lobby effort to the Revenue Oversight Committee.

#### SECRETARY OF STATE

|                        |         |         |  |           |         |         |  |  |           |
|------------------------|---------|---------|--|-----------|---------|---------|--|--|-----------|
| 1. Records Management  |         |         |  |           |         |         |  |  |           |
| a. Operations          | 889,775 | 263,600 |  | 1,153,375 | 848,329 | 145,530 |  |  | 993,859   |
| b. Audit               |         | 7,500   |  | 7,500     |         |         |  |  |           |
| 2. Administrative Code |         |         |  |           |         |         |  |  |           |
| a. Operations          | 51,600  | 159,504 |  | 211,104   |         | 161,690 |  |  | 161,690   |
| b. Audit               |         | 2,500   |  | 2,500     |         |         |  |  |           |
| Total                  | 948,975 | 425,604 |  | 1,374,479 | 848,329 | 307,220 |  |  | 1,155,549 |

#### COMMISSIONER OF POLITICAL PRACTICES

|                   |         |       |  |         |         |     |  |  |         |
|-------------------|---------|-------|--|---------|---------|-----|--|--|---------|
| 1. Administration | 143,476 | 1,284 |  | 144,760 | 132,781 | 950 |  |  | 133,731 |
| 2. Audit          |         | 1,680 |  | 1,680   |         |     |  |  |         |
| Total             | 145,156 | 1,284 |  | 146,440 | 132,781 | 950 |  |  | 133,731 |

#### STATE AUDITOR

|                                   |           |           |  |           |           |           |  |  |           |
|-----------------------------------|-----------|-----------|--|-----------|-----------|-----------|--|--|-----------|
| 1. Investment Division            |           | 255,345   |  | 255,345   |           | 251,497   |  |  | 251,497   |
| a. Audit                          |           | 3,696     |  | 3,696     |           |           |  |  |           |
| 2. Management and Control Program |           |           |  |           |           |           |  |  |           |
| a. Operations                     | 349,070   |           |  | 349,070   | 327,574   |           |  |  | 327,574   |
| b. Audit                          |           | 6,300     |  | 6,300     |           |           |  |  |           |
| 3. Central Payroll Division       |           |           |  |           |           |           |  |  |           |
| a. Operations                     | 362,072   | 305,000   |  | 667,072   | 363,893   | 268,031   |  |  | 631,924   |
| b. Audit                          | 12,789    | 1,911     |  | 14,700    |           |           |  |  |           |
| 4. Administrative Support         |           |           |  |           |           |           |  |  |           |
| a. Operations                     | 359,551   |           |  | 359,551   | 345,214   |           |  |  | 345,214   |
| b. Audit                          |           | 3,864     |  | 3,864     |           |           |  |  |           |
| 5. Insurance Department           |           |           |  |           |           |           |  |  |           |
| a. Operations                     |           | 667,504   |  | 667,504   |           | 638,105   |  |  | 638,105   |
| b. Audit                          |           | 9,240     |  | 9,240     |           |           |  |  |           |
| c. Nongender Insurance Law        |           | 54,563    |  | 54,563    |           |           |  |  |           |
| Total                             | 1,093,646 | 1,297,259 |  | 2,390,905 | 1,036,681 | 1,157,633 |  |  | 2,194,314 |

Item 5c is a biennial appropriation. The appropriation for item 5c includes a 1.0 FTE to implement the nongender insurance law. The agency is not to include this FTE in its current level budget request presented to the 1987 Legislature.

|                                                | Fiscal 1986  |                       |                         |             | Fiscal 1987 |              |                       |                         |             |            |
|------------------------------------------------|--------------|-----------------------|-------------------------|-------------|-------------|--------------|-----------------------|-------------------------|-------------|------------|
|                                                | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total       | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total      |
| DEPARTMENT OF JUSTICE                          |              |                       |                         |             |             |              |                       |                         |             |            |
| 1. Legal Services                              |              |                       |                         |             |             |              |                       |                         |             |            |
| a. Operations                                  |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              | 789,736               | 20,356                  |             | 810,092     | 746,188      | 14,182                |                         |             | 760,370    |
| b. Case-Related Travel                         |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              | 10,000                |                         |             | 10,000      | 9,500        |                       |                         |             | 9,500      |
| 2. County Prosecutor Services                  |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              | 128,754               |                         |             | 128,754     | 130,954      |                       |                         |             | 130,954    |
| 3. Agency Legal Services                       |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              |                       |                         | 431,375     | 431,375     |              |                       |                         | 430,508     | 430,508    |
| 4. Motor Vehicle Administration                |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              |                       |                         | 102,155     | 102,155     |              | 102,690               |                         |             | 102,690    |
| 5. Driver Licensing Program                    |              |                       |                         |             |             |              |                       |                         |             |            |
| a. Operations                                  |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              | 1,823,692             | 244,629                 |             | 2,068,321   | 1,735,051    | 230,934               |                         |             | 1,965,985  |
| b. Microfilm Study                             |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              |                       | 20,000                  |             | 20,000      |              |                       |                         |             |            |
| 6. Highway Patrol                              |              |                       |                         |             |             |              |                       |                         |             |            |
| a. Operations                                  |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              | 2,969,511             | 6,261,568               | 451,440     | 9,682,519   |              | 9,103,534             | 481,063                 |             | 9,584,597  |
| b. Highband Radio                              |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              |                       | 389,750                 |             | 389,750     |              |                       |                         |             |            |
| 7. Vehicle Registration                        |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              |                       | 1,942,639               |             | 1,942,639   |              | 1,843,167             |                         |             | 1,843,167  |
| 8. Law Enforcement Services Administration     |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              |                       | 80,950                  |             | 80,950      | 72,798       |                       |                         |             | 72,798     |
| 9. County Attorney Payroll                     |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              |                       | 801,948                 |             | 801,948     | 832,336      |                       |                         |             | 832,336    |
| 10. Law Enforcement Telecommunications Program |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              |                       | 709,951                 |             | 709,951     |              | 708,851               |                         |             | 708,851    |
| 11. Law Enforcement Academy                    |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              |                       | 583,610                 |             | 583,610     |              | 562,962               |                         |             | 562,962    |
| 12. Fire Marshal                               |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              |                       | 343,353                 |             | 343,353     | 314,904      |                       |                         |             | 314,904    |
| 13. Identification Program                     |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              |                       | 244,444                 |             | 244,444     | 230,563      |                       |                         |             | 230,563    |
| 14. Criminal Investigators                     |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              |                       | 152,748                 | 69,231      | 221,979     | 142,777      |                       | 70,292                  |             | 213,069    |
| a. Case-Related Travel                         |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              |                       | 10,000                  |             | 10,000      | 9,500        |                       |                         |             | 9,500      |
| b. Undercover Criminal Investigation           |              |                       |                         |             |             |              |                       |                         |             |            |
| c. Buy Fund                                    |              |                       |                         |             |             |              |                       |                         |             |            |
| 15. Central Services                           |              |                       |                         |             |             |              |                       |                         |             |            |
| a. Operations                                  |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              | 350,040               | 25,000                  |             | 375,040     | 352,376      | 6,131                 |                         |             | 358,507    |
| b. Audit                                       |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              | 11,899                | 14,576                  | 2,677       | 29,747      |              |                       |                         |             |            |
| 16. Criminal Investigation, Coal Board         |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              |                       | 265,874                 |             | 265,874     |              |                       | 271,375                 |             | 271,375    |
| 17. Indian Legal Jurisdiction                  |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              |                       | 69,080                  |             | 69,080      | 69,476       |                       |                         |             | 69,476     |
| a. Legal Fees                                  |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              |                       | 281,449                 |             | 281,449     |              |                       |                         |             |            |
| 18. Data Processing Program                    |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              |                       | 312,337                 |             | 312,337     | 300,087      |                       |                         |             | 300,087    |
| 19. Extradition and Transfer of Prisoners      |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              |                       | 162,615                 |             | 162,615     | 158,457      |                       |                         |             | 158,457    |
| 20. Forensic Science Division                  |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                |              |                       | 691,083                 |             | 691,083     |              | 643,728               |                         |             | 643,728    |
| Total                                          |              |                       |                         |             |             |              |                       |                         |             |            |
|                                                | 8,542,556    | 10,985,317            | 809,222                 | 431,970     | 20,769,065  | 5,104,967    | 13,216,179            | 822,730                 | 430,508     | 19,574,384 |

Items 1b, 9, and 14a are line item appropriations.

Items 5b, 6b, and 17a are biennial appropriations.

The rate charged by agency legal services (item 3) may not exceed \$46.00 per hour.

The 4.0 FTE Highway Patrol Officers added for the 55 mile per hour enforcement squad will not carry over as current level into the 1989 biennium.

The portion of the appropriation in item 10 from the state special highway revenue account for the purpose of establishing the regional dispatch center is provided for the 1987 biennium only. The Department of Justice shall develop a cost allocation plan for the purpose of recovering the cost of operation of regional dispatch centers from all user agencies on an equitable basis, and shall submit the funding plan to the 50th Legislature within the Department's 1989 biennium budget request. It is the intent that a direct appropriation from the state special highway revenue account not be used for this purpose.

If SB 116 passes, item 9 shall be increased by no more than \$715,787 general fund in fiscal 1986.

If SB 7, Special Session III, passes, item 9 shall be increased by no more than \$90,000 general fund in fiscal 1987.

| General Fund                             | Fiscal 1986           |                         |             | Total      | General Fund | Fiscal 1987           |                         |             | Total      |
|------------------------------------------|-----------------------|-------------------------|-------------|------------|--------------|-----------------------|-------------------------|-------------|------------|
|                                          | State Special Revenue | Federal Special Revenue | Proprietary |            |              | State Special Revenue | Federal Special Revenue | Proprietary |            |
| HIGHWAY TRAFFIC SAFETY                   |                       |                         |             |            |              |                       |                         |             |            |
| 1. Operations                            | 70,247                | 1,485,698               |             | 1,555,945  |              | 67,156                | 1,480,936               |             | 1,548,092  |
| a. Audit                                 | 1,219                 | 1,218                   |             | 2,437      |              |                       |                         |             |            |
| Total                                    | 71,466                | 1,486,916               |             | 1,558,382  |              | 67,156                | 1,480,936               |             | 1,548,092  |
| BOARD OF CRIME CONTROL                   |                       |                         |             |            |              |                       |                         |             |            |
| 1. Operations                            | 483,905               | 80,929                  |             | 564,834    | 461,780      |                       | 82,500                  |             | 544,280    |
| a. Audit                                 | 8,245                 | 1,571                   |             | 9,816      |              |                       |                         |             |            |
| Total                                    | 492,150               | 82,500                  |             | 574,650    | 461,780      |                       | 82,500                  |             | 544,280    |
| DEPARTMENT OF REVENUE                    |                       |                         |             |            |              |                       |                         |             |            |
| 1. Director's Office                     |                       |                         |             |            |              |                       |                         |             |            |
| a. Operations                            | 265,340               |                         | 2,836       | 352,117    | 236,425      | 86,856                |                         | 2,836       | 326,117    |
| b. Audit                                 | 70,000                | 5,000                   | 24,750      | 99,750     |              |                       |                         |             |            |
| 2. Central Services                      | 870,973               | 5,000                   |             | 875,973    | 819,810      |                       | 5,000                   |             | 824,810    |
| 3. Research and Information Division     | 957,533               |                         | 319,178     | 1,276,711  | 914,298      |                       |                         | 319,733     | 1,234,031  |
| 4. Legal and Investigation Program       | 813,442               | 1,429,378               | 337,212     | 2,580,032  | 753,903      |                       | 1,397,529               | 328,870     | 2,480,302  |
| 5. Income Tax Division                   | 2,785,839             | 6,428                   |             | 2,792,265  | 2,568,878    | 6,844                 |                         |             | 2,575,722  |
| 6. Natural Resources and Corporation Tax | 1,241,059             | 56,588                  |             | 1,439,219  | 1,230,445    | 55,236                | 139,338                 |             | 1,425,019  |
| 7. Miscellaneous Tax                     | 470,459               | 68,384                  |             | 538,843    | 393,102      | 62,162                |                         |             | 455,264    |
| 8. Motor Fuel Division                   |                       | 713,013                 |             | 713,013    |              | 655,957               |                         |             | 655,957    |
| 9. Property Assessment Division          | 11,252,843            |                         |             | 11,252,843 | 9,958,174    |                       |                         |             | 9,958,174  |
| a. Equipment                             | 193,670               |                         |             | 193,670    |              |                       |                         |             |            |
| b. Airline Litigation                    | 120,000               |                         |             | 120,000    |              |                       |                         |             |            |
| c. Property Tax Reappraisal              |                       |                         |             |            | 84,151       |                       |                         |             | 84,151     |
| Total                                    | 19,041,158            | 933,352                 | 683,976     | 22,234,436 | 16,959,186   | 867,055               | 1,541,867               | 651,439     | 20,019,547 |

Item 9a is a biennial appropriation. Item 9b is a biennial appropriation to deal with legal issues arising under federal nondiscriminatory taxation acts such as the Tax Equity and Fiscal Responsibility Act, the Railroad Revitalization and Regulatory Reform Act, and any subsequent federal legislation that directs the state to take a nondiscriminatory posture in the taxation of entities doing business within the state. This appropriation may be used only for attorney fees, expert witnesses, and extraordinary expenses associated solely with resolving disputes related to such legal issues.

Liquor Division proprietary funds necessary to maintain adequate inventories of liquor and wine and to operate the state liquor operation are appropriated. During the 1987 biennium, the Division shall attempt to return at least 13 percent of net sales. Net sales are gross sales less discounts and all taxes collected. The Division shall limit operational expenses of the liquor merchandising system to not more than 15 percent of net sales. Operational expenses may not include product costs, freight charges, or expenses allocable to other divisions or licensing bureau expenses.

The Division retains full authority to determine store operating hours and the number and location of stores and employees. Nonprofitable or marginally profitable state stores shall be closed or converted to agency stores in an orderly manner. Agency stores shall be closed if the Division considers them marginally profitable and other state stores or agencies are located within a reasonable distance. The Division is directed to implement the recommendations of the Revenue Oversight Committee dated June 19, 1986, with respect to Liquor Division Recovery, provided the Department shall hold timely public hearings prior to closing any state store or agency and prior to implementing a price restructuring.

The appropriation for item 4 includes 13 FTE support staff added to the Child Support Bureau. The agency is prohibited from including these 13 FTE in its current level budget request presented to the 1987 Legislature.

The appropriation for the Income Tax Division includes the additional 19 FTE added. These FTE include 4.5 FTE systems development positions, 6.0 FTE audit staff, and 8.5 FTE collection staff. The agency is prohibited from including these 19 FTE in its current level budget request presented to the 1987 Legislature.

The Department may, through the use of program transfer authority, fund the 7 FTE deleted from the Income Tax Division by House Committee of the Whole Amendment during Special Session III.

The appropriation for item 6 includes 2 FTE added to the Natural Resources and Corporation Tax Division. These FTE include a 1 FTE natural resources tax auditor and a 1 FTE corporate tax auditor. The agency is prohibited from including these 2 FTE in its current level budget request presented to the 1987 Legislature.

Item 9c is to fund the action taken in Senate Bill 19, Special Session III. If Senate Bill 19 does not pass, these funds are to revert to the general fund.

|                               | Fiscal 1986  |                       |                         |             | Fiscal 1987 |              |                       |                         |             |           |
|-------------------------------|--------------|-----------------------|-------------------------|-------------|-------------|--------------|-----------------------|-------------------------|-------------|-----------|
|                               | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total       | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total     |
| DEPARTMENT OF ADMINISTRATION  |              |                       |                         |             |             |              |                       |                         |             |           |
| 1. Central Administration     |              |                       |                         |             |             |              |                       |                         |             |           |
| a. Operations                 |              |                       |                         |             |             |              |                       |                         |             |           |
| 248,097                       |              |                       | 41,407                  | 289,504     | 250,487     |              |                       |                         | 41,330      | 291,817   |
| 2. Accounting                 |              |                       |                         |             |             |              |                       |                         |             |           |
| a. Operations                 |              |                       |                         |             |             |              |                       |                         |             |           |
| 832,156                       |              |                       |                         | 832,156     | 802,671     |              |                       |                         |             | 802,671   |
| b. Audit                      |              |                       |                         |             |             |              |                       |                         |             |           |
| 10,500                        |              |                       |                         | 10,500      |             |              |                       |                         |             |           |
| 3. Architecture & Engineering |              |                       |                         |             |             |              |                       |                         |             |           |
| a. Operations                 |              | 523,564               |                         | 528,864     | 1,052,428   |              | 544,106               |                         | 544,106     | 1,088,212 |
| b. Audit                      |              |                       |                         |             |             |              |                       |                         |             |           |
| 5,300                         |              |                       |                         | 5,300       |             |              |                       |                         |             |           |
| 4. General Services           |              |                       |                         |             |             |              |                       |                         |             |           |
| a. Operations                 |              |                       |                         |             |             |              |                       |                         |             |           |
| 561,183                       |              |                       | 2,571,858               | 3,133,041   | 523,417     |              |                       |                         | 2,617,433   | 3,140,850 |
| b. Audit                      |              |                       |                         | 6,500       | 6,500       |              |                       |                         |             |           |
| 5. Purchasing                 |              |                       |                         |             |             |              |                       |                         |             |           |
| 513,037                       |              |                       |                         | 513,037     | 449,855     |              |                       |                         |             | 449,855   |
| 6. Property and Supply        |              |                       |                         |             |             |              |                       |                         |             |           |
| a. Audit                      |              |                       |                         | 562,444     | 562,444     |              |                       |                         | 565,769     | 565,769   |
| b. Cost of Goods Sold         |              |                       |                         | 6,300       | 6,300       |              |                       |                         |             |           |
| 7. Mail & Management          |              |                       |                         |             |             |              |                       |                         |             |           |
| a. Audit                      |              |                       |                         | 228,868     | 228,868     |              |                       |                         | 232,411     | 232,411   |
| b. Communications             |              |                       |                         | 1,000       | 1,000       |              |                       |                         |             |           |
|                               |              |                       |                         | 754,338     | 754,338     |              |                       |                         | 861,494     | 861,494   |
| 8. Investments                |              |                       |                         |             |             |              |                       |                         |             |           |
| a. Operations                 |              |                       |                         | 758,054     | 758,054     |              |                       |                         | 702,611     | 702,611   |
| b. Audit                      |              |                       |                         | 29,500      | 29,500      |              |                       |                         | 29,500      | 29,500    |
| c. Rent                       |              |                       |                         | 38,680      | 38,680      |              |                       |                         | 35,691      | 35,691    |
| 9. Communications             |              |                       |                         |             |             |              |                       |                         |             |           |
| a. Audit                      |              |                       |                         | 7,666,092   | 7,666,092   |              |                       |                         | 7,781,079   | 7,781,079 |
| b. Contract Services          |              |                       |                         | 3,000       | 3,000       |              |                       |                         |             |           |
|                               |              |                       |                         | 200,000     | 200,000     |              |                       |                         |             |           |
| 10. Personnel                 |              |                       |                         |             |             |              |                       |                         |             |           |
| 891,911                       |              |                       |                         | 891,911     | 885,804     |              |                       |                         |             | 885,804   |
| 11. Group Benefits            |              |                       |                         |             |             |              |                       |                         |             |           |
| 32,000                        |              |                       | 184,649                 | 216,649     | 35,145      |              |                       |                         | 176,364     | 211,509   |
| a. Audit                      |              |                       |                         | 25,300      | 25,300      |              |                       |                         | 25,100      | 25,100    |
| 12. Training                  |              |                       |                         |             |             |              |                       |                         |             |           |
| 30,812                        |              |                       | 100,868                 | 131,680     | 31,259      |              |                       |                         | 97,990      | 129,249   |
| a. Audit                      |              |                       |                         | 250         | 500         |              |                       |                         |             |           |
| 13. State Insurance           |              |                       |                         |             |             |              |                       |                         |             |           |
| a. Audit                      |              |                       | 1,863,614               | 1,863,614   |             |              |                       |                         | 1,852,641   | 1,852,641 |
|                               |              |                       | 3,000                   | 3,000       |             |              |                       |                         |             |           |
| 14. Passenger Tramway Safety  |              |                       |                         |             |             |              |                       |                         |             |           |
| 19,209                        |              |                       |                         | 19,209      |             | 18,765       |                       |                         |             | 18,765    |
| 15. Workers' Compensation     |              |                       |                         |             |             |              |                       |                         |             |           |
| 333,771                       |              |                       |                         | 333,771     |             | 308,550      |                       |                         |             | 308,550   |
| a. Audit                      |              |                       |                         |             |             |              |                       |                         |             |           |
| 1,000                         |              |                       |                         | 1,000       |             |              |                       |                         |             |           |
| b. Veterans' Preference       |              |                       |                         | 9,000       | 9,000       |              |                       |                         |             |           |
| c. Meeting Rooms              |              |                       |                         |             |             |              |                       |                         |             |           |
| 12,000                        |              |                       |                         | 12,000      |             | 11,400       |                       |                         |             | 11,400    |
| 16. Publications and Graphics |              |                       |                         |             |             |              |                       |                         |             |           |
| a. Audit                      |              |                       | 1,705,460               | 1,705,460   |             |              |                       |                         | 1,810,061   | 1,810,061 |
|                               |              |                       | 5,400                   | 5,400       |             |              |                       |                         |             |           |

| Fiscal 1986                       |                       |                         |             |            | Fiscal 1987  |                       |                         |             |            |
|-----------------------------------|-----------------------|-------------------------|-------------|------------|--------------|-----------------------|-------------------------|-------------|------------|
| General Fund                      | State Special Revenue | Federal Special Revenue | Proprietary | Total      | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total      |
| b. Equipment                      |                       |                         | 150,000     | 150,000    |              |                       |                         | 143,872     | 143,872    |
| c. Private Vendors Pass Through   |                       |                         | 2,097,720   | 2,097,720  |              |                       |                         | 2,012,092   | 2,012,092  |
| 17. Information Services Division |                       |                         | 7,397,572   | 7,397,572  |              |                       |                         | 7,165,585   | 7,165,585  |
| a. Audit                          |                       |                         | 27,700      | 27,700     |              |                       |                         |             |            |
| 18. State Tax Appeal Board        |                       |                         |             |            |              |                       |                         |             |            |
| a. Operations                     |                       |                         |             | 295,584    | 280,716      |                       |                         |             | 280,716    |
| 295,584                           |                       |                         |             |            |              |                       |                         |             |            |
| b. Contracted Services            |                       |                         |             | 30,000     |              |                       |                         |             |            |
| 30,000                            |                       |                         |             |            |              |                       |                         |             |            |
| 19. Treasury Central Services     |                       |                         | 27,498      | 428,022    | 397,438      |                       |                         | 26,238      | 423,676    |
| 400,524                           |                       |                         |             |            |              |                       |                         |             |            |
| a. Audit                          |                       |                         |             | 36,800     |              |                       |                         |             |            |
| 36,800                            |                       |                         |             |            |              |                       |                         |             |            |
| Total                             | 3,902,063             | 884,635                 | 29,983,936  | 34,770,634 | 3,656,792    | 882,821               |                         | 29,585,852  | 34,125,465 |

The appropriation in item 3a in the Proprietary column is appropriated from the capital projects fund.

The appropriation in item 4a in the Proprietary column includes \$55,356 in fiscal 1986 and \$58,801 in fiscal 1987 from the capital projects fund.

Item 8c may be used only in the event the Investment Bureau moves from its existing facilities to more expensive facilities.

Item 9b is a biennial appropriation to hire consultants for a long-term telecommunications proposal.

Item 18b is a biennial appropriation for the "34 percent cases" and appeals resulting from property reappraisals.

Item 16b is for the purchase of copier pool equipment.

Item 16c is to be used only for hiring one FTE to monitor vendor contracts with the state and to pay all vendor printing claims for the state.

Items 6b, 7b, 15b, and 15c are line item appropriations for each year of the biennium.

In item 4, the Department may charge a maximum of \$2.98 per square foot in fiscal 1986 and \$3.10 per square foot in fiscal 1987. At the end of fiscal 1987, the maximum cash the Department may carry over is \$320,000. During the 1987 biennium if utility costs exceed the budgeted amounts, the Department may submit a budget amendment to cover the increase in utility costs.

The Department may expend available self-insurance reserves and revenues to pay any deficit that may be incurred for property or liability insurance premiums due and payable through June 30, 1987.

Included in item 17 is \$99,840 in fiscal 1986 and \$104,832 in fiscal 1987 for contract programming. The agency is prohibited from including these costs in its current level budget request presented to the 1987 Legislature.

If HB 12 is not passed and approved, the general fund appropriation for fiscal 1986 in item 1a is increased to \$12,378,052 and the general fund appropriation for fiscal 1987 in item 1a is increased to \$12,442,304.

Contingent upon passage of HB 430, \$12,500 in fiscal 1986 and \$12,500 in fiscal 1987 are appropriated to the group benefits program of Personnel Division (item 11), in the proprietary fund.

#### PUBLIC EMPLOYEES' RETIREMENT DIVISION

|               |  |  |  |         |         |  |  |  |         |         |
|---------------|--|--|--|---------|---------|--|--|--|---------|---------|
| 1. Operations |  |  |  | 807,048 | 807,048 |  |  |  | 786,375 | 786,375 |
| 2. Audit      |  |  |  | 27,300  | 27,300  |  |  |  |         |         |
| Total         |  |  |  | 834,348 | 834,348 |  |  |  | 786,375 | 786,375 |

The amounts listed in items 1 and 2 are appropriated from the pension trust fund.

#### TEACHERS' RETIREMENT SYSTEM

|               |  |  |  |         |         |  |  |  |         |         |
|---------------|--|--|--|---------|---------|--|--|--|---------|---------|
| 1. Operations |  |  |  | 441,759 | 441,759 |  |  |  | 406,819 | 406,819 |
| 2. Audit      |  |  |  | 19,740  | 19,740  |  |  |  |         |         |
| Total         |  |  |  | 461,499 | 461,499 |  |  |  | 406,819 | 406,819 |

| <u>General<br/>Fund</u> | <u>Fiscal 1986</u>                   |                                        | <u>Proprietary</u> | <u>Total</u> | <u>General<br/>Fund</u> | <u>Fiscal 1987</u>                   |                                        | <u>Proprietary</u> | <u>Total</u> |
|-------------------------|--------------------------------------|----------------------------------------|--------------------|--------------|-------------------------|--------------------------------------|----------------------------------------|--------------------|--------------|
|                         | <u>State<br/>Special<br/>Revenue</u> | <u>Federal<br/>Special<br/>Revenue</u> |                    |              |                         | <u>State<br/>Special<br/>Revenue</u> | <u>Federal<br/>Special<br/>Revenue</u> |                    |              |

The amounts listed in items 1 and 2 are appropriated from the pension trust fund.

#### DEPARTMENT OF MILITARY AFFAIRS

##### 1. Administration Program

|                        |  |           |  |           |           |  |           |  |           |
|------------------------|--|-----------|--|-----------|-----------|--|-----------|--|-----------|
| a. Operations          |  |           |  |           |           |  |           |  |           |
| 128,427                |  | 7,241     |  | 135,668   | 124,062   |  | 7,246     |  | 131,308   |
| b. Audit               |  |           |  |           |           |  |           |  |           |
| 4,200                  |  |           |  | 4,200     |           |  |           |  |           |
| c. Utilities           |  |           |  |           |           |  |           |  |           |
| 24,650                 |  |           |  | 24,650    | 25,619    |  |           |  | 25,619    |
| 2. Army National Guard |  |           |  |           |           |  |           |  |           |
| 653,266                |  | 230,901   |  | 884,167   | 620,094   |  | 233,864   |  | 853,958   |
| a. Utilities           |  |           |  |           |           |  |           |  |           |
| 239,178                |  | 159,452   |  | 398,630   | 249,120   |  | 168,079   |  | 415,199   |
| 3. Air National Guard  |  |           |  |           |           |  |           |  |           |
| 41,201                 |  | 625,597   |  | 666,798   | 38,762    |  | 628,184   |  | 666,946   |
| a. Utilities           |  |           |  |           |           |  |           |  |           |
| 60,819                 |  | 243,278   |  | 304,097   | 65,448    |  | 261,789   |  | 327,237   |
| 4. Veterans' Affairs   |  |           |  |           |           |  |           |  |           |
| 470,851                |  |           |  | 470,851   | 443,340   |  |           |  | 443,340   |
| a. Audit               |  |           |  |           |           |  |           |  |           |
| 4,200                  |  |           |  | 4,200     |           |  |           |  |           |
| Total                  |  |           |  |           |           |  |           |  |           |
| 1,626,792              |  | 1,266,469 |  | 2,893,261 | 1,566,445 |  | 1,297,162 |  | 2,863,607 |

If utilities expenditures exceed the amounts appropriated for utilities, the Department may ask for a supplemental appropriation. If utilities do not exceed the amount anticipated for utilities, the difference may be used for energy conservation measures. The amounts in items 1c, 2a, and 3a are appropriated for utilities.

#### DISASTER AND EMERGENCY SERVICES

##### 1. Disaster Coordination

|                             |  |         |  |         |         |  |         |  |         |
|-----------------------------|--|---------|--|---------|---------|--|---------|--|---------|
| a. Operations               |  |         |  |         |         |  |         |  |         |
| 220,594                     |  | 267,249 |  | 487,843 | 211,723 |  | 252,524 |  | 464,247 |
| b. Audit                    |  |         |  |         |         |  |         |  |         |
| 2,940                       |  | 2,940   |  | 5,880   |         |  |         |  |         |
| 2. Nuclear Civil Protection |  |         |  |         |         |  |         |  |         |
| a. Operations               |  |         |  |         |         |  |         |  |         |
|                             |  | 270,878 |  | 270,878 |         |  | 268,334 |  | 268,334 |
| b. Audit                    |  |         |  |         |         |  |         |  |         |
|                             |  | 2,520   |  | 2,520   |         |  |         |  |         |
| Total                       |  |         |  |         |         |  |         |  |         |
| 223,534                     |  | 543,587 |  | 767,121 | 211,723 |  | 520,858 |  | 732,581 |

#### DEPARTMENT OF HIGHWAYS

|                                  |             |             |             |             |             |             |             |           |             |
|----------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-----------|-------------|
| 1. Construction                  | 92,515,021  | 117,728,884 |             | 210,243,905 |             | 68,065,747  | 106,475,343 |           | 174,541,090 |
| 2. Operations                    |             |             |             |             |             |             |             |           |             |
| a. Operations                    | 5,022,309   | 2,055,267   |             | 7,077,576   |             | 4,903,311   | 2,058,703   |           | 6,962,014   |
| b. Audit                         |             |             |             |             |             |             |             |           |             |
| 63,000                           |             |             |             | 63,000      |             |             |             |           |             |
| 3. Preconstruction               |             |             |             |             |             |             |             |           |             |
| 8,923,512                        |             | 7,415,892   |             | 14,339,404  |             | 5,046,692   | 6,458,655   |           | 11,505,347  |
| 4. Service Revolving             |             |             |             |             |             |             |             |           |             |
|                                  |             |             | 2,990,034   | 2,990,034   |             |             |             | 3,217,861 | 3,217,861   |
| 5. Maintenance                   |             |             |             |             |             |             |             |           |             |
| 40,497,899                       |             |             |             | 40,497,899  |             | 38,342,838  |             |           | 38,342,838  |
| 6. Equipment                     |             |             |             |             |             |             |             |           |             |
| 2,920,903                        |             |             | 9,735,463   | 12,656,366  |             | 2,247,850   |             | 9,891,263 | 12,139,113  |
| 7. Motor Pool                    |             |             |             |             |             |             |             |           |             |
|                                  |             |             | 890,157     | 890,157     |             |             |             | 697,299   | 697,299     |
| 8. Stores Inventory              |             |             |             |             |             |             |             |           |             |
| 13,050,700                       |             |             |             | 13,050,700  |             | 12,643,971  |             |           | 12,643,971  |
| 9. Gross Vehicle Weight Division |             |             |             |             |             |             |             |           |             |
| 3,218,080                        |             |             |             | 3,218,080   |             | 3,389,182   |             |           | 3,389,182   |
| 10. Capital Outlay               |             |             |             |             |             |             |             |           |             |
| 14,773,336                       |             |             |             | 14,773,336  |             | 16,563,599  |             |           | 16,563,599  |
| Total                            |             |             |             |             |             |             |             |           |             |
| 178,984,760                      | 127,200,043 | 13,615,654  | 319,800,457 |             | 151,203,190 | 114,992,701 | 13,806,423  |           | 280,002,314 |



| General<br>Fund | Fiscal 1986                 |                               | Proprietary | Total | General<br>Fund | Fiscal 1987                 |                               | Proprietary | Total |
|-----------------|-----------------------------|-------------------------------|-------------|-------|-----------------|-----------------------------|-------------------------------|-------------|-------|
|                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |       |                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |       |

*The Department shall not reduce contractor payments due to the 5 percent cuts in Special Session III. All reductions as a result of the 5 percent cuts made in Special Session III are to be made from nonconstruction programs.*

In the event additional federal highway funds become available, additional spending authority and additional FTEs may be requested through budget amendment.

The Department shall manage the program with the intent to end the 1987 biennium with approximately a \$10 million cash balance in the highway special revenue account in the state special revenue fund.

Funding may be transferred among all programs, including stores inventory, to reflect personal services expenditures.

The Department is appropriated \$32,050,000 in fiscal year 1986 and \$29,600,000 in fiscal year 1987 for a cash transfer for the highway special revenue account to the highway reconstruction trust account.

The Department of Highways is directed to submit to the 1987 Legislature a construction work plan for the 1989 biennium that is detailed by year, project phase, and fund. This work plan must specify, by road system or project area, proposed projects on which \$1 million or more would be spent during the 1989 biennium and an aggregate cost for projects with anticipated expenditures of less than \$1 million. Costs must be detailed by year, fund, and project phase.

The Legislature anticipates the Department will proceed during the 1987 biennium with the projects and right-of-way acquisitions listed in its revised work plan presented to the legislative subcommittee on general government and highways and spend funds substantially in accordance with the estimated expenditures shown on that work plan. The Department shall report to the 1987 Legislature any significant deviation in projects undertaken or funds expended from that work plan. The Department will be allowed to adjust appropriations in the construction and preconstruction programs between fiscal years and funding sources to reflect actual expenditures related to the projected work plan.

The internal service program contains \$210,000 in fiscal year 1987 for overhaul of the Department's airplane. In the event the repair is not required, the Department shall revert this spending authority.

The Legislature anticipates that the Maintenance Division will receive, by budget amendment, spending authority for any funds in excess of \$394,098 in fiscal 1986 and \$400,073 in fiscal 1987 that it collects from damage situations.

The Department is authorized to transfer \$3,700,000 from the highway special revenue account to the stores program account as contributed capital in fiscal 1986. The Department is instructed to develop a pricing structure in the stores inventory program to maintain a cash balance and prepare budgets for the 1989 biennium in accordance with this plan.

#### TOTAL SECTION A

|            |             |             |            |             |            |             |             |            |             |
|------------|-------------|-------------|------------|-------------|------------|-------------|-------------|------------|-------------|
| 46,466,014 | 196,953,138 | 133,717,077 | 46,085,133 | 423,221,362 | 40,318,844 | 170,057,507 | 121,511,463 | 45,741,166 | 377,628,980 |
|------------|-------------|-------------|------------|-------------|------------|-------------|-------------|------------|-------------|

#### B. HUMAN SERVICES

##### DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

|                                  |  |         |           |           |         |           |           |  |           |
|----------------------------------|--|---------|-----------|-----------|---------|-----------|-----------|--|-----------|
| 1. Director's Division           |  |         |           |           |         |           |           |  |           |
| a. Director's Office             |  |         |           |           |         |           |           |  |           |
| 368,121                          |  | 785,949 |           | 1,154,070 | 347,061 |           | 776,214   |  | 1,123,275 |
| b. Legal Unit                    |  |         |           | 104,482   | 105,589 |           |           |  | 105,589   |
| 104,482                          |  |         |           |           |         |           |           |  |           |
| c. Board of Health               |  |         |           |           |         |           |           |  |           |
| 18,638                           |  |         |           | 18,638    | 10,638  |           |           |  | 10,638    |
| 2. Financial Services Division   |  |         |           |           |         |           |           |  |           |
| a. Administration                |  | 145,971 |           | 145,971   |         |           | 148,887   |  | 148,887   |
| b. Fiscal Bureau                 |  | 311,366 |           | 311,366   |         |           | 313,072   |  | 313,072   |
| c. Audit                         |  | 42,000  |           | 42,000    |         |           |           |  |           |
| d. Records and Statistics Bureau |  | 234,518 | 72,269    | 370,210   | 228,158 | 72,203    | 63,423    |  | 363,784   |
| 3. Environmental Sciences        |  | 63,423  |           |           |         |           |           |  |           |
| a. Administration                |  |         |           |           |         |           |           |  |           |
| 113,645                          |  |         |           | 113,645   |         | 113,999   |           |  | 113,999   |
| b. Food & Consumer Safety        |  | 328,488 | 204,000   | 532,488   | 314,253 | 206,000   |           |  | 520,253   |
| c. Solid Waste Management        |  | 78,266  | 1,306,442 | 3,584,074 | 74,197  | 1,344,323 | 2,811,374 |  | 4,229,894 |
| d. Air Quality                   |  | 320,657 |           | 891,048   | 320,657 |           | 573,258   |  | 893,915   |
| e. Occupational Health           |  | 172,842 | 41,072    | 213,914   | 168,041 |           | 34,084    |  | 202,125   |
| f. Water Quality                 |  | 263,972 | 81,388    | 1,642,097 | 247,531 | 80,992    | 1,221,594 |  | 1,550,117 |
| i. Cabin Creek                   |  |         | 1,296,737 |           |         |           |           |  |           |
|                                  |  |         | 95,000    | 95,000    |         |           |           |  |           |

| General Fund                                            | Fiscal 1986           |                         | Proprietary | Total      | General Fund | Fiscal 1987           |                         | Proprietary | Total      |
|---------------------------------------------------------|-----------------------|-------------------------|-------------|------------|--------------|-----------------------|-------------------------|-------------|------------|
|                                                         | State Special Revenue | Federal Special Revenue |             |            |              | State Special Revenue | Federal Special Revenue |             |            |
| g. Transfer to General Fund                             | 500,000               |                         |             | 500,000    |              |                       |                         |             |            |
| h. LUST                                                 | 53,063                | 159,188                 |             | 212,251    |              |                       |                         |             |            |
| i. Environmental Quality Protection Fund, EIS, Variance | 950,000               |                         |             | 950,000    |              |                       |                         |             |            |
| 4. Management Services Division                         |                       |                         |             |            |              |                       |                         |             |            |
| a. Administration                                       | 167,781               | 48,000                  | 26,815      | 242,596    | 146,255      | 51,000                | 19,892                  |             | 217,147    |
| b. Microbiology Laboratory                              | 370,950               | 96,950                  | 49,000      | 516,900    | 221,452      | 151,373               | 34,000                  |             | 406,825    |
| c. Contingency Fund                                     | 50,000                |                         |             | 50,000     |              |                       |                         |             |            |
| d. Chemistry Laboratory                                 | 86,411                | 200,217                 |             | 286,628    | 81,377       | 171,013               |                         |             | 252,390    |
| e. Data Processing                                      |                       | 36,213                  |             | 36,213     |              |                       | 33,600                  |             | 33,600     |
| 5. Health Services and Medical Facilities Division      |                       |                         |             |            |              |                       |                         |             |            |
| a. Administration                                       | 33,734                |                         | 33,833      | 67,567     | 33,864       |                       | 33,895                  |             | 67,759     |
| b. Dental                                               | 23,920                |                         | 118,714     | 142,634    | 23,050       |                       | 107,257                 |             | 130,307    |
| c. Nursing                                              | 194,168               |                         | 1,334,412   | 1,528,578  | 193,335      |                       | 1,342,558               |             | 1,535,893  |
| d. Clinical                                             | 120,852               |                         | 9,501,861   | 9,622,513  | 102,547      |                       | 9,533,533               |             | 9,636,080  |
| e. Emergency Medical                                    | 295,972               | 45,172                  | 185,439     | 526,583    | 288,473      | 44,567                | 204,855                 |             | 537,895    |
| f. Health Planning and Resource Development             | 126,401               |                         | 213,258     | 339,659    | 119,163      |                       | 213,918                 |             | 333,079    |
| g. Licensing and Certification                          | 250,443               |                         | 336,374     | 586,817    | 250,695      |                       | 337,149                 |             | 587,844    |
| Total                                                   | 3,560,414             | 3,721,146               | 17,546,382  | 24,827,942 | 3,276,336    | 2,235,470             | 17,802,561              |             | 23,314,367 |

The total appropriation for the Department includes \$1,874,183 in fiscal 1986 and \$1,920,679 in fiscal 1987 of the maternal and child health block grant and \$632,157 in fiscal 1986 and \$632,061 in fiscal 1987 of the preventive health block grant. To the extent revenues from these grants exceed those amounts, it shall be distributed to the counties. To the extent revenues from these grants are less than these amounts, distributions to the counties shall be reduced.

The Department of Health and Environmental Sciences shall use the Attorney General's legal fee rate to charge federal programs for services performed by the Department of Health and Environmental Sciences, Legal Services Unit. Use of federal appropriation authority of \$42,701 in fiscal 1986 and \$52,472 in fiscal 1987 shall be used only to purchase legal services from the Department of Health and Environmental Sciences, Legal Services Unit. All legal services performed for federal programs shall be billed and all fees collected shall be deposited to the general fund.

Resource indemnity trust funds allocated to the Department of Health and Environmental Sciences as per section 15-38-202, MCA, received in excess of \$378,000 in fiscal 1986 and \$435,000 in fiscal 1987 are appropriated for use by the Solid and Hazardous Waste Bureau for the hazardous waste and superfund programs. Any unexpended resource indemnity trust funds appropriated for fiscal year 1986 are reappropriated for fiscal year 1987.

If House Bill 633 is not passed and approved, the state special revenue appropriation for fiscal 1986 in item 3f is increased to \$218,175 and the state special revenue appropriation in fiscal 1987 is increased to \$220,817.

Items 3fi, 3h, and 3i are biennial appropriations.

Funds appropriated for family planning services are contingent upon the recipient providing such services in a physical plant that does not contain an abortion clinic or facility that performs abortions.

Any federal funds received for the Environmental Sciences Division Administration, item 3a, shall replace resource indemnity trust money, which shall revert to the resource indemnity trust fund.

Item 3g is a transfer of funds from the junk vehicle state special revenue fund to the general fund.

Beginning in fiscal 1987, PKU testing in the microbiology laboratory will be operated solely from fees collected for PKU testing.

Item 4c is for reimbursable laboratory work in excess of \$345,167 in fiscal 1986 and \$373,386 in fiscal 1987.

No authority may be transferred into or out of item 3i.

#### DEPARTMENT OF LABOR & INDUSTRY

|                          |         |         |         |         |
|--------------------------|---------|---------|---------|---------|
| 1. Commissioner's Office | 167,010 | 167,010 | 166,390 | 166,390 |
|--------------------------|---------|---------|---------|---------|

|                                 | General Fund | Fiscal 1986           |                         |             | Total      | General Fund | Fiscal 1987           |                         |             | Total      |
|---------------------------------|--------------|-----------------------|-------------------------|-------------|------------|--------------|-----------------------|-------------------------|-------------|------------|
|                                 |              | State Special Revenue | Federal Special Revenue | Proprietary |            |              | State Special Revenue | Federal Special Revenue | Proprietary |            |
| 2. Labor Standards              |              |                       |                         |             |            |              |                       |                         |             |            |
| 559,314                         |              | 3,250                 |                         |             | 562,564    | 345,002      | 3,250                 | 174,793                 |             | 523,045    |
| 3. Appeals                      |              |                       |                         |             |            |              |                       |                         |             |            |
| 305,024                         |              |                       | 228,517                 | 3,500       | 537,041    | 302,083      |                       | 229,907                 | 3,500       | 535,490    |
| 4. Human Rights                 |              |                       |                         |             |            |              |                       |                         |             |            |
| 203,318                         |              |                       | 125,876                 |             | 329,194    | 208,687      |                       | 121,632                 |             | 330,319    |
| Total                           |              |                       |                         |             |            |              |                       |                         |             |            |
| 1,067,656                       |              | 3,250                 | 521,403                 | 3,500       | 1,595,809  | 855,772      | 3,250                 | 692,722                 | 3,500       | 1,555,244  |
| 5. Employment Security Division |              |                       |                         |             |            |              |                       |                         |             |            |
| a. Job Services                 |              |                       |                         |             |            |              |                       |                         |             |            |
|                                 |              |                       | 10,637,651              |             | 10,637,651 |              |                       | 10,728,743              |             | 10,728,743 |
| b. Unemployment Insurance       |              |                       |                         |             |            |              |                       |                         |             |            |
|                                 |              |                       | 2,606,257               |             | 2,606,257  |              |                       | 2,605,199               |             | 2,605,199  |
| c. Central Services             |              |                       |                         |             |            |              |                       |                         |             |            |
|                                 |              |                       | 4,194,753               |             | 4,194,753  |              |                       | 4,113,527               |             | 4,113,527  |
| d. Audit                        |              |                       |                         |             |            |              |                       |                         |             |            |
|                                 |              |                       |                         |             |            |              |                       | 56,700                  |             | 56,700     |
| e. Job Training Partnership Act |              |                       |                         |             |            |              |                       |                         |             |            |
| 334,000                         |              |                       | 7,100,000               |             | 7,434,000  | 125,000      |                       | 7,309,000               |             | 7,434,000  |
| Total                           |              |                       |                         |             |            |              |                       |                         |             |            |
| 334,000                         |              |                       | 24,538,661              |             | 24,872,661 | 125,000      |                       | 24,813,169              |             | 24,938,169 |
| 6. Workers' Compensation        |              |                       |                         |             |            |              |                       |                         |             |            |
| a. Operations                   |              |                       |                         |             |            |              |                       |                         |             |            |
| 100,579                         |              | 7,252,477             | 222,118                 |             | 7,575,174  | 100,394      | 7,218,236             | 221,837                 |             | 7,540,467  |
| b. Audit                        |              |                       |                         |             |            |              |                       |                         |             |            |
|                                 |              |                       | 40,000                  |             | 40,000     |              |                       |                         |             |            |
| c. Crime Victims Fund           |              |                       |                         |             |            |              |                       |                         |             |            |
| 500,000                         |              |                       |                         |             | 500,000    |              | 100,000               |                         |             | 100,000    |
| Total                           |              |                       |                         |             |            |              |                       |                         |             |            |
| 100,579                         |              | 7,792,477             | 222,118                 |             | 8,115,174  | 100,394      | 7,318,236             | 221,837                 |             | 7,640,467  |

Item 5a includes federal spending authority for current level operations of all existing job service offices. If federal funds are less than these amounts, the Department may supplement federal funds with state unemployment assessments as provided in section 39-51-404(4), MCA.

Item 6a contains \$103,326 in fiscal 1986 and \$85,841 in fiscal 1987 of Workers' Compensation funds for an additional 3 FTE legal personnel and expenses. These FTEs are not to be presented as part of the current level budget to the 1987 Legislature.

Item 6c is appropriated to the general fund from the crime victims fund.

#### DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

|                                   |  |            |  |            |            |  |            |  |            |  |
|-----------------------------------|--|------------|--|------------|------------|--|------------|--|------------|--|
| 1. Assistance Payments            |  |            |  |            |            |  |            |  |            |  |
| a. Operations                     |  |            |  |            |            |  |            |  |            |  |
| 669,713                           |  | 2,358,296  |  | 3,028,009  | 662,345    |  | 2,392,658  |  | 3,055,003  |  |
| b. Benefits                       |  |            |  |            |            |  |            |  |            |  |
| i. Nonresident General Assistance |  |            |  |            |            |  |            |  |            |  |
| 30,000                            |  |            |  | 30,000     | 30,000     |  |            |  | 30,000     |  |
| ii. Emergency General Assistance  |  |            |  |            |            |  |            |  |            |  |
| 100,000                           |  |            |  | 100,000    |            |  |            |  |            |  |
| iii. State General Assistance     |  |            |  |            |            |  |            |  |            |  |
| 2,777,906                         |  |            |  | 2,777,906  | 2,965,602  |  |            |  | 2,965,602  |  |
| iv. AFDC                          |  |            |  |            |            |  |            |  |            |  |
| 9,731,463                         |  | 20,542,614 |  | 30,274,077 | 10,233,069 |  | 22,054,047 |  | 32,287,116 |  |
| v. Other Benefits                 |  |            |  |            |            |  |            |  |            |  |
| 174,701                           |  | 15,238,563 |  | 15,413,264 | 173,049    |  | 14,651,892 |  | 14,824,941 |  |
| vi. Legal Services                |  |            |  |            |            |  |            |  |            |  |
| 100,000                           |  |            |  | 100,000    | 50,000     |  |            |  | 50,000     |  |
| Total                             |  |            |  |            |            |  |            |  |            |  |
| 13,583,783                        |  | 38,139,473 |  | 51,723,256 | 14,114,065 |  | 39,098,597 |  | 53,212,662 |  |
| 2. Social Services                |  |            |  |            |            |  |            |  |            |  |
| a. Operations                     |  |            |  |            |            |  |            |  |            |  |
| 7,014,163                         |  | 2,098,297  |  | 9,112,460  | 6,961,928  |  | 2,141,454  |  | 9,103,382  |  |
| b. Benefits                       |  |            |  |            |            |  |            |  |            |  |
| 5,867,404                         |  | 6,988,078  |  | 12,855,482 | 5,823,196  |  | 7,118,717  |  | 12,941,913 |  |
| c. Legacy Legislature             |  |            |  |            |            |  |            |  |            |  |
| 5,000                             |  |            |  | 5,000      |            |  |            |  |            |  |
| Total                             |  |            |  |            |            |  |            |  |            |  |
| 12,886,567                        |  | 9,086,375  |  | 21,972,942 | 12,785,124 |  | 9,260,171  |  | 22,045,295 |  |
| 3. Eligibility Determination      |  |            |  |            |            |  |            |  |            |  |

|                                           | Fiscal 1986  |                       |                         |             | Fiscal 1987 |              |                       |                         |             |             |
|-------------------------------------------|--------------|-----------------------|-------------------------|-------------|-------------|--------------|-----------------------|-------------------------|-------------|-------------|
|                                           | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total       | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total       |
|                                           | 2,028,531    |                       | 5,054,842               |             | 7,083,173   | 2,013,366    |                       | 5,320,842               |             | 7,334,208   |
| 4. Administration and Support             |              |                       |                         |             |             |              |                       |                         |             |             |
| a. Operations                             | 1,576,381    |                       | 1,336,309               |             | 2,912,690   | 1,530,850    |                       | 1,344,281               |             | 2,875,131   |
| b. Legislative Audit                      | 62,508       |                       | 52,992                  |             | 115,500     |              |                       |                         |             |             |
| Total                                     | 1,638,889    |                       | 1,389,301               |             | 3,028,190   | 1,530,850    |                       | 1,344,281               |             | 2,875,131   |
| County Assumption - Administration        | 963,626      |                       | 362,018                 |             | 1,325,644   | 952,818      |                       | 361,382                 |             | 1,314,200   |
| 5. Medical Assistance                     |              |                       |                         |             |             |              |                       |                         |             |             |
| a. Operations                             | 1,079,895    |                       | 1,771,702               |             | 2,851,597   | 1,049,396    |                       | 1,792,221               |             | 2,841,617   |
| b. Benefits                               |              |                       |                         |             |             |              |                       |                         |             |             |
| i. State Medical                          | 2,894,772    |                       |                         |             | 2,894,772   | 3,026,214    |                       |                         |             | 3,026,214   |
| ii. Medicaid - Institution Reimbursement  | 4,494,303    |                       | 8,681,530               |             | 13,175,833  | 3,906,574    |                       | 7,962,663               |             | 11,869,257  |
| iii. Other Benefits                       | 16,164,688   |                       | 31,701,655              |             | 47,866,343  | 16,181,929   |                       | 33,271,998              |             | 49,453,927  |
| iv. Medicaid - Other                      | 10,649,454   | 6,527,941             | 33,185,357              |             | 50,362,752  | 9,625,510    | 7,393,221             | 34,773,291              |             | 51,792,002  |
| v. Medicaid Management Information System | 120,000      |                       | 1,080,000               |             | 1,200,000   |              |                       |                         |             |             |
| Total                                     | 35,403,112   | 6,527,941             | 76,420,244              |             | 118,351,297 | 33,789,623   | 7,393,221             | 77,800,193              |             | 118,983,037 |
| 6. Audit and Program Compliance           | 686,543      |                       | 681,936                 |             | 1,368,479   | 650,262      |                       | 678,194                 |             | 1,328,456   |
| 7. Vocational Rehabilitation              | 690,601      | 541,891               | 3,956,328               |             | 5,188,820   | 686,796      | 563,666               | 4,189,835               |             | 5,440,297   |
| a. Special Population Services            | 20,000       |                       | 96,000                  |             | 116,000     | 20,000       |                       |                         |             | 20,000      |
| 8. Disability Determination               |              | 2,250,917             |                         |             | 2,250,917   |              |                       | 2,299,399               |             | 2,299,399   |
| 9. Visual Services                        | 234,314      |                       | 655,898                 |             | 890,212     | 241,698      |                       | 669,618                 |             | 911,316     |
| 10. Developmental Disabilities            |              |                       |                         |             |             |              |                       |                         |             |             |
| a. Operations                             | 267,286      |                       | 832,663                 |             | 1,099,949   | 232,171      |                       | 829,690                 |             | 1,061,861   |
| b. Benefits                               | 3,273,088    |                       | 12,661,320              |             | 15,934,408  | 5,175,965    |                       | 12,202,205              |             | 17,378,170  |
| Total                                     | 3,540,374    |                       | 13,493,983              |             | 17,034,357  | 5,408,136    |                       | 13,031,895              |             | 18,440,031  |
| 11. DDPAC                                 |              |                       |                         |             |             |              |                       |                         |             |             |
| a. Operations                             |              |                       | 105,000                 |             | 105,000     |              |                       | 105,000                 |             | 105,000     |
| b. Benefits                               |              |                       | 195,000                 |             | 195,000     |              |                       | 195,000                 |             | 195,000     |
| Total                                     |              |                       | 300,000                 |             | 300,000     |              |                       | 300,000                 |             | 300,000     |
| TOTAL SRS                                 | 71,676,340   | 7,069,832             | 151,887,115             |             | 230,633,287 | 72,192,738   | 7,956,887             | 154,354,407             |             | 234,504,032 |

| General<br>Fund | Fiscal 1986                 |                               | Proprietary | Total | General<br>Fund | Fiscal 1987                 |                               | Proprietary | Total |
|-----------------|-----------------------------|-------------------------------|-------------|-------|-----------------|-----------------------------|-------------------------------|-------------|-------|
|                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |       |                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |       |

It is to be a priority that primary care givers who provide direct service under case management for the Medicaid home and community-based services waiver be acquainted with the mental health needs of the elderly.

Further, case management teams, care givers, and the Aging Services Network are to be acquainted with appropriate means for referral and intervention. Aging information and referral technicians are to be informed of the local services available to address mental health needs.

*The benefit portion of the medicaid waiver program in item (5)(b)(iii) for fiscal year 1986 is \$1,424,503. The unexpended amount of this appropriation is reappropriated for medicaid waiver benefit purposes for fiscal year 1987.*

In each fiscal year, 10% of the low income energy block grant shall be transferred to the social services block grant. If the transfer is greater than \$1,169,510 in either fiscal year, a like amount of general fund shall revert. Eight and six-tenths percent of the low income energy block grant shall be used for the weathurization program in each fiscal year.

No funds may be transferred into or out of the nonresident general assistance program, the emergency general assistance program, or the state general assistance program.

Except for 5% in fiscal 1986 and 5% in fiscal 1987 that the Department may use for administrative expenses, all other funds appropriated for the community services block grant must be allocated to the Human Resource Development Council.

Funds appropriated under item 1bvi are for a contract with the Montana Legal Services Corporation to provide legal assistance to all supplemental security income clients, with the intent of reducing the state general assistance caseload by a minimum of 180 clients by the end of the 1987 biennium.

*The department is to continue its current policy of limited placement in foster care. The department may increase contracts with in-state providers to accommodate geographical distribution of placements.*

*The department is to freeze foster care payment rates at the level paid during fiscal year 1986.*

If third-party payments or reimbursement from any source received by the Department to offset costs of the foster care program are in excess of \$320,000 in fiscal 1986 or \$320,000 in fiscal 1987, these excess payments shall revert to the general fund.

The Department may not consider donated or nondepartmental contracted funds obtained by developmental disabilities providers or foster care providers when allocating or contracting state payments for developmental disabilities services or foster care services.

No FTE or spending authority may be transferred into or out of the eligibility determination program or the disability determination program.

Item 4b is a biennial appropriation.

The Department may provide coverage of heart transplant surgery under the medicaid-other program. This coverage shall expire on June 30, 1987, unless specifically extended by the next Legislature.

Except as provided for coverage of heart transplant surgery as set forth in this narrative, the Department shall not expand or reduce the amount, scope, or duration of the benefits available to recipients under the medicaid-other program during the 1987 biennium unless Title XIX of the federal Social Security Act is amended to require expansion or reduction of benefits as a condition of the state receiving federal financial participation. This provision does not prohibit the Department from amending reimbursement procedures to contain costs providing there are no reductions in the types of services provided to recipients or increases in the amount paid by recipients under copayment rules.

No funds may be transferred out of item 5bii.

If collections of county mill levy funds from state-assumed counties exceed \$8,527,941 in fiscal 1986 and \$7,393,221 in fiscal 1987, the excess will be deposited to the general fund.

Item 5bv is a biennial appropriation.

Item 7a is a biennial appropriation.

Funds appropriated under item 10b include \$2,890,123 for reduction of the developmental disabilities waiting list. The Department shall adopt as a priority development of residential services for autistic children.

Funds appropriated under item 11b must be expended for direct services in accordance with recommendations of the Developmental Disabilities Planning and Advisory Council.

#### TOTAL SECTION B

|            |            |             |       |             |            |            |             |       |             |
|------------|------------|-------------|-------|-------------|------------|------------|-------------|-------|-------------|
| 76,738,989 | 18,636,705 | 194,715,679 | 3,500 | 290,094,873 | 76,550,240 | 17,513,843 | 197,884,696 | 3,500 | 291,952,279 |
|------------|------------|-------------|-------|-------------|------------|------------|-------------|-------|-------------|

| Fiscal 1986               |                       |                         |             |           | Fiscal 1987  |                       |                         |             |           |
|---------------------------|-----------------------|-------------------------|-------------|-----------|--------------|-----------------------|-------------------------|-------------|-----------|
| General Fund              | State Special Revenue | Federal Special Revenue | Proprietary | Total     | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total     |
| C. NATURAL RESOURCES      |                       |                         |             |           |              |                       |                         |             |           |
| PUBLIC SERVICE COMMISSION |                       |                         |             |           |              |                       |                         |             |           |
| 1. Operations             |                       |                         |             |           |              |                       |                         |             |           |
| 1,651,873                 |                       | 46,628                  | 15,000      | 1,713,501 | 1,637,319    |                       | 50,919                  | 15,000      | 1,703,238 |
| 2. Audit                  |                       |                         |             |           |              |                       |                         |             |           |
| 11,500                    |                       |                         |             | 11,500    |              |                       |                         |             |           |
| 3. Pipeline Consultants   |                       |                         |             |           |              |                       |                         |             |           |
| 3,768                     |                       | 15,000                  |             | 18,768    |              |                       |                         |             |           |
| 4. Expert Witnesses       |                       |                         |             |           |              |                       |                         |             |           |
| 20,000                    |                       |                         |             | 20,000    |              |                       |                         |             |           |
| <hr/>                     |                       |                         |             |           |              |                       |                         |             |           |
| Total                     |                       |                         |             |           |              |                       |                         |             |           |
| 1,687,141                 |                       | 61,628                  | 15,000      | 1,763,769 | 1,637,319    |                       | 50,919                  | 15,000      | 1,703,238 |

The appropriations in items 3 and 4 are for the biennium.

If HB 45 of Special Session III passes, the fiscal year 1987 general fund appropriation in item 1 is reduced to zero and \$1,637,319 of State Special Revenue is appropriated.

#### DEPARTMENT OF LIVESTOCK

|                                       |           |         |  |           |         |           |         |  |           |
|---------------------------------------|-----------|---------|--|-----------|---------|-----------|---------|--|-----------|
| 1. Central Services                   |           |         |  |           |         |           |         |  |           |
| a. Operations                         |           |         |  |           |         |           |         |  |           |
| 48,926                                | 349,211   |         |  | 398,137   | 58,228  | 335,651   |         |  | 393,879   |
| b. Audit                              |           |         |  |           |         |           |         |  |           |
| 14,700                                |           |         |  | 14,700    |         |           |         |  |           |
| 2. Diagnostic Laboratory              |           |         |  |           |         |           |         |  |           |
| 329,908                               | 435,642   |         |  | 765,550   | 302,331 | 335,390   |         |  | 637,521   |
| 3. Disease Control                    |           |         |  |           |         |           |         |  |           |
| 570,424                               |           |         |  | 570,424   |         | 525,973   |         |  | 525,973   |
| 4. Milk and Egg Program               |           |         |  |           |         |           |         |  |           |
| 208,876                               | 18,000    |         |  | 226,876   | 210,964 |           | 18,000  |  | 228,964   |
| 5. Inspection and Control             |           |         |  |           |         |           |         |  |           |
| a. Operations                         |           |         |  |           |         |           |         |  |           |
| 1,916,014                             |           |         |  | 1,916,014 |         | 1,892,799 |         |  | 1,892,799 |
| b. Market Office Computer Terminals   |           |         |  |           |         |           |         |  |           |
| 31,292                                |           |         |  | 31,292    |         |           |         |  |           |
| 6. Beef and Pork Research & Marketing |           |         |  |           |         |           |         |  |           |
| 570,000                               |           |         |  | 570,000   |         |           | 570,000 |  | 570,000   |
| 7. Predatory Animal Control           |           |         |  |           |         |           |         |  |           |
| 301,444                               |           |         |  | 301,444   |         | 256,411   |         |  | 256,411   |
| 8. Rabies Control                     |           |         |  |           |         |           |         |  |           |
| 67,989                                | 15,000    |         |  | 82,989    |         | 182,727   |         |  | 182,727   |
| Total                                 |           |         |  |           |         |           |         |  |           |
| 668,399                               | 3,619,027 | 588,000 |  | 4,875,426 | 571,423 | 3,528,651 | 568,000 |  | 4,688,274 |

Item 5b is a biennial appropriation.

The appropriation in item 2 in fiscal 1986 includes \$27,600 from the state special revenue fund for milk control authorized in section 81-23-202, MCA. The assessment authorized in section 81-23-202, MCA, in effect July 1, 1985, will not be reduced until this expenditure has been made. This amount has been generated under the provisions of section 81-23-105, MCA, for milk testing. This is to assist in the purchase of milk testing equipment authorized in this appropriation.

#### DEPARTMENT OF AGRICULTURE

|                                     |           |           |         |           |           |           |           |         |           |
|-------------------------------------|-----------|-----------|---------|-----------|-----------|-----------|-----------|---------|-----------|
| 1. Centralized Services             |           |           |         |           |           |           |           |         |           |
| a. Operations                       |           |           |         |           |           |           |           |         |           |
| 273,854                             | 533,036   | 72,375    | 29,168  | 908,433   | 254,464   | 538,364   | 54,918    | 27,764  | 875,510   |
| b. Audit                            |           |           |         |           |           |           |           |         |           |
| 19,950                              |           |           |         | 19,950    |           |           |           |         |           |
| 2. Hail Insurance                   |           |           |         |           |           |           |           |         |           |
|                                     |           |           | 168,905 | 168,905   |           |           |           | 170,720 | 170,720   |
| 3. Wheat Research and Marketing     |           |           |         |           |           |           |           |         |           |
|                                     |           | 1,017,850 |         | 1,017,850 |           |           | 1,020,428 |         | 1,020,428 |
| 4. Environmental Management         |           |           |         |           |           |           |           |         |           |
| 712,396                             | 165,467   | 197,657   |         | 1,075,520 | 659,615   | 156,070   | 222,760   |         | 1,038,445 |
| 5. Plant Industry                   |           |           |         |           |           |           |           |         |           |
| 432,596                             | 380,900   | 24,773    | 43,895  | 882,164   | 416,789   | 384,006   | 24,785    | 43,578  | 869,158   |
| 6. Agriculture Development Division |           |           |         |           |           |           |           |         |           |
| 101,208                             | 37,054    | 101,995   | 165,899 | 406,156   | 94,443    | 35,751    | 43,455    | 164,916 | 338,565   |
| Total                               |           |           |         |           |           |           |           |         |           |
| 1,540,004                           | 1,116,457 | 1,414,650 | 407,867 | 4,478,978 | 1,425,311 | 1,114,191 | 1,366,346 | 406,978 | 4,312,826 |

Within proprietary funds appropriated to the Department of Agriculture are revenues received under the provisions of section 80-2-221, MCA, for hail insurance and section 80-2-103, MCA, for rural development. Amounts included are:

|                       |          | <u>Fiscal 1986</u> | <u>Fiscal 1987</u> |
|-----------------------|----------|--------------------|--------------------|
| Section 80-2-221, MCA | Item 1a. | \$ 23,067          | \$ 21,030          |
|                       | Item 2.  | 168,905            | 170,720            |
| Section 80-2-103, MCA | Item 1a. | \$ 4,101           | \$ 4,834           |
|                       | Item 6.  | 65,899             | 65,166             |

The general fund loan authorized for the establishment of the beginning farm loan program in HB 447 of the 48th Legislature is extended until June 30, 1987.

|                                  | <u>General Fund</u> | <u>State Special Revenue</u> | <u>Fiscal 1986<br/>Federal Special Revenue</u> | <u>Proprietary</u> | <u>Total</u> | <u>General Fund</u> | <u>State Special Revenue</u> | <u>Fiscal 1987<br/>Federal Special Revenue</u> | <u>Proprietary</u> | <u>Total</u> |
|----------------------------------|---------------------|------------------------------|------------------------------------------------|--------------------|--------------|---------------------|------------------------------|------------------------------------------------|--------------------|--------------|
| <b>DEPARTMENT OF STATE LANDS</b> |                     |                              |                                                |                    |              |                     |                              |                                                |                    |              |
| 1. Central Management            |                     |                              |                                                |                    |              |                     |                              |                                                |                    |              |
| a. Operations                    | 815,457             | 470,557                      | 170,000                                        | 154,257            | 1,610,271    | 817,013             | 379,571                      | 170,000                                        | 176,584            | 1,543,168    |
| b. Audit                         | 20,790              | 1,134                        | 3,276                                          |                    | 25,200       |                     |                              |                                                |                    |              |
| 2. Reclamation                   |                     | 1,438,007                    | 7,560,562                                      |                    | 8,998,569    | 549,531             | 729,928                      | 8,063,957                                      |                    | 9,343,416    |
| 3. Land Administration           |                     |                              |                                                |                    |              |                     |                              |                                                |                    |              |
| a. Operations                    | 445,250             |                              |                                                |                    | 445,250      | 432,804             |                              |                                                |                    | 432,804      |
| b. Land Use Specialists          | 111,313             |                              |                                                |                    | 111,313      | 76,485              |                              |                                                |                    | 76,485       |
| 4. Resource Development          |                     | 856,889                      |                                                |                    | 856,889      |                     | 880,242                      |                                                |                    | 880,242      |
| 5. Forestry                      | 4,101,262           | 2,001,487                    | 1,605,602                                      |                    | 7,708,351    | 4,553,621           | 1,226,817                    | 1,587,112                                      |                    | 7,367,550    |
| Total                            | 5,494,072           | 4,768,074                    | 9,339,440                                      | 154,257            | 19,755,843   | 6,429,454           | 3,216,558                    | 9,821,069                                      | 176,584            | 19,643,665   |

The funds appropriated in item 3b may be expended only to the extent revenues from increased land transaction fees authorized in section 77-1-302, MCA, are deposited to the general fund.

Item 5 contains \$3,012,118 in fiscal 1986 and \$2,992,162 in fiscal 1987 for fire protection.

The Department may transfer up to \$359,254 in fiscal 1986 and \$395,388 in fiscal 1987 of the state special revenue appropriation in item 4 to item 5. These are resource development funds which may be used to expand the timber harvest on state lands.

#### DEPARTMENT OF FISH, WILDLIFE, AND PARKS

|                                   |           |           |           |           |           |           |           |           |           |  |
|-----------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|--|
| 1. Centralized Services           |           |           |           |           |           |           |           |           |           |  |
| a. Operations                     | 1,675,350 | 253,006   | 1,899,687 | 3,828,043 |           | 1,587,594 | 251,597   | 1,937,999 | 3,777,190 |  |
| b. Audit                          | 46,200    |           |           | 46,200    |           |           |           |           |           |  |
| c. Legislative Contract Authority |           | 40,000    |           | 40,000    |           |           | 40,000    |           | 40,000    |  |
| 2. Field Services Division        |           |           |           |           |           |           |           |           |           |  |
| a. Operations                     | 1,093,308 | 299,115   |           | 1,392,423 |           | 1,003,939 | 297,990   |           | 1,301,929 |  |
| b. Legislative Contract Authority |           | 45,000    |           | 45,000    |           |           | 45,000    |           | 45,000    |  |
| c. Data Processing                |           | 60,369    |           | 60,369    |           |           |           |           |           |  |
| 3. Fisheries                      |           |           |           |           |           |           |           |           |           |  |
| a. Operations                     | 2,796,028 | 995,333   |           | 3,791,361 |           | 2,749,462 | 974,180   |           | 3,723,642 |  |
| b. Legislative Contract Authority |           | 1,247,000 |           | 1,247,000 |           |           | 1,201,000 |           | 1,201,000 |  |
| 4. Law Enforcement                |           |           |           |           |           |           |           |           |           |  |
| a. Operations                     | 3,782,333 |           |           | 3,782,333 |           | 3,747,185 |           |           | 3,747,185 |  |
| b. Legislative Contract Authority |           | 84,000    |           | 84,000    |           |           | 84,000    |           | 84,000    |  |
| 5. Wildlife                       |           |           |           |           |           |           |           |           |           |  |
| a. Operations                     | 2,594,704 | 2,185,349 |           | 4,780,053 |           | 2,609,394 | 2,192,134 |           | 4,801,528 |  |
| b. Legislative Contract Authority |           | 1,015,000 |           | 1,015,000 |           |           | 978,000   |           | 978,000   |  |
| 6. Parks Program                  |           |           |           |           |           |           |           |           |           |  |
| a. Operations                     | 412,330   | 2,878,088 | 501,500   | 269,542   | 4,061,460 | 3,038,156 | 501,500   | 255,305   | 3,794,961 |  |
| b. Operations — Contingency       |           | 50,000    |           |           | 50,000    |           | 50,000    |           | 50,000    |  |
| 7. Conservation Education         |           |           |           |           |           |           |           |           |           |  |
| a. Operations                     |           |           |           |           |           |           |           |           |           |  |

| Fiscal 1986                       |                       |                         |             |           | Fiscal 1987  |                       |                         |             |            |
|-----------------------------------|-----------------------|-------------------------|-------------|-----------|--------------|-----------------------|-------------------------|-------------|------------|
| General Fund                      | State Special Revenue | Federal Special Revenue | Proprietary | Total     | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total      |
|                                   | 1,063,503             | 82,269                  |             | 1,145,772 |              | 1,055,079             | 75,313                  |             | 1,130,392  |
| b. Legislative Contract Authority |                       | 30,000                  |             | 30,000    |              |                       | 30,000                  |             | 30,000     |
| 8. Administration                 |                       |                         |             |           |              |                       |                         |             |            |
| a. Operations                     | 912,290               | 184,004                 |             | 1,096,294 | 699,705      | 182,979               |                         |             | 882,684    |
| b. Legislative Contract Authority |                       | 15,000                  |             | 15,000    |              | 15,000                |                         |             | 15,000     |
| Total                             | 412,330               | 16,871,804              | 7,036,945   | 2,169,229 | 26,490,308   | 16,540,514            | 6,868,693               | 2,193,304   | 25,602,511 |

The appropriation of legislative contract authority in items 1c, 2b, 3b, 4b, 5b, 7b, and 8b is subject to the following provisions:

1. Legislative contract authority applies only to federal and private funds.
2. Legislative contract authority expenditures must be reported on state accounting records separately from current level operations.
3. A report shall be submitted by the Department to the Legislative Fiscal Analyst following the end of fiscal 1986 and following the end of fiscal 1987, which report must include the following:
  - a. a description of the additional services provided by each grant of federal or private funds;
  - b. an evaluation of the effectiveness of the additional services relating to each grant.

Item 2c is a biennial appropriation.

Item 6b is appropriated for operation and maintenance of state parks if the Kleffner Ranch is not approved in HB 928. If the Kleffner Ranch is approved in HB 928 this appropriation is void.

#### DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

|                                    |           |            |           |            |           |           |           |  |            |
|------------------------------------|-----------|------------|-----------|------------|-----------|-----------|-----------|--|------------|
| 1. Centralized Services            |           |            |           |            |           |           |           |  |            |
| a. Operations                      |           |            |           |            |           |           |           |  |            |
| 1,164,833                          | 349,558   | 170,000    |           | 1,684,391  | 996,934   | 281,667   | 180,637   |  | 1,459,238  |
| b. Audit                           |           |            |           |            |           |           |           |  |            |
| 13,524                             | 7,476     |            |           | 21,000     |           |           |           |  |            |
| 2. Oil & Gas                       |           |            |           |            |           |           |           |  |            |
| a. Operations                      |           |            |           |            |           |           |           |  |            |
| 903,904                            |           |            |           | 903,904    |           | 662,846   |           |  | 662,846    |
| b. Additional Travel               |           |            |           |            |           |           |           |  |            |
| 2,500                              |           |            |           | 2,500      |           |           |           |  |            |
| c. Litigation - MEPA               |           |            |           |            |           |           |           |  |            |
| 23,750                             |           |            |           | 23,750     |           |           |           |  |            |
| 3. Conservation Districts          |           |            |           |            |           |           |           |  |            |
| 832,334                            | 2,607     |            |           | 834,941    | 337,782   | 487,990   | 2,703     |  | 828,475    |
| 4. Water Resources                 |           |            |           |            |           |           |           |  |            |
| a. Operations                      |           |            |           |            |           |           |           |  |            |
| 2,891,145                          | 1,689,250 | 42,800     |           | 4,623,195  | 2,202,672 | 2,181,960 | 42,800    |  | 4,427,432  |
| b. State Water Projects            |           |            |           |            |           |           |           |  |            |
| 800,000                            |           |            |           | 800,000    |           |           |           |  |            |
| c. Debt Service and Issuance Fees  |           |            |           |            |           |           |           |  |            |
| 7,356,628                          | 43,880    |            |           | 7,400,508  |           |           |           |  |            |
| d. Middle Creek                    |           | 4,100,000  |           | 4,100,000  |           |           |           |  |            |
| e. Cooney Dam                      |           |            |           |            |           |           |           |  |            |
| 75,000                             |           |            |           | 75,000     |           |           |           |  |            |
| f. Dam Safety                      |           |            |           |            |           |           |           |  |            |
| 16,000                             |           |            |           | 16,000     | 30,000    |           |           |  | 30,000     |
| g. Board of Water Well Contractors |           |            |           |            |           |           |           |  |            |
| 37,012                             |           |            |           | 37,012     |           | 34,610    |           |  | 34,610     |
| 5. Energy Division                 |           |            |           |            |           |           |           |  |            |
| a. Operations                      |           |            |           |            |           |           |           |  |            |
| 466,165                            | 3,428,718 | 2,866,837  |           | 6,761,720  | 430,460   | 1,807,000 | 968,020   |  | 3,203,480  |
| b. Lake Broadview Mitigation       |           |            |           |            |           |           |           |  |            |
|                                    |           | 113,000    |           | 113,000    |           |           |           |  |            |
| Total                              | 4,551,667 | 15,506,130 | 7,339,124 | 27,396,921 | 3,997,848 | 5,656,073 | 1,192,160 |  | 10,846,081 |

Item 2b is appropriated contingent upon filling all inspector positions.

Item 2c is a biennial appropriation.



| General<br>Fund | Fiscal 1986                 |                               | Proprietary | Total | General<br>Fund | Fiscal 1987                 |                               | Proprietary | Total |
|-----------------|-----------------------------|-------------------------------|-------------|-------|-----------------|-----------------------------|-------------------------------|-------------|-------|
|                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |       |                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |       |

The Oil and Gas Conservation Division is authorized to spend any funds received from bonds for plugging abandoned wells as authorized in section 82-11-123(5), MCA, and such funds are appropriated for those purposes.

Items 4b, 4c, 4d, and 4e are biennial appropriations. To the extent funds appropriated in item 4e are not needed for the Cooney Dam project, they shall be applied to reduce the water users' debt on this project.

Item 4f is a biennial appropriation to fund Department responsibilities under SB 369.

Included within the \$2,866,837 appropriation of federal special revenue funds in item 5a in fiscal 1986 is \$1,650,000 for Rock Creek Mitigation and \$276,328 for the Residential Standards Demonstration Program. These amounts are appropriated for the biennium.

Item 5b for the Lake Broadview mitigation project is appropriated for the biennium.

#### DEPARTMENT OF COMMERCE

|                                                        |            |           |         |            |           |            |           |           |            |
|--------------------------------------------------------|------------|-----------|---------|------------|-----------|------------|-----------|-----------|------------|
| 1. Business Licensing and Regulation - Program Support |            |           |         |            |           |            |           |           |            |
| 21,478                                                 | 61,129     |           |         | 82,607     | 20,763    | 56,300     |           |           | 77,063     |
| 2. Weights and Measures Bureau                         |            |           |         |            |           |            |           |           |            |
| 469,746                                                |            |           |         | 469,746    | 412,941   |            |           |           | 412,941    |
| 3. Financial Division                                  |            |           |         |            |           |            |           |           |            |
| 773,993                                                |            |           |         | 773,993    |           | 720,166    |           |           | 720,166    |
| 4. Milk Control Bureau                                 |            |           |         |            |           |            |           |           |            |
| a. Operations                                          |            |           |         |            |           |            |           |           |            |
| 266,610                                                |            |           |         | 266,610    |           | 248,176    |           |           | 248,176    |
| b. Expert Witnesses                                    |            |           |         |            |           |            |           |           |            |
| 6,000                                                  |            |           |         | 6,000      |           | 6,000      |           |           | 6,000      |
| 5. Professional and Occupational Licensing             |            |           |         |            |           |            |           |           |            |
| 2,313,135                                              |            |           |         | 2,313,135  |           | 2,088,819  |           |           | 2,088,819  |
| 6. Aeronautics Division                                |            |           |         |            |           |            |           |           |            |
| 600,116                                                |            |           | 92,600  | 692,716    |           | 555,100    |           | 88,329    | 643,429    |
| 7. Transportation Division                             |            |           |         |            |           |            |           |           |            |
| 573,098                                                | 75,000     | 6,314,749 |         | 6,962,837  | 398,632   | 71,250     | 2,827,434 |           | 3,297,316  |
| 8. Business Assistance                                 |            |           |         |            |           |            |           |           |            |
| 735,562                                                |            | 126,500   |         | 862,062    | 694,940   |            | 126,500   |           | 821,440    |
| 9. Montana Promotion                                   |            |           |         |            |           |            |           |           |            |
| 1,258,200                                              |            | 325,000   |         | 1,583,200  | 1,181,766 |            | 350,000   |           | 1,531,766  |
| 10. Housing Division                                   |            |           |         |            |           |            |           |           |            |
|                                                        | 8,292,600  | 1,123,755 |         | 9,416,355  |           |            | 8,296,450 | 1,191,285 | 9,487,735  |
| 11. Community Development                              |            |           |         |            |           |            |           |           |            |
| 206,505                                                | 504,000    | 7,797,446 |         | 8,507,951  | 192,021   | 446,926    | 6,265,516 |           | 6,904,463  |
| 12. Hard Rock Mining Board                             |            |           |         |            |           |            |           |           |            |
| 1,000,000                                              |            |           |         | 1,000,000  |           |            |           |           |            |
| 13. Local Government Block Grant                       |            |           |         |            |           |            |           |           |            |
| 1,500,000                                              | 15,459,000 |           |         | 16,959,000 | 1,425,000 | 15,088,850 |           |           | 16,513,850 |
| 14. Coal Board                                         |            |           |         |            |           |            |           |           |            |
| 2,435,980                                              |            |           |         | 2,435,980  |           | 1,859,788  |           |           | 1,859,788  |
| 15. Economic Policy and Research                       |            |           |         |            |           |            |           |           |            |
| 249,641                                                |            | 20,000    |         | 269,641    | 233,666   |            | 20,000    |           | 253,666    |
| 16. Local Government Audit Service                     |            |           |         |            |           |            |           |           |            |
| a. Operations                                          |            |           |         |            |           |            |           |           |            |
| 88,127                                                 |            |           | 919,842 | 1,007,969  | 83,358    |            |           | 857,132   | 940,490    |
| b. District Court Assistance                           |            |           |         |            |           |            |           |           |            |
| 1,375,000                                              |            |           |         | 1,375,000  |           |            |           |           |            |
| c. District Court Operations                           |            |           |         |            |           |            |           |           |            |
| 3,170,633                                              |            |           |         | 3,170,633  | 2,995,229 |            |           |           | 2,995,229  |
| 17. Accounting and Management                          |            |           |         |            |           |            |           |           |            |
| 87,589                                                 |            |           | 280,171 | 367,760    | 82,761    |            |           | 261,685   | 344,446    |
| 18. Indian Affairs Coordinator                         |            |           |         |            |           |            |           |           |            |
| 108,207                                                |            |           |         | 108,207    | 101,434   |            |           |           | 101,434    |
| 19. Bonding Authority                                  |            |           |         |            |           |            |           |           |            |
| 193,248                                                |            |           | 318,653 | 511,901    | 178,163   |            |           | 302,323   | 480,486    |
| 20. Director's Office Management Services              |            |           |         |            |           |            |           |           |            |
| a. Operations                                          |            |           |         |            |           |            |           |           |            |
| 1,731                                                  |            |           | 644,288 | 646,019    | 1,644     |            |           | 574,474   | 576,118    |
| b. Audit                                               |            |           |         |            |           |            |           |           |            |
|                                                        |            |           | 63,000  | 63,000     |           |            |           |           |            |
| 21. Legal Services Division                            |            |           |         |            |           |            |           |           |            |
| 131,938                                                |            |           | 169,041 | 300,979    | 122,281   |            |           | 156,577   | 278,858    |
| 22. Building Codes Division                            |            |           |         |            |           |            |           |           |            |
| 1,151,533                                              |            |           |         | 1,151,533  |           | 930,098    |           |           | 930,098    |
| a. Audit                                               |            |           |         |            |           |            |           |           |            |
| 3,000                                                  |            |           |         | 3,000      |           |            |           |           |            |
| Total                                                  |            |           |         |            |           |            |           |           |            |

| General Fund | Fiscal 1986           |                         |             |            | General Fund | Fiscal 1987           |                         |             |            |
|--------------|-----------------------|-------------------------|-------------|------------|--------------|-----------------------|-------------------------|-------------|------------|
|              | State Special Revenue | Federal Special Revenue | Proprietary | Total      |              | State Special Revenue | Federal Special Revenue | Proprietary | Total      |
| 10,170,683   | 24,649,496            | 22,876,295              | 3,611,350   | 61,307,834 | 8,124,599    | 22,071,473            | 17,885,900              | 3,431,805   | 51,513,777 |

The interentity loan of \$10,000 to the Board of Private Investigation may be extended until June 30, 1987.

The general fund appropriations in item 7 include \$100,000 per year for litigation cost on McCarty Farms/Staggers 229. The Department shall seek to recover the general fund expenditures plus interest at a rate of 10% from any settlement in this case.

The appropriation in item 12 is for the biennium.

Understanding that education of enforcement personnel and enforcement will be an extremely important need in the success of an energy code enforcement program and the exact needs will not be known until after the administrative hearings process for the energy code adoption is completed, the necessary funding may be added by budget amendment. The budget amendment will be for the purposes of allowing the Department to receive and expend federal funds made available for educational and enforcement purposes and the necessary supervisory staff to administer the same. Should the economy improve to the point there is a need for more building standard inspectors, a maximum of 3 FTEs and operating expenses and equipment for the 3 FTEs may be added by budget amendment to the Building Codes Division.

The Department of Commerce is authorized to expend funds deposited to the state special revenue account as a result of House Bill 295, the "Lemon Law".

*The appropriation in item 16c for District Court operations is the appropriations transfer made in section 11, Chapter 1, Special Laws of 1985.*

#### TOTAL SECTION C

|            |            |            |           |             |            |            |            |           |             |
|------------|------------|------------|-----------|-------------|------------|------------|------------|-----------|-------------|
| 24,524,306 | 66,530,988 | 48,656,082 | 6,357,703 | 146,069,079 | 22,185,954 | 52,127,660 | 37,773,087 | 6,223,671 | 118,310,372 |
|------------|------------|------------|-----------|-------------|------------|------------|------------|-----------|-------------|

#### D. DEPARTMENT OF INSTITUTIONS

##### CENTRAL OFFICE

|                                   |            |         |           |            |            |         |           |           |            |
|-----------------------------------|------------|---------|-----------|------------|------------|---------|-----------|-----------|------------|
| 1. Director's Office              |            |         |           |            |            |         |           |           |            |
| a. Operations                     |            |         |           | 385,599    | 360,510    |         |           |           | 360,510    |
| b. Workers' Compensation          |            |         |           |            | 172,000    |         |           |           | 172,000    |
| 2. Management Services Division   |            |         |           |            |            |         |           |           |            |
| a. Management Services            |            |         |           | 881,915    | 842,296    |         |           |           | 842,296    |
| b. Audit                          | 28,035     | 875     | 6,090     | 35,000     |            |         |           |           |            |
| 3. Alcohol & Drug Abuse Division  | 219,592    | 330,039 | 1,114,606 | 1,664,237  | 208,612    | 327,151 | 1,083,560 |           | 1,619,323  |
| 4. Corrections Division           |            |         |           |            |            |         |           |           |            |
| a. Central Office                 |            |         |           |            |            |         |           |           |            |
| i. Operations                     | 3,948,380  | 250     | 2,595     | 3,951,225  | 3,873,602  | 250     | 2,699     |           | 3,876,551  |
| ii. Equipment                     | 100,000    |         |           | 100,000    |            |         |           |           |            |
| b. Women's Corrections            |            |         |           |            |            |         |           |           |            |
| i. Operations                     | 686,014    |         |           | 686,014    | 659,397    |         |           |           | 659,397    |
| c. Corrections Medical            |            |         |           |            |            |         |           |           |            |
| i. Operations                     | 607,934    |         |           | 607,934    | 626,172    |         |           |           | 626,172    |
| d. Mountain View School           |            |         |           |            |            |         |           |           |            |
| i. Operations                     | 1,583,331  | 2,000   | 65,586    | 1,630,917  | 1,511,201  | 2,000   | 65,764    |           | 1,578,965  |
| ii. Audit                         | 10,000     |         |           | 10,000     |            |         |           |           |            |
| e. Pine Hills School              |            |         |           |            |            |         |           |           |            |
| i. Operations                     | 2,687,303  | 41,455  | 486,856   | 3,195,614  | 2,653,595  | 41,467  | 487,555   |           | 3,182,617  |
| ii. Audit                         | 13,000     |         |           | 13,000     |            |         |           |           |            |
| f. Montana State Prison           |            |         |           |            |            |         |           |           |            |
| i. Care and Custody — Operations  | 10,528,932 | 50,617  | 105,284   | 10,684,833 | 11,476,200 | 50,637  | 90,996    |           | 11,617,833 |
| ii. Care and Custody — Audit      | 17,132     |         | 1,015     | 18,147     |            |         |           |           |            |
| iii. Care and Custody — Equipment | 80,000     |         |           | 80,000     |            |         |           |           |            |
| iv. Ranch and Dairy Operations    |            |         |           | 1,745,190  | 1,745,190  |         |           | 1,789,187 | 1,789,187  |

| General Fund                          | Fiscal 1986           |                         | Proprietary | Total      | General Fund | Fiscal 1987           |                         | Proprietary | Total      |
|---------------------------------------|-----------------------|-------------------------|-------------|------------|--------------|-----------------------|-------------------------|-------------|------------|
|                                       | State Special Revenue | Federal Special Revenue |             |            |              | State Special Revenue | Federal Special Revenue |             |            |
| v. Ranch and Dairy Audit              |                       |                         | 2,105       | 2,105      |              |                       |                         |             |            |
| vi. Industries Operations             |                       |                         | 396,128     | 396,128    |              |                       |                         | 404,598     | 404,598    |
| vii. Industries Audit                 |                       |                         | 3,193       | 3,193      |              |                       |                         |             |            |
| viii. Industries Training Operations  |                       |                         |             |            |              |                       |                         |             |            |
| 156,782                               |                       | 37,243                  | 195,995     | 390,000    | 144,032      |                       |                         | 181,657     | 325,689    |
| ix. Industries Training Audit         |                       |                         |             |            |              |                       |                         |             |            |
| 320                                   |                       | 80                      | 400         | 800        |              |                       |                         |             |            |
| x. Canteen Operations                 |                       |                         |             |            |              |                       |                         |             |            |
| 360,435                               |                       |                         |             | 360,435    |              | 361,031               |                         |             | 361,031    |
| xi. Canteen Audit                     |                       |                         |             |            |              |                       |                         |             |            |
| 321                                   |                       |                         |             | 321        |              |                       |                         |             |            |
| xii. License Plate Factory Operations |                       |                         |             |            |              |                       |                         |             |            |
| 354,094                               |                       |                         |             | 354,094    |              | 366,598               |                         |             | 366,598    |
| xiii. License Plate Factory Audit     |                       |                         |             |            |              |                       |                         |             |            |
| 184                                   |                       |                         |             | 184        |              |                       |                         |             |            |
| g. Swan River Forest Camp             |                       |                         |             |            |              |                       |                         |             |            |
| i. Operations                         |                       |                         |             |            |              |                       |                         |             |            |
| 847,039                               | 73,773                | 37,525                  |             | 958,337    | 805,332      | 74,284                | 39,450                  |             | 919,066    |
| ii. Audit                             |                       |                         |             |            |              |                       |                         |             |            |
| 8,000                                 |                       |                         |             | 8,000      |              |                       |                         |             |            |
| 5. Mental Health Division             |                       |                         |             |            |              |                       |                         |             |            |
| a. Central Office                     |                       |                         |             |            |              |                       |                         |             |            |
| i. Operations                         |                       |                         |             |            |              |                       |                         |             |            |
| 4,122,606                             |                       | 1,349,118               |             | 5,471,724  | 4,124,712    |                       | 1,235,176               |             | 5,359,888  |
| b. Boulder River School and Hospital  |                       |                         |             |            |              |                       |                         |             |            |
| i. Operations                         |                       |                         |             |            |              |                       |                         |             |            |
| 10,774,551                            | 33,844                | 51,769                  |             | 10,860,164 | 10,842,541   | 20,324                | 43,827                  |             | 10,906,692 |
| ii. Audit                             |                       |                         |             |            |              |                       |                         |             |            |
| 20,000                                |                       |                         |             | 20,000     |              |                       |                         |             |            |
| iii. Equipment                        |                       |                         |             |            |              |                       |                         |             |            |
| 20,000                                |                       |                         |             | 20,000     |              |                       |                         |             |            |
| c. Center for the Aged                |                       |                         |             |            |              |                       |                         |             |            |
| i. General Operations                 |                       |                         |             |            |              |                       |                         |             |            |
| 2,510,228                             | 7,386                 |                         |             | 2,517,612  | 2,454,706    | 7,735                 |                         |             | 2,462,441  |
| ii. Audit                             |                       |                         |             |            |              |                       |                         |             |            |
| 10,000                                |                       |                         |             | 10,000     |              |                       |                         |             |            |
| d. Eastmont                           |                       |                         |             |            |              |                       |                         |             |            |
| i. General Operations                 |                       |                         |             |            |              |                       |                         |             |            |
| 2,070,704                             | 3,000                 |                         |             | 2,073,704  | 2,039,279    | 3,000                 |                         |             | 2,042,279  |
| ii. Audit                             |                       |                         |             |            |              |                       |                         |             |            |
| 10,000                                |                       |                         |             | 10,000     |              |                       |                         |             |            |
| e. Veterans' Home                     |                       |                         |             |            |              |                       |                         |             |            |
| i. General Operations                 |                       |                         |             |            |              |                       |                         |             |            |
| 452,980                               | 20,764                | 1,384,015               |             | 1,857,759  | 452,883      | 20,764                | 1,393,515               |             | 1,867,162  |
| ii. Audit                             |                       |                         |             |            |              |                       |                         |             |            |
| 8,000                                 |                       |                         |             | 8,000      |              |                       |                         |             |            |
| iii. Boiler Replacement               |                       |                         |             |            |              |                       |                         |             |            |
| 24,995                                |                       |                         |             | 24,995     |              |                       |                         |             |            |
| f. Montana State Hospital             |                       |                         |             |            |              |                       |                         |             |            |
| i. General Operations                 |                       |                         |             |            |              |                       |                         |             |            |
| 17,728,908                            | 1,692,998             | 5,103                   |             | 19,427,009 | 17,526,461   | 1,686,132             | 5,103                   |             | 19,217,696 |
| ii. Audit                             |                       |                         |             |            |              |                       |                         |             |            |
| 28,872                                | 2,528                 |                         |             | 29,400     |              |                       |                         |             |            |
| iii. Equipment                        |                       |                         |             |            |              |                       |                         |             |            |
| 130,000                               |                       |                         |             | 130,000    |              |                       |                         |             |            |
| g. Montana Youth Treatment Center     |                       |                         |             |            |              |                       |                         |             |            |
| i. General Operations                 |                       |                         |             |            |              |                       |                         |             |            |
| 2,084,969                             |                       | 30,113                  | 28,065      | 2,143,147  | 2,442,087    |                       | 41,555                  | 28,065      | 2,511,707  |
| ii. Audit                             |                       |                         |             |            |              |                       |                         |             |            |
| 10,000                                |                       |                         |             | 10,000     |              |                       |                         |             |            |

Item 1b is appropriated to the Department for additional workers' compensation costs anticipated in fiscal 1987. The director may allocate these funds to programs only for additional workers' compensation costs based on increased rates.

Within item 4, transfers may be made between line items in excess of 5% of the total appropriation authority in each line item upon approval of the Governor or his designated representative.

Within item 5, transfers may be made between line items in excess of 5% of the total appropriation authority in each line item upon approval of the Governor or his designated representative.

Items 4a(ii), 4ci, 4f(ii), 5b(iii), 5e(ii), and 5f(ii) are biennial appropriations.

| General<br>Fund | Fiscal 1986                 |                               | Proprietary | Total | General<br>Fund | Fiscal 1987                 |                               | Proprietary | Total |
|-----------------|-----------------------------|-------------------------------|-------------|-------|-----------------|-----------------------------|-------------------------------|-------------|-------|
|                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |       |                 | State<br>Special<br>Revenue | Federal<br>Special<br>Revenue |             |       |

The Department is authorized to maintain an aggregate funding level of \$2,236,595 during fiscal 1986 and \$2,236,595 during fiscal 1987 for those substance abuse programs that during fiscal 1984 were partially or totally funded under the provisions of section 53-24-206, MCA. Expenditures of revenues available under section 53-24-206, MCA, when combined with discretionary distribution of the alcohol federal block grant, may not exceed the aggregate funding totals specified above.

If HB 36 of Special Session III is approved, the Montana Youth Treatment Center's fiscal year 1987 General Fund appropriation is reduced by \$1,259,537 based on a projected sale of the Center on December 1, 1986. Should the sale not occur, or if the sale is delayed beyond December 1, 1986, the Department is authorized to request a supplemental to continue the Center's operation. Contained within the reduced appropriation is \$33,000 to cover expenses directly related to the sale of the Center as required by HB 36, including employee relocation, advertising, and review committee expenses. Any remaining balance not expended on such expenses shall revert to the General Fund.

|                       |  |  |  |         |         |  |  |  |         |
|-----------------------|--|--|--|---------|---------|--|--|--|---------|
| 6. Board of Pardons   |  |  |  |         |         |  |  |  |         |
| a. General Operations |  |  |  |         |         |  |  |  |         |
| 165,154               |  |  |  | 165,154 | 157,872 |  |  |  | 157,872 |
| b. Audit              |  |  |  |         |         |  |  |  |         |
| 2,520                 |  |  |  | 2,520   |         |  |  |  |         |
| Total                 |  |  |  |         |         |  |  |  |         |
| 167,674               |  |  |  | 167,674 | 157,872 |  |  |  | 157,872 |

|                 |           |           |           |            |            |           |           |           |            |
|-----------------|-----------|-----------|-----------|------------|------------|-----------|-----------|-----------|------------|
| TOTAL SECTION D |           |           |           |            |            |           |           |           |            |
| 62,921,773      | 2,974,563 | 4,676,998 | 2,371,076 | 72,944,410 | 63,373,490 | 2,961,373 | 4,489,200 | 2,403,507 | 73,227,570 |

#### E. OTHER EDUCATION

##### BOARD OF PUBLIC EDUCATION

|                                        |  |         |       |           |           |  |         |        |           |
|----------------------------------------|--|---------|-------|-----------|-----------|--|---------|--------|-----------|
| 1. Board Administration                |  |         |       |           |           |  |         |        |           |
| a. Operations                          |  |         |       |           |           |  |         |        |           |
| 104,979                                |  |         |       | 104,979   | 98,737    |  |         |        | 98,737    |
| b. Audit                               |  |         |       |           |           |  |         |        |           |
| 2,520                                  |  |         |       | 2,520     |           |  |         |        |           |
| Total                                  |  |         |       |           |           |  |         |        |           |
| 107,499                                |  |         |       | 107,499   | 98,737    |  |         |        | 98,737    |
| 2. Fire Services Training School       |  |         |       |           |           |  |         |        |           |
| a. Operations                          |  |         |       |           |           |  |         |        |           |
| 230,759                                |  | 14,000  | 3,000 | 247,759   | 210,641   |  | 2,000   | 12,000 | 224,641   |
| Total                                  |  |         |       |           |           |  |         |        |           |
| 230,759                                |  | 14,000  | 3,000 | 247,759   | 210,641   |  | 2,000   | 12,000 | 224,641   |
| 3. Montana School for the Deaf & Blind |  |         |       |           |           |  |         |        |           |
| a. Administration                      |  |         |       |           |           |  |         |        |           |
| 173,882                                |  |         |       | 173,882   | 174,761   |  |         |        | 174,761   |
| b. General Services                    |  |         |       |           |           |  |         |        |           |
| 310,406                                |  |         |       | 310,406   | 314,914   |  |         |        | 314,914   |
| c. Student Services                    |  |         |       |           |           |  |         |        |           |
| 604,154                                |  | 30,000  |       | 634,154   | 606,168   |  | 30,000  |        | 636,168   |
| d. Education                           |  |         |       |           |           |  |         |        |           |
| 924,350                                |  | 452,494 |       | 1,376,844 | 930,510   |  | 427,500 |        | 1,358,010 |
| e. Audiological Services               |  |         |       |           |           |  |         |        |           |
| 673,000                                |  |         |       | 673,000   | 500,000   |  |         |        | 500,000   |
| f. Audit                               |  |         |       |           |           |  |         |        |           |
| 17,500                                 |  |         |       | 17,500    |           |  |         |        |           |
| Total                                  |  |         |       |           |           |  |         |        |           |
| 2,703,292                              |  | 482,494 |       | 3,185,786 | 2,526,353 |  | 457,500 |        | 2,983,853 |

Amounts in item 3e represent a biennial appropriation. Item 3e includes funds to allow the Board of Public Education to employ or contract with temporary personnel pursuant to providing comprehensive audiological services as provided for in Board of Public Education policy. It is the intent of the Legislature that this program be reviewed during the 1987 regular session.

In addition to the amount in item 3e, any balance remaining on June 30, 1985, from the general fund appropriation for audiological services contained in HB 447, Laws of 1983, is reappropriated until June 30, 1987, for the purpose of providing audiological testing services.

##### OFFICE OF PUBLIC INSTRUCTION

|                               |  |  |  |         |         |  |        |  |         |
|-------------------------------|--|--|--|---------|---------|--|--------|--|---------|
| 1. Chief State School Officer |  |  |  |         |         |  |        |  |         |
| 112,375                       |  |  |  | 141,477 | 113,696 |  | 19,071 |  | 132,767 |
| 2. Basic Skills               |  |  |  |         |         |  |        |  |         |
| 29,102                        |  |  |  |         |         |  |        |  |         |

|                                          | Fiscal 1986  |                       |                         |             | Fiscal 1987 |              |                       |                         |             |            |
|------------------------------------------|--------------|-----------------------|-------------------------|-------------|-------------|--------------|-----------------------|-------------------------|-------------|------------|
|                                          | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total       | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total      |
| 3. Vocational Education                  | 914,677      | 261,454               | 103,000                 |             | 1,279,131   | 872,134      | 265,371               | 104,000                 |             | 1,241,505  |
| 4. Administrative Services               | 408,192      |                       | 357,217                 |             | 765,409     | 386,132      |                       | 348,097                 |             | 734,229    |
| a. General Operations                    | 829,758      | 495,166               | 669,994                 |             | 1,994,918   | 840,069      | 493,238               | 683,089                 |             | 2,016,396  |
| b. Audit                                 | 33,600       |                       |                         |             | 33,600      |              |                       |                         |             |            |
| 5. Special Services                      | 135,981      |                       | 1,341,647               |             | 1,477,628   | 136,314      |                       | 1,294,839               |             | 1,431,153  |
| 6. School Transportation                 | 6,086,000    |                       |                         |             | 6,086,000   | 5,781,700    |                       |                         |             | 5,781,700  |
| 7. School Lunch                          | 640,000      |                       |                         |             | 640,000     | 622,250      |                       |                         |             | 622,250    |
| 8. Gifted and Talented Grants            | 100,000      |                       |                         |             | 100,000     | 95,000       |                       |                         |             | 95,000     |
| 9. Secondary Vocational Education        | 920,000      |                       |                         |             | 920,000     |              |                       |                         |             |            |
| 10. Adult Basic Education                | 148,535      |                       |                         |             | 148,535     |              | 155,962               |                         |             | 155,962    |
| 11. Special Education                    | 28,011,800   |                       |                         |             | 28,011,800  | 27,361,646   |                       |                         |             | 27,361,646 |
| 12. Special Education Contingency        | 400,000      |                       |                         |             | 400,000     | 400,000      |                       |                         |             | 400,000    |
| 13. State Impact Payments                | 13,000       |                       |                         |             | 13,000      | 5,500        |                       |                         |             | 5,500      |
| 14. Discretionary Grants                 |              |                       |                         |             |             |              |                       |                         |             |            |
| a. Job Training Partnership              | 500,000      |                       |                         |             | 500,000     |              |                       | 540,000                 |             | 540,000    |
| b. Vocational Education Grants           | 2,500,000    |                       |                         |             | 2,500,000   |              |                       | 2,500,000               |             | 2,500,000  |
| c. Adult Basic Education Grants          | 403,412      |                       |                         |             | 403,412     |              |                       | 405,879                 |             | 405,879    |
| d. Education of the Handicapped — Part B | 330,000      |                       |                         |             | 330,000     |              |                       | 350,000                 |             | 350,000    |
| e. Education of the Handicapped — Part D | 35,000       |                       |                         |             | 35,000      |              |                       | 40,000                  |             | 40,000     |
| f. Preschool Incentive Grants            | 118,000      |                       |                         |             | 118,000     |              |                       | 129,000                 |             | 129,000    |
| Total                                    | 38,605,383   | 905,155               | 6,387,372               |             | 45,897,910  | 36,614,441   | 914,571               | 6,413,975               |             | 43,942,987 |

All revenues received in the state traffic education account under the provisions of section 20-7-504, MCA, are appropriated to be distributed as provided in section 20-7-506, MCA.

The appropriations in items 4b and 9 are for the biennium.

State and federal funds appropriated in items 1 through 5 include internal transfers of indirect costs. The amount of indirect costs in excess of \$445,666 in fiscal 1986 and \$443,738 in fiscal 1987 that are recovered shall cause a like reversion of general fund.

Special education funds in item 11 are for foundation and permissive support of the maximum-budget-without-a-vote for special education.

Special education contingency funds in item 12 are for emergencies that may arise in special education programs at local districts. A district's board of trustees may apply for an allocation from these funds by presenting to the Superintendent of Public Instruction, for each child, a child-study team report and an individual education plan relating to this unforeseen expense and a current listing of program, case loads, and related costs. The contingency appropriation is for the biennium, and the specific amounts may be transferred between fiscal years.

Notwithstanding other provisions of law, the Superintendent may not approve a maximum-budget-without-a-vote for special education which, in the aggregate, exceeds \$55,597,270 in the 1987 biennium.

|                                      | Fiscal 1986  |                      |           | Fiscal 1987  |                      |           |
|--------------------------------------|--------------|----------------------|-----------|--------------|----------------------|-----------|
|                                      | General Fund | Current Unrestricted | Total     | General Fund | Current Unrestricted | Total     |
| BILLINGS VOCATIONAL-TECHNICAL CENTER |              |                      |           |              |                      |           |
| 1. Instruction                       | 545,390      | 471,500              | 1,016,890 | 511,618      | 497,842              | 1,009,460 |
| 2. Plant Operation & Maintenance     | 140,432      | 140,432              | 280,864   | 144,357      | 144,795              | 289,152   |
| 3. Equipment                         | 24,362       | 24,362               | 48,724    | 17,953       | 17,962               | 35,915    |

|               | General<br>Fund | Fiscal 1986<br>Current<br>Unrestricted | Total     | General<br>Fund | Fiscal 1987<br>Current<br>Unrestricted | Total     |
|---------------|-----------------|----------------------------------------|-----------|-----------------|----------------------------------------|-----------|
| 4. Support    |                 |                                        |           |                 |                                        |           |
| a. Operations | 120,396         | 271,123                                | 391,519   | 59,156          | 322,843                                | 381,999   |
| b. Audit      | 8,000           | 10,000                                 | 18,000    |                 |                                        |           |
|               | -----           | -----                                  | -----     | -----           | -----                                  | -----     |
| Total         | 838,580         | 917,417                                | 1,755,997 | 733,084         | 983,442                                | 1,716,526 |

The appropriation in item 4b is for the biennium. Total audit costs are estimated to be \$20,000 for the biennium. Ten percent of these costs are to be paid from funds other than those appropriated in items 1 through 4.

Included in items 1 through 4 is \$127,612 in fiscal 1986 and \$128,910 in fiscal 1987 of federal vocational education funds. For each dollar of federal vocational education funds received by the Billings Vocational-Technical Center exceeding these amounts in each fiscal year, a general fund reversion of 50 cents shall occur.

#### BUTTE VOCATIONAL-TECHNICAL CENTER

|                                  |         |         |           |         |         |           |
|----------------------------------|---------|---------|-----------|---------|---------|-----------|
| 1. Instruction                   | 442,898 | 382,954 | 825,850   | 388,091 | 403,585 | 791,676   |
| 2. Plant Operation & Maintenance | 82,289  | 82,288  | 164,577   | 85,302  | 85,301  | 170,603   |
| 3. Equipment                     | 7,055   | 7,055   | 14,110    | 9,711   | 5,229   | 14,940    |
| 4. Support                       |         |         |           |         |         |           |
| a. Operations                    | 260,361 | 91,365  | 351,726   | 226,898 | 126,474 | 353,372   |
| b. Audit                         | 8,000   | 10,000  | 18,000    |         |         |           |
|                                  | -----   | -----   | -----     | -----   | -----   | -----     |
| Total                            | 800,601 | 573,682 | 1,374,283 | 710,002 | 620,589 | 1,330,591 |

The appropriation in item 4b is for the biennium. Total audit costs are estimated to be \$20,000 for the biennium. Ten percent of these costs are to be paid from funds other than those appropriated in items 1 through 4.

Included in items 1 through 4 is \$121,613 in fiscal 1986 and \$121,613 in fiscal 1987 of federal vocational education funds. For each dollar of federal vocational education funds received by the Butte Vocational-Technical Center exceeding these amounts in each fiscal year, a general fund reversion of 50 cents shall occur.

#### GREAT FALLS VOCATIONAL-TECHNICAL CENTER

|                                  |         |         |           |         |         |           |
|----------------------------------|---------|---------|-----------|---------|---------|-----------|
| 1. Instruction                   | 451,610 | 390,160 | 841,770   | 395,044 | 412,113 | 807,157   |
| 2. Plant Operation & Maintenance | 94,367  | 94,367  | 188,734   | 96,911  | 96,910  | 193,821   |
| 3. Equipment                     | 22,866  | 22,866  | 45,732    | 31,299  | 16,854  | 48,153    |
| 4. Support                       |         |         |           |         |         |           |
| a. Operations                    | 237,136 | 137,889 | 375,025   | 195,341 | 181,502 | 376,843   |
| b. Audit                         | 8,000   | 10,000  | 18,000    |         |         |           |
|                                  | -----   | -----   | -----     | -----   | -----   | -----     |
| Total                            | 813,979 | 655,282 | 1,469,261 | 718,595 | 707,379 | 1,425,974 |

The appropriation in item 4b is for the biennium. Total audit costs are estimated to be \$20,000 for the biennium. Ten percent of these costs are to be paid from funds other than those appropriated in items 1 through 4.

Included in items 1 through 4 is \$121,010 in fiscal 1986 and \$121,221 in fiscal 1987 of federal vocational education funds. For each dollar of federal vocational education funds received by the Great Falls Vocational-Technical Center exceeding these amounts in each fiscal year, a general fund reversion of 50 cents shall occur.

#### HELENA VOCATIONAL-TECHNICAL CENTER

|                                  |         |         |           |         |         |           |
|----------------------------------|---------|---------|-----------|---------|---------|-----------|
| 1. Instruction                   | 715,467 | 597,933 | 1,313,400 | 647,159 | 641,209 | 1,288,368 |
| 2. Plant Operation & Maintenance | 158,772 | 158,771 | 317,543   | 153,212 | 158,995 | 312,207   |
| 3. Equipment                     | 26,895  | 26,895  | 53,790    | 36,845  | 19,840  | 56,685    |
| 4. Support                       |         |         |           |         |         |           |
| a. Operations                    | 424,133 |         | 424,133   | 358,599 | 50,612  | 409,211   |
| b. Audit                         | 7,000   | 10,000  | 17,000    |         |         |           |
|                                  | -----   | -----   | -----     | -----   | -----   | -----     |
| Total                            |         |         |           |         |         |           |

| General Fund | Fiscal 1986 |              | Total     | General Fund | Fiscal 1987 |              | Total     |
|--------------|-------------|--------------|-----------|--------------|-------------|--------------|-----------|
|              | Current     | Unrestricted |           |              | Current     | Unrestricted |           |
| 1,332,267    | 793,599     |              | 2,125,866 | 1,195,815    | 870,656     |              | 2,066,471 |

The appropriation in item 4b is for the biennium. Total audit costs are estimated to be \$20,000 for the biennium. Fifteen percent of these costs are to be paid from funds other than those appropriated in items 1 through 4.

Included in items 1 through 4 is \$106,295 in fiscal 1986 and \$107,743 in fiscal 1987 of federal vocational education funds. For each dollar of federal vocational education funds received by the Helena Vocational-Technical Center exceeding these amounts in each fiscal year, a general fund reversion of 50 cents shall occur.

#### MISSOULA VOCATIONAL-TECHNICAL CENTER

|                                  |         |           |           |         |           |           |
|----------------------------------|---------|-----------|-----------|---------|-----------|-----------|
| 1. Instruction                   | 636,186 | 549,854   | 1,186,040 | 569,146 | 579,790   | 1,148,936 |
| 2. Plant Operation & Maintenance | 150,934 | 150,934   | 301,868   | 156,570 | 156,569   | 313,139   |
| 3. Equipment                     | 25,807  | 25,807    | 51,614    | 35,348  | 19,033    | 54,381    |
| 4. Support                       |         |           |           |         |           |           |
| a. Operations                    | 81,977  | 345,235   | 427,212   | 30,787  | 398,562   | 429,349   |
| b. Audit                         | 7,000   | 10,000    | 17,000    |         |           |           |
| Total                            | 901,904 | 1,081,830 | 1,983,734 | 791,851 | 1,153,954 | 1,945,805 |

The appropriation in item 4b is for the biennium. Total audit costs are estimated to be \$20,000 for the biennium. Fifteen percent of these costs are to be paid from funds other than those appropriated in items 1 through 4.

Included in items 1 through 4 is \$327,807 in fiscal 1986 and \$326,987 in fiscal 1987 of federal vocational education funds. For each dollar of federal vocational education funds received by the Missoula Vocational-Technical Center exceeding these amounts in each fiscal year, a general fund reversion of 50 cents shall occur.

Receipt of state funds appropriated to the five vocational-technical centers is contingent upon each county in which the center resides levying 1.5 mills each fiscal year. The Superintendent of Public Instruction may transfer millage collections among centers. Millage received by the centers from the 1.5 mill levy which, in the aggregate, exceeds \$855,233 in fiscal 1986 and \$868,314 in fiscal 1987 will cause a general fund reversion of a like amount each year.

| General Fund                           | Fiscal 1988           |                         | Proprietary | Total   | General Fund | Fiscal 1987           |                         | Proprietary | Total   |
|----------------------------------------|-----------------------|-------------------------|-------------|---------|--------------|-----------------------|-------------------------|-------------|---------|
|                                        | State Special Revenue | Federal Special Revenue |             |         |              | State Special Revenue | Federal Special Revenue |             |         |
| STATE COUNCIL FOR VOCATIONAL EDUCATION |                       |                         |             |         |              |                       |                         |             |         |
| 1. Operations                          |                       | 113,410                 |             | 113,410 |              |                       | 116,350                 |             | 116,350 |
| 2. Audit                               |                       | 2,940                   |             | 2,940   |              |                       |                         |             |         |
| <hr/>                                  |                       |                         |             |         |              |                       |                         |             |         |
| Total                                  |                       | 116,350                 |             | 116,350 |              |                       | 116,350                 |             | 116,350 |
| MONTANA ARTS COUNCIL                   |                       |                         |             |         |              |                       |                         |             |         |
| 1. Administration                      |                       |                         |             |         |              |                       |                         |             |         |
| 56,887                                 |                       | 69,587                  |             | 126,474 | 53,846       |                       | 70,875                  |             | 124,721 |
| 2. Audit                               |                       |                         |             |         |              |                       |                         |             |         |
| 4,200                                  |                       | 4,200                   |             | 8,400   |              |                       |                         |             |         |
| 3. Grants                              |                       |                         |             |         |              |                       |                         |             |         |
| 20,000                                 |                       | 171,348                 |             | 191,348 | 20,000       |                       | 128,171                 |             | 148,171 |
| 4. Special Projects                    |                       |                         |             |         |              |                       |                         |             |         |
| 39,370                                 |                       | 190,465                 |             | 229,835 | 36,639       |                       | 192,451                 |             | 229,090 |
| <hr/>                                  |                       |                         |             |         |              |                       |                         |             |         |
| Total                                  |                       |                         |             |         |              |                       |                         |             |         |
| 120,457                                |                       | 435,600                 |             | 556,057 | 110,485      |                       | 391,497                 |             | 501,982 |
| MONTANA HISTORICAL SOCIETY             |                       |                         |             |         |              |                       |                         |             |         |
| 1. Administration                      |                       |                         |             |         |              |                       |                         |             |         |
| a. Operations                          |                       |                         |             |         |              |                       |                         |             |         |
| 352,902                                |                       | 69,245                  |             | 422,147 | 371,891      |                       | 71,221                  |             | 443,112 |
| b. Audit                               |                       |                         |             |         |              |                       |                         |             |         |
| 12,264                                 |                       |                         |             | 12,264  |              |                       |                         |             |         |
| 2. Library Program                     |                       |                         |             |         |              |                       |                         |             |         |
| 149,518                                |                       | 76,098                  |             | 225,616 | 145,057      |                       | 33,633                  |             | 178,690 |
| 3. Museum Program                      |                       |                         |             |         |              |                       |                         |             |         |
| 219,011                                |                       | 109,075                 |             | 328,086 | 214,081      |                       | 109,057                 |             | 323,138 |
| 4. Publications Program                |                       |                         |             |         |              |                       |                         |             |         |
| a. Operations                          |                       |                         | 358,905     | 399,988 | 39,758       |                       |                         | 359,595     | 399,353 |
| 41,083                                 |                       |                         |             |         |              |                       |                         |             |         |
| b. Audit                               |                       |                         |             |         |              |                       |                         |             |         |

| General Fund                                       | Fiscal 1986           |                         | Proprietary | Total     | General Fund | Fiscal 1987           |                         | Proprietary | Total     |
|----------------------------------------------------|-----------------------|-------------------------|-------------|-----------|--------------|-----------------------|-------------------------|-------------|-----------|
|                                                    | State Special Revenue | Federal Special Revenue |             |           |              | State Special Revenue | Federal Special Revenue |             |           |
|                                                    |                       |                         | 1,008       | 1,008     |              |                       |                         |             |           |
| 5. Historical Sites Preservation Program           |                       |                         |             |           |              |                       |                         |             |           |
| a. Operations                                      |                       |                         |             |           |              |                       |                         |             |           |
| 72,777                                             |                       | 742,253                 |             | 815,030   | 71,272       |                       | 758,505                 |             | 829,777   |
| b. Audit                                           |                       |                         |             |           |              |                       |                         |             |           |
| 1,764                                              |                       | 1,764                   |             | 3,528     |              |                       |                         |             |           |
| 6. Archives Program                                |                       |                         |             |           |              |                       |                         |             |           |
| 206,893                                            |                       | 62,462                  |             | 269,355   | 201,435      |                       | 17,764                  |             | 219,199   |
| 7. Education Program                               |                       |                         |             |           |              |                       |                         |             |           |
| 24,414                                             |                       | 64,707                  |             | 89,121    | 14,084       |                       | 65,042                  |             | 79,126    |
| Total                                              | 1,080,626             | 1,125,604               | 359,913     | 2,566,143 | 1,057,578    |                       | 1,055,222               | 359,595     | 2,472,395 |
| MONTANA STATE LIBRARY                              |                       |                         |             |           |              |                       |                         |             |           |
| 1. Reference and Information                       |                       |                         |             |           |              |                       |                         |             |           |
| 268,474                                            | 20,832                | 90,203                  |             | 379,509   | 251,813      | 21,874                | 93,816                  |             | 367,503   |
| 2. Library Development                             |                       |                         |             |           |              |                       |                         |             |           |
| 43,542                                             | 379,482               | 401,895                 |             | 824,919   | 36,737       | 361,153               | 316,464                 |             | 714,354   |
| 3. Institutional Library Services Program          |                       |                         |             |           |              |                       |                         |             |           |
| 19,613                                             |                       | 47,114                  |             | 66,727    | 20,222       |                       | 47,114                  |             | 67,336    |
| 4. Library Services - Physical Handicapped Program |                       |                         |             |           |              |                       |                         |             |           |
| 52,877                                             |                       | 82,730                  |             | 135,607   | 54,041       |                       | 83,209                  |             | 137,250   |
| 5. Administration Program                          |                       |                         |             |           |              |                       |                         |             |           |
| 98,615                                             |                       | 34,717                  |             | 133,332   | 99,158       |                       | 34,717                  |             | 133,875   |
| 6. Technical Services                              |                       |                         |             |           |              |                       |                         |             |           |
| 55,478                                             | 47,790                | 29,072                  |             | 132,340   | 54,899       | 40,839                | 29,072                  |             | 124,810   |
| 7. Audit                                           |                       |                         |             |           |              |                       |                         |             |           |
| 9,000                                              |                       |                         |             | 9,000     |              |                       |                         |             |           |
| 8. Natural Heritage Program                        |                       |                         |             |           |              |                       |                         |             |           |
| 75,000                                             |                       | 75,140                  |             | 150,140   |              |                       |                         |             |           |
| Total                                              | 547,599               | 623,104                 | 760,871     | 1,831,574 | 516,870      | 423,866               | 604,392                 |             | 1,545,128 |

The amounts included in items 1 through 6 in the Federal Special Revenue column represent Library Services and Construction Act funds that may be transferred between fiscal 1986 and 1987.

Amounts in item 8 represent a biennial appropriation.

|                 |           |           |         |            |            |           |           |         |            |
|-----------------|-----------|-----------|---------|------------|------------|-----------|-----------|---------|------------|
| TOTAL SECTION E |           |           |         |            |            |           |           |         |            |
| 48,082,946      | 5,450,049 | 9,322,291 | 362,913 | 63,218,199 | 45,284,452 | 5,674,457 | 9,040,936 | 371,595 | 60,371,440 |

NOTE: The total of state special revenues for section E includes the following amounts of current unrestricted funds:

Fiscal 1986 ——— \$4,021,790  
Fiscal 1987 ——— \$4,336,020

#### F. HIGHER EDUCATION

All funds, other than plant funds and current unrestricted operating funds, may be spent and are appropriated contingent upon approval by the Board of Regents by July 1 of each year of the comprehensive program budget. The budget must contain detailed revenues and expenditures and anticipated fund balances of current funds, loan funds, and endowment funds. All movement of funds between the current unrestricted subfund and the designated subfund account entities must be clearly identified in the state budgeting and accounting system.

Programs for the university budgets include instruction, organized research, public service, academic support, student services, institutional support, operation and maintenance of plant, and scholarships and fellowships.

Included within current unrestricted funds to the six institutions is the sum of \$14,384,000 in fiscal 1986 and \$18,049,000 in fiscal 1987 from revenues generated under the provisions of section 20-25-423, MCA. The Department of Revenue shall levy the full six mills as authorized in section 20-25-423, MCA, and the revenues generated by the levy are appropriated to the University System. The general fund appropriation to the University System shall be reduced by the amount the revenues available under the provisions of section 20-25-423, MCA, exceed \$18,049,000 in fiscal 1987.

#### BOARD OF REGENTS

|                   |  |  |  |        |        |  |  |  |        |
|-------------------|--|--|--|--------|--------|--|--|--|--------|
| 1. Administration |  |  |  |        |        |  |  |  |        |
| 23,101            |  |  |  | 23,101 | 22,292 |  |  |  | 22,292 |

#### COMMISSIONER OF HIGHER EDUCATION

|                          |  |  |  |         |         |  |  |  |         |
|--------------------------|--|--|--|---------|---------|--|--|--|---------|
| 1. Office Administration |  |  |  |         |         |  |  |  |         |
| a. Operations            |  |  |  |         |         |  |  |  |         |
| 798,252                  |  |  |  | 798,252 | 760,602 |  |  |  | 760,602 |
| b. Audit                 |  |  |  |         |         |  |  |  |         |



|                                              | General Fund | Fiscal 1986           |                         | Proprietary | Total     | General Fund | Fiscal 1987           |                         | Proprietary | Total     |
|----------------------------------------------|--------------|-----------------------|-------------------------|-------------|-----------|--------------|-----------------------|-------------------------|-------------|-----------|
|                                              |              | State Special Revenue | Federal Special Revenue |             |           |              | State Special Revenue | Federal Special Revenue |             |           |
|                                              | 7,351        |                       |                         |             | 7,351     |              |                       |                         |             |           |
| 2. WAMI                                      | 1,428,893    | 424,742               |                         |             | 1,853,635 | 178,845      | 1,719,774             |                         |             | 1,898,619 |
| 3. WICHE - Student Assistance                | 1,943,900    |                       |                         |             | 1,943,900 |              | 1,846,300             |                         |             | 1,846,300 |
| 4. WICHE - Administrative Dues               | 53,000       |                       |                         |             | 53,000    |              | 56,000                |                         |             | 56,000    |
| 5. University of Minnesota - Rural Dentistry | 129,600      |                       |                         |             | 129,600   | 111,000      |                       |                         |             | 111,000   |
| 6. SSIG                                      | 175,000      |                       | 210,000                 |             | 385,000   | 175,000      |                       | 210,000                 |             | 385,000   |
| 7. NDSL                                      | 60,000       |                       |                         |             | 60,000    | 55,000       |                       |                         |             | 55,000    |
| 8. Talent Search                             |              |                       |                         |             |           |              |                       |                         |             |           |
| a. Operations                                |              |                       | 165,003                 |             | 165,003   |              |                       | 165,472                 |             | 165,472   |
| b. Audit                                     |              |                       | 469                     |             | 469       |              |                       |                         |             |           |
| 9. Guaranteed Student Loan                   |              |                       |                         |             |           |              |                       |                         |             |           |
| a. Operations                                |              |                       | 1,131,267               |             | 1,131,267 |              |                       | 1,195,119               |             | 1,195,119 |
| b. Audit                                     |              |                       | 1,680                   |             | 1,680     |              |                       |                         |             |           |
| 10. Work Study                               | 291,000      |                       |                         |             | 291,000   | 276,450      |                       |                         |             | 276,450   |
| Total                                        | 2,890,096    | 2,421,642             | 1,508,419               |             | 6,820,157 | 1,556,897    | 3,622,074             | 1,570,591               |             | 6,749,562 |

The Commissioner of Higher Education is allowed to transfer appropriation authority between the amounts included in the WICHE appropriation for dentistry, of \$75,600 in fiscal 1986 and \$85,100 in fiscal 1987, and the Minnesota Rural Dentistry appropriation, of \$129,600 in fiscal 1986 and \$111,000 in fiscal 1987.

The Commissioner of Higher Education shall notify students applying for WICHE, WAMI, and Minnesota Rural Dentistry programs for fiscal year 1988 that the 1987 Legislature may enact a requirement that will require entering students to pay back a percentage of their support fees to the state.

|                               | <u>General Fund</u> | <u>Fiscal 1986</u><br><u>Current Unrestricted</u> | <u>Total</u> | <u>General Fund</u> | <u>Fiscal 1987</u><br><u>Current Unrestricted</u> | <u>Total</u> |
|-------------------------------|---------------------|---------------------------------------------------|--------------|---------------------|---------------------------------------------------|--------------|
| COMMUNITY COLLEGES            |                     |                                                   |              |                     |                                                   |              |
| 1. Miles Community College    |                     |                                                   |              |                     |                                                   |              |
| a. Operations                 |                     |                                                   |              |                     |                                                   |              |
| b. Audit                      | 862,335             |                                                   | 862,335      | 827,699             |                                                   | 827,699      |
| 2. Dawson Community College   | 8,320               |                                                   | 8,320        |                     |                                                   |              |
| a. Operations                 | 743,392             |                                                   | 743,392      | 713,534             |                                                   | 713,534      |
| b. Audit                      | 8,320               |                                                   | 8,320        |                     |                                                   |              |
| 3. Flathead Community College |                     |                                                   |              |                     |                                                   |              |
| a. Operations                 | 1,579,708           |                                                   | 1,579,708    | 1,516,259           |                                                   | 1,516,259    |
| b. Audit                      | 8,320               |                                                   | 8,320        |                     |                                                   |              |
| Total                         | 3,210,395           |                                                   | 3,210,395    | 3,057,492           |                                                   | 3,057,492    |

The fiscal 1986 appropriation provides 52% and the fiscal 1987 appropriation provides 49% of the total unrestricted budgets for the community colleges, which budgets shall be approved by the Board of Regents.

The fiscal 1986 general fund appropriation for each community college included 41.6% of the total audit cost. The remaining 58.4% of these costs are to be paid from funds other than those appropriated in items 1 through 3. Audit costs may not exceed \$20,000 for each unit for the biennium.

Dawson, Miles, and Flathead Community Colleges are prohibited from including in student enrollment, used in calculating the unrestricted budget referred to in section 20-15-310, MCA, student FTEs from out-of-district centers not approved under Board of Regent Policy 220.1.

#### BUREAU OF MINES

|             |           |         |           |           |        |           |
|-------------|-----------|---------|-----------|-----------|--------|-----------|
| 1. Research | 1,173,331 | 353,000 | 1,526,331 | 1,411,728 | 53,000 | 1,464,728 |
|-------------|-----------|---------|-----------|-----------|--------|-----------|

|                                                                  | General<br>Fund | Fiscal 1986<br>Current<br>Unrestricted | Total      | General<br>Fund | Fiscal 1987<br>Current<br>Unrestricted | Total      |
|------------------------------------------------------------------|-----------------|----------------------------------------|------------|-----------------|----------------------------------------|------------|
| <b>AGRICULTURAL EXPERIMENT STATION</b>                           |                 |                                        |            |                 |                                        |            |
| 1. Agricultural Experiment Station                               | 5,971,058       | 2,327,579                              | 8,298,637  | 5,645,120       | 2,417,957                              | 8,063,077  |
| 2. U.S. Range Station                                            |                 | 895,039                                | 895,039    |                 | 922,735                                | 922,735    |
| Total                                                            | 5,971,058       | 3,222,618                              | 9,193,676  | 5,645,120       | 3,340,692                              | 8,985,812  |
| <b>COOPERATIVE EXTENSION SERVICE</b>                             |                 |                                        |            |                 |                                        |            |
| 1. Public Service                                                | 2,230,609       | 2,037,594                              | 4,268,203  | 2,079,227       | 2,097,506                              | 4,176,733  |
| <b>FORESTRY &amp; CONSERVATION EXPERIMENT STATION</b>            |                 |                                        |            |                 |                                        |            |
| 1. Research                                                      | 115,118         | 552,308                                | 667,426    | 636,099         |                                        | 636,099    |
| <b>MONTANA STATE UNIVERSITY</b>                                  |                 |                                        |            |                 |                                        |            |
| 1. Instruction                                                   | 16,445,067      | 8,802,203                              | 25,247,270 | 13,972,017      | 10,160,599                             | 24,132,616 |
| 2. Research                                                      | 370,709         | 199,613                                | 570,322    | 352,826         | 199,982                                | 552,808    |
| 3. Public Service                                                | 6,565           | 3,535                                  | 10,100     | 6,287           | 3,564                                  | 9,851      |
| 4. Academic Support, Student Services, and Institutional Support | 8,136,701       | 5,316,397                              | 13,453,098 | 7,469,991       | 5,847,577                              | 13,317,568 |
| 5. Audit                                                         | 27,300          | 14,700                                 | 42,000     |                 |                                        |            |
| 6. Operation and Maintenance of Physical Plant                   | 3,342,860       | 1,800,002                              | 5,142,862  | 3,178,462       | 1,925,153                              | 5,103,615  |
| 7. Scholarships and Fellowships                                  |                 | 896,879                                | 896,879    |                 | 954,922                                | 954,922    |
| Total                                                            | 28,329,202      | 17,033,329                             | 45,362,531 | 24,979,583      | 19,091,797                             | 44,071,380 |

The appropriation in item 5 is for the biennium. Total audit costs are estimated to be \$84,000 for the biennium. Fifty percent of these costs are to be paid from funds other than those appropriated in items 1 through 7.

For each year of the 1987 biennium, that portion of the current unrestricted fund derived from indirect cost reimbursements that exceeds \$935,000 is appropriated to Montana State University.

#### UNIVERSITY OF MONTANA

|                                                                  |            |            |            |            |            |            |
|------------------------------------------------------------------|------------|------------|------------|------------|------------|------------|
| 1. Instruction                                                   | 12,104,759 | 6,488,562  | 18,593,321 | 10,315,870 | 7,561,121  | 17,876,991 |
| 2. Research                                                      |            | 428,813    | 428,813    | 267,470    | 151,602    | 419,072    |
| a. MONTCLIRC                                                     | 87,500     |            | 87,500     | 71,725     |            | 71,725     |
| 3. Public Service                                                | 128,632    | 69,264     | 197,896    | 123,044    | 69,741     | 192,785    |
| 4. Academic Support, Student Services, and Institutional Support | 6,744,889  | 3,898,964  | 10,643,753 | 6,219,482  | 4,373,345  | 10,592,827 |
| 5. Audit                                                         | 24,570     | 13,230     | 37,800     |            |            |            |
| 6. Operation and Maintenance of Physical Plant                   | 3,294,760  | 1,774,102  | 5,068,862  | 3,217,487  | 1,823,676  | 5,041,163  |
| 7. Scholarships and Fellowships                                  |            | 937,840    | 937,840    |            | 996,102    | 996,102    |
| Total                                                            | 22,385,110 | 13,610,675 | 35,995,785 | 20,215,078 | 14,975,587 | 35,190,665 |

The appropriation in item 5 is for the biennium. Total audit costs are estimated to be \$75,600 for the biennium. Fifty percent of these costs are to be paid from funds other than those appropriated in items 1 through 7.

For each year of the 1987 biennium, that portion of the current unrestricted fund derived from indirect cost reimbursements that exceeds \$400,000 is appropriated to the University of Montana.

The University of Montana shall charge fees for legal services related to MONTCLIRC. These fees must be deposited into a separate designated fund.

#### EASTERN MONTANA COLLEGE

|                |           |           |           |           |           |           |
|----------------|-----------|-----------|-----------|-----------|-----------|-----------|
| 1. Instruction | 4,382,178 | 2,359,300 | 6,741,478 | 3,683,980 | 2,820,839 | 6,504,819 |
|----------------|-----------|-----------|-----------|-----------|-----------|-----------|

|                                                                  | General<br>Fund | Fiscal 1986<br>Current<br>Unrestricted | Total      | General<br>Fund | Fiscal 1987<br>Current<br>Unrestricted | Total      |
|------------------------------------------------------------------|-----------------|----------------------------------------|------------|-----------------|----------------------------------------|------------|
| 2. Public Service                                                | 143,374         | 77,202                                 | 220,576    | 137,026         | 77,667                                 | 214,693    |
| 3. Academic Support, Student Services, and Institutional Support | 3,104,652       | 1,465,176                              | 4,569,828  | 2,895,098       | 1,681,948                              | 4,577,046  |
| 4. Audit                                                         | 24,570          | 13,230                                 | 37,800     |                 |                                        |            |
| 5. Operation and Maintenance of Physical Plant                   | 1,264,648       | 680,964                                | 1,945,612  | 1,235,041       | 700,023                                | 1,935,064  |
| 6. Scholarships and Fellowships                                  |                 | 313,719                                | 313,719    |                 | 342,954                                | 342,954    |
| Total                                                            | 8,919,422       | 4,909,591                              | 13,829,013 | 7,951,145       | 5,623,431                              | 13,574,576 |

The appropriation in item 4 is for the biennium. Total audit costs are estimated to be \$50,400 for the biennium. Twenty-five percent of these costs are to be paid from funds other than those appropriated in items 1 through 6.

For each year of the 1987 biennium, that portion of the current unrestricted fund derived from indirect cost reimbursements that exceeds \$85,000 is appropriated to Eastern Montana College.

#### NORTHERN MONTANA COLLEGE

|                                                                  |           |           |           |           |           |           |
|------------------------------------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| 1. Instruction                                                   | 2,742,173 | 1,464,487 | 4,206,660 | 2,388,655 | 1,704,085 | 4,092,740 |
| 2. Public Service                                                | 5,920     | 3,187     | 9,107     | 5,679     | 3,219     | 8,898     |
| 3. Academic Support, Student Services, and Institutional Support | 2,008,931 | 203,295   | 2,212,226 | 1,926,851 | 289,656   | 2,216,507 |
| 4. Audit                                                         | 20,475    | 11,025    | 31,500    |           |           |           |
| 5. Operation and Maintenance of Physical Plant                   | 585,111   | 315,060   | 900,171   | 566,612   | 321,157   | 887,769   |
| 6. Scholarships and Fellowships                                  |           | 249,568   | 249,568   |           | 272,590   | 272,590   |
| Total                                                            | 5,362,610 | 2,246,622 | 7,609,232 | 4,887,797 | 2,590,707 | 7,478,504 |

The appropriation in item 4 is for the biennium. Total audit costs are estimated to be \$42,000 for the biennium. Twenty-five percent of these costs are to be paid from funds other than those appropriated in items 1 through 6.

For each year of the 1987 biennium, that portion of the current unrestricted fund derived from indirect cost reimbursements that exceeds \$20,000 is appropriated to Northern Montana College.

#### WESTERN MONTANA COLLEGE

|                                                                  |           |           |           |           |           |           |
|------------------------------------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| 1. Instruction                                                   | 1,104,649 | 589,996   | 1,694,645 | 932,026   | 709,878   | 1,641,904 |
| 2. Academic Support, Student Services, and Institutional Support | 1,194,208 | 305,687   | 1,499,895 | 1,148,764 | 356,299   | 1,505,063 |
| 3. Audit                                                         | 19,500    | 10,500    | 30,000    |           |           |           |
| 4. Operation and Maintenance of Physical Plant                   | 434,852   | 234,151   | 669,003   | 434,539   | 246,297   | 680,836   |
| 5. Scholarships and Fellowships                                  |           | 75,404    | 75,404    |           | 82,630    | 82,630    |
| Total                                                            | 2,753,209 | 1,215,738 | 3,968,947 | 2,515,329 | 1,395,104 | 3,910,433 |

The appropriation in item 3 is for the biennium. Total audit costs are estimated to be \$40,000 for the biennium. Twenty-five percent of these costs are to be paid from funds other than those appropriated in items 1 through 6.

For each year of the 1987 biennium, that portion of the current unrestricted fund derived from indirect cost reimbursements that exceeds \$14,000 is appropriated to Western Montana College.

#### MONTANA COLLEGE OF MINERAL SCIENCE & TECHNOLOGY

|                                                                  |           |           |           |           |           |           |
|------------------------------------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| 1. Instruction                                                   |           |           |           |           |           |           |
| a. Instruction Program                                           | 2,598,940 | 1,593,128 | 4,192,068 | 2,299,666 | 1,851,994 | 4,151,660 |
| b. Phase-Down                                                    | 362,031   |           | 362,031   |           |           |           |
| 2. Research                                                      | 27,167    | 14,829    | 41,796    | 26,145    | 14,819    | 40,964    |
| 3. Academic Support, Student Services, and Institutional Support | 1,848,881 | 956,211   | 2,805,092 | 1,698,558 | 1,177,360 | 2,875,918 |
| 4. Audit                                                         | 23,400    | 12,600    | 36,000    |           |           |           |

|                                                | General<br>Fund | Fiscal 1986<br>Current<br>Unrestricted | Total     | General<br>Fund | Fiscal 1987<br>Current<br>Unrestricted | Total     |
|------------------------------------------------|-----------------|----------------------------------------|-----------|-----------------|----------------------------------------|-----------|
| 5. Operation and Maintenance of Physical Plant | 754,034         | 406,019                                | 1,160,053 | 838,639         | 475,342                                | 1,313,981 |
| 6. Scholarships and Fellowships                |                 | 253,228                                | 253,228   |                 | 273,073                                | 273,073   |
|                                                |                 | -----                                  | -----     |                 | -----                                  | -----     |
| Total                                          | 5,614,453       | 3,235,815                              | 8,850,268 | 4,863,008       | 3,792,588                              | 8,655,596 |

The appropriation in item 4 is for the biennium. Total audit costs are estimated to be \$48,000 for the biennium. Twenty-five percent of these costs are to be paid from funds other than those appropriated in items 1 through 6.

For each year of the 1987 biennium, that portion of the current unrestricted fund derived from indirect cost reimbursements that exceeds \$150,000 is appropriated to the Montana College of Mineral Science and Technology.

The appropriation in item 1b is for the biennium.

|                 | General<br>Fund | Fiscal 1986<br>State<br>Special<br>Revenue | Fiscal 1986<br>Federal<br>Special<br>Revenue | Proprietary | Total       | General<br>Fund | Fiscal 1987<br>State<br>Special<br>Revenue | Fiscal 1987<br>Federal<br>Special<br>Revenue | Proprietary | Total       |
|-----------------|-----------------|--------------------------------------------|----------------------------------------------|-------------|-------------|-----------------|--------------------------------------------|----------------------------------------------|-------------|-------------|
| TOTAL SECTION F | 88,977,714      | 50,838,932                                 | 1,508,419                                    |             | 141,325,065 | 79,820,795      | 56,582,486                                 | 1,570,591                                    |             | 137,973,872 |

NOTE: The total of state special revenues for section F includes the following amounts of current unrestricted funds:

Fiscal 1986 — \$48,417,290  
Fiscal 1987 — \$52,960,412

#### TOTAL STATE FUNDING

347,711,742 341,384,375 392,596,546 55,180,325 1,136,872,988 327,533,775 304,917,326 372,269,973 54,743,439 1,059,464,513

Section 18. Effective date. This act is effective July 1, 1985."

Section 1. Section 1, House Bill 922, Laws of 1985, is amended to read:

**"Section 1. Appropriations for grants.** (1) There is appropriated to the Department of Natural Resources and Conservation \$4,145,789 from the resource indemnity trust interest account.

(2) The funds appropriated in this section must be awarded by the Department of Natural Resources and Conservation to the entities listed in section 3 for the described purposes and in the described grant amounts, subject to the conditions described in section 6."

Section 2. Section 3(2), Item 6, House Bill 922, Laws of 1985, is amended to read:

PROJECT GRANT AMOUNT  
**"6. DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES**

Hazardous Waste Management Collection and Transfer Project

\$747,313"

Section 3. **Administrative expenses of House Bill 922 grant program — appropriation reduction.** Administrative expenses appropriated to the Department of Natural Resources and Conservation in section 2(3)(b), House Bill 922, Laws of 1985, for grant administration are reduced from \$277,000 to \$108,000.

Section 4. Section 75-1-1101, MCA, is amended to read:

**"75-1-1101. Environmental contingency account objectives.** (1) There is created an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental contingency account is controlled by the governor.

(2) Except as provided in subsection (5), at the beginning of each fiscal year, 5% of the funds appropriated to the department of natural resources and conservation from the resource indemnity trust interest account, *not to exceed \$175,000 in fiscal year 1987*, must be allocated to the environmental contingency account.

(3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental contingency account upon the authorization of the governor to meet unanticipated public needs consistent with the following objectives:

(a) to support water development projects in communities that face an emergency or imminent need for such services or to prevent the physical failure of a water project;

(b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including:

(i) natural disasters adequately covered by other funding sources; or

(ii) fire;

(c) to respond to an emergency or imminent threat to persons, property, or the environment caused by mineral development; and

(d) to fund the environmental quality protection fund provided for in 75-10-704 or to take other necessary actions, including the construction of facilities, to respond to actual or potential threats to persons, property, or the environment caused by hazardous wastes or other hazardous materials.

(4) The environmental contingency account may receive no additional allocation for any fiscal year in which the balance in the account exceeds \$1,000,000 at the beginning of that fiscal year.

(5) Interest from funds in the environmental contingency account accrues to the resource indemnity trust interest account.

(6) The governor shall submit to the legislature at the beginning of each regular session a complete financial report on the environmental contingency account, including a description of all expenditures made since the preceding report."

**Section 5. Agricultural assistance and counseling program — appropriation reduction.** The general fund appropriation to the Department of Agriculture to implement the agricultural assistance and counseling program in section 14, Chapter 9, Special Laws of March 1986, is reduced from \$350,000 to \$332,500.

**Section 6. Montana Science and Technology Development Board — appropriation reduction.** The appropriation from the alternative energy and energy conservation research development and demonstration

account to the Department of Commerce for use of the Montana Science and Technology Development Board in section 13, Chapter 701, Laws of 1985, is reduced from \$2,000,000 to \$1,963,610.

**Section 7. Committee on Indian Affairs — appropriation reduction.** The appropriation to the Legislative Council from the general fund for use by the Committee on Indian Affairs in section 10, Chapter 675, Laws of 1985, is reduced from \$6,000 to \$5,000.

**Section 8.** Section 2, House Bill 961, Laws of 1985, is amended to read:

**"Section 2. Appropriation.** (1) There is appropriated \$150,000 from the general fund to the Montana Historical Society for the fiscal year ending June 30, 1985, to be used for the purpose of section 1. The balance of such funds not expended in fiscal year 1985 is appropriated for the biennium ending June 30, 1987, for the same purpose.

(2) There is appropriated \$150,000 from the cultural and aesthetics projects account to the Montana Historical Society for the fiscal year ending June 30, 1987, for the purpose of section 1. This appropriation will require an interaccount loan from the general fund which must be repaid from the coal tax park acquisition trust interest income to the cultural and aesthetic project account by June 30, 1991. *For repayment, in whole or in part, of such loan, the remaining balance in the cultural and aesthetic project account on June 30, 1987, after funding Chapter 732, Laws of 1985, must be transferred to the general fund in an amount not to exceed such loan balance.*

(3) There is appropriated from other special revenue funds any money received from gifts and grants by the Society and available for the purpose of section 1."

**Section 9. Fish, Wildlife, and Parks land acquisition — Lake Elmo, Billings.** Subject to the conditions and limitations provided in section 7, House Bill 928, Laws of 1985, the following money is appropriated to the Department of Fish, Wildlife, and Parks in the indicated amount for the purpose of land acquisition:

|            |           |               |
|------------|-----------|---------------|
| Lake Elmo, | \$322,500 | Coal Tax Park |
| Billings   |           | Acquisition   |
|            | \$277,500 | Federal       |

**Section 10. Repealer.** Section 10, Chapter 717, Laws of 1985, is repealed.

**Section 11. Effective date.** This act is effective on passage and approval.

Approved June 30, 1986.

# **RESOLUTIONS**

ENACTED BY THE

**Forty-Ninth Legislature**

IN SPECIAL

SESSION

STATE OF MONTANA

June 1986





# RESOLUTIONS

## SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE BOARD OF REGENTS TO PREPARE A REPORT ON THE LONG-TERM DIRECTION OF HIGHER EDUCATIONAL INSTITUTIONS IN MONTANA.

WHEREAS, the Board of Regents is conducting studies on the long-term direction of higher educational institutions within the State of Montana; and

WHEREAS, these studies appear to be both appropriate and timely given the economic conditions of the state; and

WHEREAS, the Forty-Ninth Legislature sitting in special session supports the Board of Regents in its planning and analysis efforts and wishes to encourage consideration of these options.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Board of Regents prepare a report that includes:

(1) a plan for the administrative consolidation of the Montana Agricultural Experiment Station and the Montana Cooperative Extension Service, with a focus on administrative efficiencies and on an effective agricultural research and extension service delivery system;

(2) a long-term plan for achieving high quality academic programs in the university system, with consideration given to making individual units specialty schools within the system;

(3) a long-term plan for instruction that:

(a) consolidates programs that are offered on several campuses;

(b) eliminates programs that serve few students and are unnecessary as support for an institution's primary mission; and

(c) addresses retention of student access to courses necessary for completion of academic degrees while the long-term plan is phased in;

(4) consolidation of administrative functions within the individual units and throughout the system which could result in efficiencies and/or cost reduction;

(5) the potential for converting all or part of underutilized system facilities for other state or private purposes;

(6) a plan for expansion of the system's contribution to the economic development of the state through applied research, manpower development, and business-industrial partnerships;

(7) a plan showing how realized cost savings could be reinvested to maintain or to improve the quality of the system's academic programs; and

(8) a plan for some form of student repayment of out-of-state tuition within the WICHE, WAMI, and Minnesota Rural Dentistry programs, with consideration given for those students who return to the State of Montana to practice their professions.

BE IT FURTHER RESOLVED, that the Board of Regents present the report to the 50th Legislature.

Passed June 28, 1986.

### HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA HONORING MARTHA ANN BURKE AS NATIONAL MOTHER OF THE YEAR.

WHEREAS, Montana prides itself on the quality of its citizens and the family values they hold dear, thus the state can justifiably be proud that a Montanan was recently accorded the honor of being named national Mother of the Year; and

WHEREAS, Martha Ann Burke, of Stevensville, Montana, was named Montana's Mother of the Year, and in April 1986, at Portland, Oregon, was named as national Mother of the Year in a selection process that included candidates from every other state; and

WHEREAS, Martha Burke was born in Pilot Grove, Missouri, and, after graduating from St. Louis University in nursing in 1938, moved to Butte to teach at St. James School of Nursing; and

WHEREAS, Martha Burke has been married to William Joseph Burke for 47 years and during that time has raised 12 children, currently ranging in age from 26 years to 46 years; and

WHEREAS, Martha Burke, as a great believer in Montana, has been involved in a wide range of community and political interests as a willing volunteer and often as a behind-the-scenes leader in many causes; and

WHEREAS, Martha Burke embodies the conviction she has espoused for years, that motherhood is the most significant profession, and, in the view of those who know her, has succeeded admirably in its practice.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

**That the Montana Legislature honor and congratulate Martha Ann Burke on her selection as America's Mother of the Year.**

**BE IT FURTHER RESOLVED, that a copy of this resolution be sent by the Secretary of State to Martha Ann Burke.**

**Passed June 27, 1986.**



# CODE SECTIONS AFFECTED

| Title-Ch.-Sec.      | Action                      | Chapter |
|---------------------|-----------------------------|---------|
| 2-9-101.....        | amended.....                | 22      |
| 2-9-106, 107.....   | repealed.....               | 22      |
| 2-9-108.....        | enacted.....                | 22      |
| 2-18-301.....       | amended contingently.....   | 6       |
| 2-18-303—305.....   | amended contingently.....   | 6       |
| 2-18-311.....       | amended contingently.....   | 6       |
| 2-18-312.....       | repealed and reenacted..... | 6       |
| 2-18-313—315.....   | amended contingently.....   | 6       |
| 2-18-703.....       | amended contingently.....   | 6       |
| 2-18-1103.....      | amended.....                | 23      |
| 2-18-1106.....      | amended.....                | 23      |
| 3-10-207.....       | amended.....                | 12      |
| 5-2-301.....        | amended.....                | 9       |
| 5-12-303.....       | amended.....                | 25      |
| 7-4-2107.....       | amended.....                | 12      |
| 7-4-2502.....       | amended.....                | 12      |
|                     | amended.....                | 17      |
| 7-4-2503, 2504..... | amended.....                | 12      |
| 7-4-2510.....       | amended.....                | 12      |
| 7-6-302—306.....    | amended.....                | 30      |
| 7-6-309.....        | amended.....                | 30      |
| 7-6-2321.....       | amended.....                | 26      |
| 7-6-4232.....       | amended.....                | 26      |
| 7-6-4453.....       | amended.....                | 26      |
| 7-32-2123.....      | amended.....                | 16      |
| 15-1-402.....       | amended.....                | 26      |
| 15-6-144.....       | amended.....                | 35      |
| 15-6-145.....       | amended.....                | 24      |
| 15-6-148.....       | enacted.....                | 34      |
| 15-6-149.....       | enacted.....                | 35      |
| 15-6-153.....       | enacted.....                | 34      |
| 15-6-154.....       | enacted.....                | 35      |
| 15-7-102.....       | amended.....                | 29      |
| 15-7-202.....       | amended.....                | 35      |
| 15-8-111.....       | amended.....                | 34      |
|                     | amended.....                | 35      |
| 15-8-112.....       | amended.....                | 29      |
| 15-10-202.....      | amended.....                | 26      |
| 15-30-204.....      | amended.....                | 28      |
| 15-35-108.....      | amended.....                | 3       |
|                     | amended.....                | 19      |
| 15-70-204.....      | amended.....                | 20      |
| 17-1-202.....       | repealed.....               | 2       |
| 17-2-107.....       | amended.....                | 1       |
| 17-3-201.....       | repealed.....               | 20      |
| 17-5-422.....       | amended.....                | 33      |
| 17-5-911.....       | amended.....                | 20      |
| 18-5-501—504.....   | enacted.....                | 36      |
| 19-1-602.....       | amended.....                | 4       |
| 19-3-603.....       | amended.....                | 4       |
| 19-3-805.....       | amended.....                | 4       |
| 20-7-324.....       | amended.....                | 27      |
| 20-9-142.....       | amended.....                | 26      |
| 20-9-318, 319.....  | amended.....                | 7       |
| 20-9-343.....       | amended.....                | 20      |

## CODE SECTIONS AFFECTED

|                       |                            |       |
|-----------------------|----------------------------|-------|
| 20-9-344.....         | amended.....               | 18    |
| 39-51-1301.....       | amended.....               | 13    |
| 41-5-207.....         | amended.....               | 11    |
|                       | amended contingently.....  | 14    |
| 41-5-306.....         | amended.....               | 11    |
| 41-5-403.....         | amended contingently.....  | 14    |
| 41-5-523.....         | amended contingently.....  | 14    |
| 44-1-501.....         | amended.....               | 20    |
| 46-9-301.....         | amended.....               | 17    |
| 46-18-236.....        | amended.....               | 17    |
| 50-78-202.....        | amended.....               | 15    |
| 50-78-301.....        | amended.....               | 15    |
| 53-1-104.....         | amended contingently.....  | 14    |
| 53-1-202.....         | amended contingently.....  | 14    |
| 53-1-402.....         | amended contingently.....  | 14    |
| 53-3-108, 109.....    | amended.....               | 10    |
| 53-3-205, 206.....    | amended.....               | 10    |
| 53-3-209.....         | amended.....               | 10    |
| 53-21-112.....        | amended contingently.....  | 14    |
| 53-21-164.....        | repealed contingently..... | 14    |
| 53-21-501, 502.....   | repealed contingently..... | 14    |
| 53-21-505.....        | repealed contingently..... | 14    |
| 53-30-202.....        | amended.....               | 11    |
| 53-30-211.....        | amended contingently.....  | 14    |
| 60-3-216.....         | amended.....               | 20    |
| 61-3-536.....         | amended.....               | 30    |
| 69-1-401—404.....     | enacted.....               | 32    |
| 75-1-1101.....        | amended.....               | HB 30 |
| 90-4-103(2), (3)..... | enacted.....               | 8     |
| 90-4-104.....         | amended.....               | 8     |
| 90-4-109.....         | amended.....               | 8     |
| 90-4-111.....         | amended.....               | 8     |
| 90-6-205.....         | amended.....               | 5     |
|                       | amended.....               | 19    |

## SESSION LAWS AFFECTED

| <u>Laws Affected</u>  | <u>Action</u> | <u>Chapter</u>    |
|-----------------------|---------------|-------------------|
| <b>Laws of 1985</b>   |               |                   |
| Ch. 649, Sec. 5       | amended       | HB 26, Sp.L. 6/86 |
| Ch. 706, Sec. 3       | amended       | HB 24, Sp.L. 6/86 |
| Ch. 708, Sec. 3       | amended       | HB 25, Sp.L. 6/86 |
| Ch. 717, Sec. 10      | repealed      | HB 30, Sp.L. 6/86 |
| Ch. 737, Secs. 1, 3—6 | repealed      | 11, Sp.L. 6/86    |
| Ch. 740, Sec. 9       | amended       | 6, Sp.L. 6/86     |
| HB 500                | amended       | HB 30, Sp.L. 6/86 |
| HB 922                | amended       | HB 30, Sp.L. 6/86 |
| HB 928, Sec. 7        | amended       | HB 30, Sp.L. 6/86 |
| HB 935, Sec. 1        | amended       | HB 7, Sp.L. 6/86  |
| HB 961, Sec. 2        | amended       | HB 30, Sp.L. 6/86 |





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**2475**



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**2479**





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**and**  
**BY EFFECTIVE DATE**

Section 1-2-201, MCA, as amended by Ch. 466, Laws of 1981, provides that:

“Every statute adopted after January 1, 1981, except those that provide for appropriation by the legislature of public funds for a public purpose, takes effect on the first day of October following its passage and approval unless a different time is prescribed therein. Every statute providing for appropriation as specified in this subsection takes effect on the first day of July following its passage and approval unless a different time is prescribed therein.”

The following is a list of specially designated effective dates for the 50th Legislature in regular session.





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| 7/01/87 ..... | Ch. 652 (§ 2)             |
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| 1/01/88 ..... | Ch. 431                   |
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| 7/01/88 .....                                     | Ch. 433             |
| 7/01/88 .....                                     | Ch. 635             |
| 7/01/88 .....                                     | Ch. 652 (§§ 1, 3-6) |
| 1/01/89 (contingent on voter approval) .....      | Ch. 218             |
| 1/01/89 (§ 1, contingent on voter approval) ..... | Ch. 342             |
| 1/01/89 (contingent on voter approval) .....      | Ch. 343             |
| 7/01/89 .....                                     | Ch. 418 (§ 16(1))   |
| 7/01/89 (contingent on voter approval) .....      | Ch. 459             |
| 1/01/91 (contingent on voter approval) .....      | Ch. 633             |

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§§ 1-116, 118 of Ch. 609 (HB 325) are effective on signing of the Executive Order under § 117(1) or on October 1, 1987, whichever occurs first.

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§§ 1, 2, 4-6, 8-10, 12, 13 of Ch. 644 (HB 459) are effective on passage and approval of legislation or adoption of party rules establishing the fourth Tuesday of March as the Presidential Preference Primary Election Date or Presidential Caucus Date in any two of the following states: Idaho, Oregon, or Washington prior to August 1, 1987.



**TABLE**  
**OF**  
**SESSION LAW TO CODE**

**2521**



## 1987

| Ch. | Sec. | MCA                                                                               | Ch. | Sec. | MCA                                                                                         |
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| 1   | 1    | 5-11-105                                                                          |     | 3    | 13-16-204                                                                                   |
| 2   | 1    | Voided by sec. 12, Ch. 662 (coordination section)                                 | 20  | 1    | 19-4-1101                                                                                   |
|     | 2    | 85-1-603                                                                          |     | 2    | Extension of authority                                                                      |
|     | 3    | 90-2-124                                                                          |     | 3    | Codification instruction                                                                    |
| 3   | 1    | 30-9-504                                                                          |     | 4    | Effective date                                                                              |
|     | 2    | 30-9-505                                                                          | 21  | 1    | 13-37-215                                                                                   |
| 4   | 1    | 37-30-311                                                                         | 22  | 1    | 19-4-302                                                                                    |
|     | 2    | Extension of authority                                                            |     | 2    | Extension of authority                                                                      |
| 5   | 1    | 70-9-106                                                                          |     | 3    | Effective date                                                                              |
|     | 2    | 70-9-201                                                                          | 23  | 1    | 19-3-1103                                                                                   |
|     | 3    | 70-9-202                                                                          |     | 2    | Extension of authority                                                                      |
|     | 4    | 70-9-203                                                                          |     | 3    | Effective date                                                                              |
|     | 5    | 70-9-204                                                                          | 24  | 1    | 19-4-203                                                                                    |
|     | 6    | 70-9-206                                                                          |     | 2    | 19-4-903                                                                                    |
|     | 7    | 70-9-207                                                                          |     | 3    | 19-4-904                                                                                    |
|     | 8    | 70-9-208                                                                          |     | 4    | Effective date                                                                              |
|     | 9    | 70-9-209                                                                          | 25  | 1    | 80-3-211                                                                                    |
|     | 10   | 70-9-301                                                                          |     | 2    | 80-3-212                                                                                    |
|     | 11   | Extension of authority                                                            |     | 3    | 80-3-201                                                                                    |
| 6   | 1    | 2-15-1519                                                                         |     | 4    | Codification instruction                                                                    |
|     | 2    | 20-31-103                                                                         | 26  | 5    | Effective date                                                                              |
| 7   | 1    | 40-1-212                                                                          |     | 1    | Repealer                                                                                    |
| 8   | 1    | 2-4-110                                                                           |     | 2    | Effective date                                                                              |
|     | 2    | Codification instruction                                                          | 27  | 1    | 15-30-171                                                                                   |
|     | 3    | Effective date — applicability                                                    |     | 2    | 15-30-172                                                                                   |
| 9   | 1    | 32-1-201                                                                          |     | 3    | Extension of authority                                                                      |
|     | 2    | 32-1-211                                                                          |     | 4    | Applicability                                                                               |
|     | 3    | Extension of authority                                                            | 28  | 1    | 33-4-312                                                                                    |
| 10  | 1    | 13-19-102                                                                         |     | 2    | 33-4-501                                                                                    |
|     | 2    | 13-19-104                                                                         |     | 3    | 33-4-502                                                                                    |
| 11  | 1    | 19-3-512                                                                          |     | 4    | Extension of authority                                                                      |
|     | 2    | Extension of authority                                                            | 29  | 1    | 53-21-204                                                                                   |
|     | 3    | Effective date                                                                    |     | 2    | Applicability                                                                               |
| 12  | 1    | Repealer                                                                          | 30  | 1    | 15-70-204                                                                                   |
|     | 2    | Applicability                                                                     |     | 2    | 15-70-321                                                                                   |
|     | 3    | Effective date                                                                    |     | 3    | Effective date                                                                              |
| 13  | 1    | 19-9-604, 19-13-608                                                               | 31  | 1    | 19-7-310                                                                                    |
|     | 2    | Extension of authority                                                            |     | 2    | Extension of authority                                                                      |
|     | 3    | Codification instruction                                                          |     | 3    | Codification instruction                                                                    |
|     | 4    | Effective date                                                                    |     | 4    | Applicability                                                                               |
| 14  | 1    | 19-3-107, 19-4-710, 19-5-706, 19-6-708, 19-7-707, 19-8-807, 19-9-1012, 19-13-1008 |     | 5    | Payments for military service made by retired sheriffs — commencement of allowance increase |
|     | 2    | Extension of authority                                                            |     | 6    | Effective date                                                                              |
|     | 3    | Codification instruction                                                          | 32  | 1    | Repealer                                                                                    |
|     | 4    | Effective date                                                                    | 33  | 1    | 71-1-306                                                                                    |
| 15  | 1    | 80-7-801                                                                          |     | 2    | Effective date                                                                              |
|     | 2    | 80-7-812                                                                          | 34  | 1    | 16-4-204                                                                                    |
|     | 3    | Extension of authority                                                            |     | 2    | 16-4-301                                                                                    |
|     | 4    | Effective date                                                                    | 35  | 1    | 76-13-601                                                                                   |
| 16  | 1    | Repealer                                                                          |     | 1    | 13-37-229                                                                                   |
|     | 2    | Effective date                                                                    | 36  | 2    | Extension of authority                                                                      |
| 17  | 1    | 7-6-4303                                                                          | 37  | 1    | 2-15-2203                                                                                   |
| 18  | 1    | Repealer                                                                          | 38  | 1    | 19-4-411                                                                                    |
| 19  | 1    | 13-15-403                                                                         |     | 2    | 19-4-401                                                                                    |
|     | 2    | 13-16-201                                                                         |     | 3    | Extension of authority                                                                      |
|     |      |                                                                                   |     | 4    | Codification instruction                                                                    |
|     |      |                                                                                   |     | 5    | Effective date                                                                              |
|     |      |                                                                                   | 39  | 1    | 81-8-252                                                                                    |

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| 40  | 2    | Extension of authority          | 53  | 1    | 1-1-512(1)                                         |
|     | 1    | 7-6-4466                        |     | 2    | 1-1-512(2)                                         |
|     | 2    | Extension of authority          | 54  | 1    | Approval of Moss                                   |
| 41  | 3    | Effective date — applicability  |     |      | mansion for in-kind payment — terms and conditions |
|     | 1    | 67-1-301                        |     | 2    | Effective date                                     |
|     | 2    | Sec. 4, Ch. 676, L. 1985        | 55  | 1    | 2-15-1858                                          |
| 42  | 3    | Effective date                  |     | 2    | 37-11-320                                          |
|     | 1    | 2-17-302                        |     | 3    | 37-11-104                                          |
|     | 2    | Extension of authority          |     | 4    | Codification instruction                           |
| 43  | 1    | 13-13-271, 13-13-272, 13-13-273 | 56  | 1    | 5-17-101                                           |
|     | 2    | Extension of authority          |     | 2    | Effective date                                     |
|     | 3    | Codification instruction        | 57  | 1    | 80-14-102                                          |
| 44  | 1    | 7-6-4111                        |     | 2    | 80-14-202                                          |
| 45  | 1    | 19-3-104                        |     | 3    | 80-14-203                                          |
|     | 2    | 19-4-101                        |     | 4    | 17-6-103                                           |
|     | 3    | 19-5-101                        |     | 5    | Sec. 9, Ch. 5, Sp. L. March 1986                   |
|     | 4    | 19-8-101                        |     | 6    | Effective date — termination                       |
|     | 5    | 19-7-101                        | 58  | 1    | 61-9-204                                           |
|     | 6    | 19-8-101                        |     | 2    | Extension of authority                             |
|     | 7    | Extension of authority          | 59  | 1    | 61-7-108                                           |
|     | 8    | Effective date                  |     | 2    | 61-7-109                                           |
| 46  | 1    | 7-12-4351                       |     | 3    | Extension of authority                             |
|     | 2    | 7-12-4352                       | 60  | 1    | 17-7-302                                           |
|     | 3    | 7-12-4353                       |     | 2    | Effective date                                     |
|     | 4    | 7-12-4354                       | 61  | 1    | 16-3-217                                           |
|     | 5    | Codification instruction        |     | 2    | 16-3-301                                           |
| 47  | 1    | 76-2-222                        |     | 3    | 16-3-218                                           |
| 48  | 1    | 2-15-3002                       |     | 4    | 16-3-219                                           |
|     | 2    | 80-11-201                       |     | 5    | 16-3-220                                           |
|     | 3    | 80-11-203                       |     | 6    | 16-4-103                                           |
|     | 4    | 80-11-207                       |     | 7    | 16-4-108                                           |
|     | 5    | 80-11-210                       |     | 8    | Extension of authority                             |
|     | 6    | 80-11-224                       |     | 9    | Codification instruction                           |
|     | 7    | Extension of authority          |     | 10   | Severability                                       |
|     | 8    | Effective date                  |     | 11   | Effective date                                     |
| 49  | 1    | 33-16-221                       | 62  | 1    | 37-4-301                                           |
|     | 2    | 33-16-222                       |     | 2    | 37-4-321                                           |
|     | 3    | 33-16-223(1)(part) and (2)      |     | 3    | Extension of authority                             |
|     | 4    | 33-16-224                       | 63  | 1    | 37-60-101                                          |
|     | 5    | 33-16-225                       |     | 2    | 37-60-105                                          |
|     | 6    | 33-16-223(1)(part)              |     | 3    | 37-60-202                                          |
|     | 7    | 33-16-203                       |     | 4    | 37-60-301                                          |
|     | 8    | Codification instruction        |     | 5    | 37-60-303                                          |
|     | 9    | Severability                    |     | 6    | 37-60-304                                          |
| 50  | 1    | 17-8-306                        |     | 7    | 37-60-307                                          |
| 51  | 1    | 18-8-201                        |     | 8    | 37-60-308                                          |
|     | 2    | 18-8-202                        |     | 9    | 37-60-309                                          |
|     | 3    | 18-8-203                        |     | 10   | 37-60-310                                          |
|     | 4    | 18-8-204                        |     | 11   | 37-60-312                                          |
|     | 5    | 18-8-205                        |     | 12   | 37-60-321                                          |
|     | 6    | 18-8-211                        |     | 13   | 37-60-322                                          |
|     | 7    | 18-8-212                        |     | 14   | 37-60-405                                          |
|     | 8    | Extension of authority          |     | 15   | 37-60-406                                          |
|     | 9    | Saving clause                   |     | 16   | 37-60-407                                          |
|     | 10   | Severability                    |     | 17   | 37-60-411                                          |
|     | 11   | Effective date                  |     | 18   | Repealer                                           |
| 52  | 1    | 17-8-107                        |     | 19   | Effective date                                     |
|     | 2    | Effective date                  |     |      |                                                    |

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| 64  | 1    | 7-34-2138                | 71  | 1    | 10-3-101                        |
|     | 2    | Effective date           |     | 2    | 10-3-103                        |
| 65  | 1    | 61-9-407                 |     | 3    | 10-3-311                        |
|     | 2    | Extension of authority   |     | 4    | 10-3-401                        |
| 66  | 1    | Repealer                 |     | 5    | 10-3-406                        |
|     | 2    | Effective date           |     | 6    | Extension of authority          |
| 67  | 1    | 53-5-701                 |     | 7    | Codification instruction        |
|     | 2    | 53-5-702                 | 72  | 1    | 37-67-303                       |
|     | 3    | 53-5-703                 |     | 2    | 37-67-308                       |
|     | 4    | 53-5-704                 |     | 3    | 37-67-309                       |
|     | 5    | 53-5-705                 |     | 4    | 37-67-310                       |
|     | 6    | 53-5-706                 |     | 5    | Extension of authority          |
|     | 7    | Codification instruction |     | 6    | Applicability                   |
|     | 8    | Severability             | 73  | 1    | 61-10-103                       |
| 68  | 1    | 16-1-101                 |     | 2    | 61-10-124                       |
|     | 2    | 16-1-104                 |     | 3    | Extension of authority          |
|     | 3    | 16-1-105                 | 74  | 1    | 61-5-125                        |
|     | 4    | 16-1-106                 |     | 2    | Codification instruction        |
|     | 5    | 16-1-201                 |     | 3    | Effective date                  |
|     | 6    | 16-1-204                 | 75  | 1    | 61-8-609                        |
|     | 7    | 16-1-303                 |     | 2    | Codification instruction        |
|     | 8    | 16-1-405                 |     | 3    | Effective date                  |
|     | 9    | 16-2-101                 | 76  | 1    | 61-11-102                       |
|     | 10   | 16-2-103                 |     | 2    | Extension of authority          |
|     | 11   | 16-2-104                 | 77  | 1    | 69-3-105                        |
|     | 12   | 16-2-106                 |     | 2    | Extension of authority          |
|     | 13   | 16-2-107                 | 78  | 1    | 37-22-301                       |
|     | 14   | 16-2-108                 |     | 2    | 37-22-303                       |
|     | 15   | 16-2-203                 |     | 3    | 37-23-202                       |
|     | 16   | 16-2-302                 |     | 4    | Expiration of two-year licenses |
|     | 17   | 16-3-101                 |     | 5    | Extension of authority          |
|     | 18   | 16-3-105                 |     | 6    | Applicability                   |
|     | 19   | 16-3-106                 |     | 7    | Effective date                  |
|     | 20   | 16-3-310                 | 79  | 1    | 19-4-410                        |
|     | 21   | 16-3-401                 |     | 2    | 19-4-401                        |
|     | 22   | 16-4-106                 |     | 3    | 19-4-405                        |
|     | 23   | 16-4-108                 |     | 4    | Extension of authority          |
|     | 24   | 16-4-201                 |     | 5    | Codification instruction        |
|     | 25   | 16-4-202                 |     | 6    | Effective date                  |
|     | 26   | 16-4-208                 | 80  | 1    | Repealer                        |
|     | 27   | 16-4-302                 |     | 2    | Extension of authority          |
|     | 28   | 16-4-401                 |     | 3    | Effective date                  |
|     | 29   | 16-4-404                 | 81  | 1    | 19-7-301                        |
|     | 30   | 16-4-405                 |     | 2    | 19-7-604                        |
|     | 31   | 16-4-411                 |     | 3    | Extension of authority          |
|     | 32   | 16-4-501                 |     | 4    | Effective date                  |
|     | 33   | 16-6-104                 | 82  | 1    | 19-11-605                       |
|     | 34   | 18-6-301                 |     | 2    | Effective date                  |
|     | 35   | 16-6-305                 | 83  | 1    | 18-1-204                        |
|     | 36   | 16-6-306                 |     | 2    | Effective date                  |
|     | 37   | 18-6-309                 | 84  | 1    | 17-8-303                        |
|     | 38   | 16-6-312                 |     | 2    | Costs of changes                |
|     | 39   | 16-6-313                 |     | 3    | Extension of authority          |
|     | 40   | Extension of authority   | 85  | 1    | 71-3-1111                       |
|     | 41   | Coordination             |     | 2    | 71-3-1112                       |
| 69  | 1    | 15-16-102                |     | 3    | 71-3-1114                       |
|     | 2    | 1-1-307                  |     | 4    | 71-3-1115                       |
| 70  | 1    | 82-4-203                 |     | 5    | 71-3-1117                       |
|     | 2    | 82-4-222                 |     | 6    | 71-3-1118                       |
|     | 3    | 82-4-223                 | 86  | 1    | 72-26-603                       |
|     | 4    | Extension of authority   |     |      |                                 |

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| 87  | 1    | 71-3-1203                | 3   | 7-4-2304               |            |
| 88  | 1    | 7-4-2511                 | 4   | 7-4-2306               |            |
|     | 2    | 7-4-2512                 | 5   | 7-4-2309               |            |
|     | 3    | 25-13-402                | 6   | 7-4-2310               |            |
|     | 4    | 25-13-404                | 7   | Effective date         |            |
|     | 5    | 25-13-701                | 102 | 1                      | 17-6-315   |
|     | 6    | 61-12-401                | 103 | 1                      | 19-3-504   |
|     | 7    | 61-12-402                | 2   | 19-3-505               |            |
|     | 8    | 61-12-403                | 3   | 19-7-306               |            |
|     | 9    | 61-12-407                | 4   | 19-9-603               |            |
|     | 10   | 71-3-1203                | 5   | 19-13-603              |            |
|     | 11   | 27-17-208                | 6   | Extension of authority |            |
|     | 12   | Codification instruction | 7   | Effective date         |            |
|     | 13   | Coordination instruction | 104 | 1                      | 77-2-329   |
|     | 14   | Effective date           | 2   | Extension of authority |            |
| 89  | 1    | 17-5-205                 | 3   | Effective date         |            |
|     | 2    | Effective date           | 105 | 1                      | 87-2-401   |
| 90  | 1    | 23-2-702                 | 2   | 87-2-402               |            |
|     | 2    | 23-2-715                 | 3   | 87-4-504               |            |
|     | 3    | 23-2-734                 | 4   | 87-5-204               |            |
|     | 4    | Extension of authority   | 5   | Extension of authority |            |
|     | 5    | Effective date           | 6   | Effective date         |            |
| 91  | 1    | 32-4-205                 | 106 | 1                      | 87-2-106   |
|     | 2    | 32-4-206                 | 2   | Extension of authority |            |
|     | 3    | 32-4-208                 | 3   | Effective date         |            |
|     | 4    | 32-4-301                 | 107 | 1                      | 30-10-206  |
|     | 5    | Extension of authority   | 2   | Extension of authority |            |
| 92  | 1    | 7-32-203                 | 3   | Applicability          |            |
|     | 2    | Extension of authority   | 4   | Effective date         |            |
| 93  | 1    | 19-9-1011                | 108 | 1                      | 2-89-302   |
|     | 2    | Extension of authority   | 2   | Effective date —       |            |
|     | 3    | Applicability            |     | applicability          |            |
|     | 4    | Effective date           | 109 | 1                      | 39-71-2305 |
| 94  | 1    | 17-5-1503                | 2   | Extension of authority |            |
|     | 2    | 17-5-1608                | 110 | 1                      | 76-2-322   |
|     | 3    | 17-5-1649                | 111 | 1                      | 2-9-303    |
|     | 4    | 17-5-1650                | 2   | 2-9-304                |            |
|     | 5    | Extension of authority   | 112 | 1                      | 46-19-401  |
|     | 6    | Effective date           | 2   | 46-19-402              |            |
| 95  | 1    | 18-7-107                 | 113 | 1                      | 7-5-4202   |
|     | 2    | Effective date —         | 114 | 1                      | 7-13-4309  |
|     |      | applicability            | 115 | 1                      | 7-13-4305  |
| 96  | 1    | 27-6-207                 | 2   | 7-13-4306              |            |
|     | 2    | Implementation schedule  | 3   | 7-13-4309              |            |
|     | 3    | Codification instruction | 116 | 1                      | 7-12-4102  |
|     | 4    | Effective date           | 117 | 1                      | 2-2-302    |
| 97  | 1    | 2-9-303                  | 2   | Applicability          |            |
|     | 2    | Extension of authority   | 3   | Effective date         |            |
|     | 3    | Effective date           | 118 | 1                      | 23-2-511   |
| 98  | 1    | 33-22-705                | 2   | 7-16-2121              |            |
|     | 2    | 33-22-702                | 119 | 1                      | 33-1-711   |
|     | 3    | Extension of authority   | 2   | Extension of authority |            |
|     | 4    | Codification instruction | 120 | 1                      | 33-15-1101 |
|     | 5    | Applicability            | 2   | 33-15-1102             |            |
| 99  | 1    | 13-10-205                | 3   | 33-15-1103             |            |
|     | 2    | 13-14-114                | 4   | 33-15-1104             |            |
|     | 3    | Effective date           | 5   | 33-15-1105             |            |
| 100 | 1    | 13-15-101                | 6   | 33-15-1106             |            |
|     | 2    | Effective date           | 7   | 33-15-1107             |            |
| 101 | 1    | 7-4-2302                 | 8   | 33-15-1111             |            |
|     | 2    | 7-4-2303                 | 9   | 33-15-1121             |            |

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|     | 10   | Extension of authority                   |     | 8    | 70-22-208                                                  |
|     | 11   | Codification instruction                 |     | 9    | 70-22-209                                                  |
|     | 12   | Severability                             |     | 10   | 70-22-210                                                  |
| 121 | 1    | 33-23-217                                |     | 11   | Codification instruction                                   |
|     | 2    | Extension of authority                   | 138 | 1    | Authorization to issue permits to appropriate ground water |
|     | 3    | Codification instruction                 |     | 2    | Coordination instruction                                   |
| 122 | 1    | 33-1-502                                 |     | 3    | Effective date                                             |
|     | 2    | Extension of authority                   |     | 1    | 33-2-117                                                   |
| 123 | 1    | 33-14-102                                |     | 2    | 33-7-101                                                   |
|     | 2    | 33-14-305                                | 139 | 3    | 33-10-101                                                  |
|     | 3    | Extension of authority                   |     | 4    | 33-22-301                                                  |
| 124 | 1    | 17-6-302                                 |     | 5    | 33-22-703                                                  |
|     | 2    | 17-6-310                                 |     | 6    | 33-23-204                                                  |
|     | 3    | 17-6-311                                 |     | 7    | 33-23-201                                                  |
|     | 4    | 17-6-312                                 |     | 8    | 33-23-202                                                  |
|     | 5    | 17-6-313                                 |     | 9    | 33-23-203                                                  |
|     | 6    | 90-8-102                                 |     | 10   | 33-23-211                                                  |
|     | 7    | 90-8-303                                 |     | 11   | 33-23-212                                                  |
|     | 8    | Extension of authority                   |     | 12   | 33-23-213                                                  |
| 125 | 1    | 33-22-921                                |     | 13   | 33-23-214                                                  |
|     | 2    | 33-22-922                                |     | 14   | 33-23-215                                                  |
|     | 3    | 33-22-923                                |     | 15   | 33-23-216                                                  |
|     | 4    | 33-22-924                                |     | 16   | Extension of authority                                     |
|     | 5    | Extension of authority                   |     | 17   | Codification instruction                                   |
|     | 6    | Codification instruction                 |     | 1    | 81-8-804                                                   |
| 126 | 1    | 19-5-701                                 | 140 | 2    | Effective date — applicability                             |
|     | 2    | 19-7-701                                 |     | 1    | 7-22-2123                                                  |
|     | 3    | 19-8-801                                 |     | 2    | 7-22-2124                                                  |
|     | 4    | Extension of authority                   | 141 | 1    | 2-15-201                                                   |
|     | 5    | Effective date                           |     | 2    | 5-16-104                                                   |
| 127 | 1    | 46-14-202                                | 142 | 1    | 50-5-204                                                   |
|     | 2    | 46-14-212                                |     | 2    | Extension of authority                                     |
|     | 3    | 46-14-213                                |     | 3    | Effective date                                             |
|     | 4    | 46-14-221                                | 143 | 1    | 80-7-1102                                                  |
|     | 5    | 46-14-302                                |     | 2    | 80-7-1104                                                  |
| 128 | 1    | 61-8-711                                 |     | 3    | 80-7-1105                                                  |
| 129 | 1    | 40-6-108                                 |     | 4    | 80-7-1106                                                  |
|     | 2    | Effective date                           |     | 5    | 80-7-1107                                                  |
| 130 | 1    | 40-5-208                                 |     | 6    | 80-7-1108                                                  |
|     | 2    | Extension of authority                   |     | 7    | Codification instruction                                   |
|     | 3    | Codification instruction                 |     | 8    | Effective date                                             |
| 131 | 1    | 53-2-613                                 | 145 | 1    | 20-3-324                                                   |
|     | 2    | Extension of authority                   | 146 | 1    | 53-2-304                                                   |
| 132 | 1    | 20-9-438                                 |     | 2    | 53-2-322                                                   |
|     | 2    | 20-9-439                                 |     | 3    | Effective date                                             |
| 133 | 1    | 27-1-714                                 | 147 | 1    | 46-18-204                                                  |
| 134 | 1    | 20-26-1105                               | 148 | 1    | 39-71-401                                                  |
| 135 | 1    | 20-9-509                                 |     | 2    | Extension of authority                                     |
|     | 2    | 20-3-324                                 | 149 | 1    | 87-3-204                                                   |
|     | 3    | 20-9-201                                 |     | 2    | Extension of authority                                     |
| 136 | 1    | 77-3-432                                 |     | 3    | Effective date                                             |
|     | 2    | Applicability to existing and new leases | 150 | 1    | 20-6-604                                                   |
|     | 3    | Extension of authority                   | 151 | 1    | 39-71-905                                                  |
| 137 | 1    | 70-22-201                                |     | 2    | Extension of authority                                     |
|     | 2    | 70-22-202                                | 152 | 1    | 87-4-601                                                   |
|     | 3    | 70-22-203                                |     | 2    | Extension of authority                                     |
|     | 4    | 70-22-204                                | 153 | 1    | 39-51-2105                                                 |
|     | 5    | 70-22-205                                |     | 2    | 39-51-2204                                                 |
|     | 6    | 70-22-206                                |     |      |                                                            |
|     | 7    | 70-22-207                                |     |      |                                                            |

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|     | 3    | 39-51-2304                               | 169 | 1    | 7-5-4302                 |
|     | 4    | 39-51-2402                               |     | 2    | 7-5-4310                 |
|     | 5    | Effective date                           | 170 | 1    | 17-2-107                 |
| 154 | 1    | 23-5-602                                 |     | 2    | Extension of authority   |
|     | 2    | 23-5-612                                 |     | 3    | Effective date           |
|     | 3    | Extension of authority                   | 171 | 1    | 17-5-2101                |
|     | 4    | Name change                              |     | 2    | 17-5-2102                |
|     | 5    | Effective date                           |     | 3    | Effective date           |
| 155 | 1    | 61-6-304                                 | 172 | 1    | 16-1-406                 |
| 156 | 1    | 15-31-524                                |     | 2    | 16-1-408                 |
|     | 2    | 35-1-1201                                |     | 3    | Repealer                 |
|     | 3    | 71-3-205                                 |     | 4    | Extension of authority   |
|     | 4    | 71-3-206                                 |     | 5    | Effective date           |
| 157 | 1    | 46-4-302                                 | 173 | 1    | 17-5-106                 |
| 158 | 1    | 17-6-201                                 |     | 2    | 7-7-2252                 |
|     | 2    | Effective date                           |     | 3    | 7-7-4252                 |
| 159 | 1    | 85-15-107                                |     | 4    | 20-9-431                 |
|     | 2    | Extension of authority                   | 174 | 1    | 87-2-724                 |
|     | 3    | Effective date                           |     | 2    | Codification instruction |
| 160 | 1    | 76-5-202                                 | 175 | 1    | 39-3-406                 |
|     | 2    | Extension of authority                   |     | 2    | Extension of authority   |
|     | 3    | Effective date                           | 176 | 1    | 5-1-101                  |
| 161 | 1    | Sec. 5, Ch. 669, L. 1985<br>(23-5-1007)  | 177 | 1    | 33-4-315                 |
|     | 2    | 23-5-1008                                |     | 2    | 33-4-409                 |
|     | 3    | Sec. 8, Ch. 669, L. 1985<br>(23-5-1013)  |     | 3    | Extension of authority   |
|     | 4    | Sec. 13, Ch. 669, L. 1985<br>(23-5-1027) |     | 4    | Effective date           |
|     | 5    | Sec. 16, Ch. 669, L. 1985<br>(23-5-1022) | 178 | 1    | 7-12-4422                |
|     | 6    | Sec. 17, Ch. 669, L. 1985<br>(23-5-1021) | 179 | 1    | 19-3-1108                |
|     | 7    | Sec. 24, Ch. 669, L. 1985                |     | 2    | Extension of authority   |
|     | 8    | 23-5-1030                                |     | 3    | Codification instruction |
|     | 9    | Sec. 10, Ch. 669, L. 1985<br>(23-5-1017) |     | 4    | Effective date           |
|     | 10   | 17-7-502                                 | 180 | 1    | 16-3-103                 |
|     | 11   | 2-18-103                                 |     | 2    | 16-4-301                 |
|     | 12   | Codification instruction                 |     | 3    | 16-4-204                 |
|     | 13   | Extension of authority                   |     | 4    | Extension of authority   |
|     | 14   | Effective date                           | 181 | 1    | 76-2-412                 |
| 162 | 1    | 45-9-103                                 |     | 2    | Effective date           |
| 163 | 1    | 23-5-607                                 | 182 | 1    | 7-5-4301                 |
|     | 2    | Extension of authority                   |     | 2    | Effective date           |
| 164 | 1    | 53-6-150                                 | 183 | 1    | 2-3-203                  |
|     | 2    | 17-7-502                                 |     | 2    | 2-3-202                  |
|     | 3    | Codification instruction                 | 184 | 1    | 69-4-511                 |
| 165 | 1    | 85-7-1904                                |     | 2    | ARM 38.5.2502            |
| 166 | 1    | 85-7-1951                                |     | 3    | Codification instruction |
|     | 2    | 85-7-2027                                | 185 | 1    | 30-14-1104               |
|     | 3    | 85-7-2133                                |     | 2    | Applicability            |
|     | 4    | 85-7-2140                                | 186 | 1    | 32-6-105                 |
|     | 1    | 7-6-4304                                 |     | 2    | Extension of authority   |
| 167 | 1    | 35-18-109                                |     | 3    | Effective date           |
| 168 | 2    | 35-18-102                                | 187 | 1    | 49-4-302                 |
|     | 3    | 35-18-105                                |     | 2    | 49-4-307                 |
|     | 4    | 35-18-106                                |     | 3    | 49-4-310                 |
|     | 5    | 35-18-206                                |     | 4    | Codification instruction |
|     | 6    | Codification instruction                 | 188 | 1    | 2-15-1016                |
|     | 7    | Effective date                           | 189 | 1    | 40-2-601                 |
|     |      |                                          |     | 2    | 40-2-602                 |
|     |      |                                          |     | 3    | 40-2-603                 |
|     |      |                                          |     | 4    | 40-2-604                 |
|     |      |                                          |     | 5    | 40-2-605                 |
|     |      |                                          |     | 6    | 40-2-606                 |
|     |      |                                          |     | 7    | 40-2-607                 |



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| 190 | 8    | 40-2-608                                          | 195 | 1    | 27-6-103                 |
|     | 9    | 40-2-609                                          |     | 2    | 27-6-206                 |
|     | 10   | 40-2-610                                          |     | 3    | 27-6-302                 |
|     | 11   | 40-2-312                                          |     | 4    | 27-6-306                 |
|     | 12   | 40-2-314                                          |     | 5    | 27-6-307                 |
|     | 13   | 40-4-202                                          |     | 6    | 27-6-308                 |
|     | 14   | Repealer                                          |     | 7    | 27-6-401                 |
|     | 15   | Codification instruction                          |     | 8    | Applicability            |
|     | 16   | Severability                                      | 196 | 1    | 45-5-205                 |
|     | 17   | Applicability                                     |     | 2    | 45-5-207                 |
|     | 1    | 17-5-1301                                         |     | 3    | 45-5-208                 |
|     | 2    | 17-5-1302                                         | 197 | 4    | Codification instruction |
|     | 3    | 17-5-1311                                         |     | 1    | 85-2-316                 |
|     | 4    | 17-5-1312                                         | 198 | 2    | Extension of authority   |
|     | 5    | 17-5-1313                                         |     | 1    | 80-6-101                 |
|     | 6    | 17-5-1314                                         |     | 2    | 80-6-102                 |
|     | 7    | 17-5-1315                                         |     | 3    | 80-6-104                 |
|     | 8    | 17-5-1316                                         |     | 4    | 80-6-105                 |
|     | 9    | 17-5-1317                                         |     | 5    | 80-6-111                 |
|     | 10   | 17-5-1318                                         |     | 6    | 80-6-114                 |
|     | 11   | 17-5-1321                                         |     | 7    | 80-6-201                 |
|     | 12   | 17-5-1322                                         |     | 8    | 80-6-202                 |
|     | 13   | 17-5-2201                                         |     | 9    | 80-6-311                 |
|     | 14   | 17-5-1323                                         |     | 10   | Codification instruction |
|     | 15   | Repealer                                          |     | 11   | Extension of authority   |
| 191 | 16   | Effective date                                    |     | 12   | Effective date           |
|     | 1    | 19-13-601                                         | 199 | 1    | 50-50-102                |
|     | 2    | 19-13-304                                         |     | 2    | 50-50-201                |
|     | 3    | 19-13-1003                                        |     | 3    | 50-50-202                |
| 192 | 4    | Extension of authority                            |     | 4    | Extension of authority   |
|     | 5    | Effective date                                    | 200 | 5    | Effective date           |
| 193 | 1-4  | Voided by sec. 27, Ch. 655 (coordination section) |     | 1    | 13-3-201                 |
|     | 1    | 85-7-1401                                         |     | 2    | 13-3-202                 |
|     | 2    | 85-7-1402                                         |     | 3    | 13-3-203                 |
|     | 3    | 85-7-1403                                         |     | 4    | 13-3-204                 |
|     | 4    | 85-7-1411                                         |     | 5    | 13-3-205                 |
|     | 5    | 85-7-1412                                         |     | 6    | 13-3-206                 |
|     | 6    | 85-7-1413                                         |     | 7    | 13-3-207                 |
|     | 7    | 85-7-1414                                         |     | 8    | 13-3-211                 |
|     | 8    | 85-7-1415                                         |     | 9    | 13-3-212                 |
|     | 9    | 85-7-1416                                         |     | 10   | 13-3-213                 |
|     | 10   | 85-7-1417                                         |     | 11   | 13-2-601                 |
|     | 11   | 85-7-1418                                         |     | 12   | 13-3-105                 |
|     | 12   | 85-7-1419                                         |     | 13   | 13-13-112                |
|     | 13   | 85-7-1431                                         |     | 14   | 13-13-211                |
|     | 14   | 85-7-1432                                         |     | 15   | Extension of authority   |
|     | 15   | 85-7-1433                                         | 201 | 1    | 2-18-1106                |
|     | 16   | 85-7-1434                                         |     | 2    | Effective date           |
|     | 17   | 85-7-1435                                         | 202 | 1    | 71-3-521                 |
|     | 18   | 85-7-1436                                         |     | 2    | 71-3-522                 |
|     | 19   | 85-7-1437                                         |     | 3    | 71-3-523                 |
|     | 20   | 85-7-1438                                         |     | 4    | 71-3-524                 |
|     | 21   | 85-7-1603                                         |     | 5    | 71-3-525                 |
|     | 22   | 85-7-1612                                         |     | 6    | 71-3-526                 |
|     | 23   | 85-7-2001                                         |     | 7    | 71-3-531                 |
|     | 24   | Codification instruction                          |     | 8    | 71-3-532                 |
|     | 25   | Effective date                                    |     | 9    | 71-3-535                 |
| 194 | 1    | 50-60-102                                         |     | 10   | 71-3-536                 |
|     | 2    | Effective date                                    |     | 11   | 71-3-541                 |
|     |      |                                                   |     | 12   | 71-3-542                 |

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|     | 13   | 71-3-512 (renum.<br>71-3-533)                                                | 217 | 1    | 16-3-301                                           |
|     | 14   | 71-3-516 (renum.<br>71-3-551)                                                |     | 2    | 16-6-305                                           |
|     | 15   | 70-23-607                                                                    |     | 3    | 16-6-314                                           |
|     | 16   | 70-23-608                                                                    |     | 4    | 45-5-623                                           |
|     | 17   | Repealer                                                                     |     | 5    | 45-5-624                                           |
|     | 18   | Codification instruction                                                     |     | 6    | Extension of authority                             |
|     | 19   | Saving clause                                                                |     | 7    | Severability                                       |
|     | 20   | Severability                                                                 |     | 8    | Applicability                                      |
|     | 21   | Applicability                                                                |     | 9    | Effective date —<br>contingent termination<br>date |
| 203 | 1    | 53-9-128                                                                     | 218 | 1    | Art. VIII, § 13, Mont.<br>Const.                   |
| 204 | 1    | 61-5-301                                                                     |     | 2    | Effective date                                     |
|     | 2    | Extension of authority                                                       |     | 3    | Submission to electorate                           |
|     | 3    | Effective date                                                               | 219 | 1    | 72-17-211                                          |
| 205 | 1    | Repealer                                                                     |     | 2    | 72-17-212                                          |
| 206 | 1    | 44-13-103                                                                    |     | 3    | 50-5-212                                           |
| 207 | 1    | 20-5-307                                                                     |     | 4    | Codification instruction                           |
| 208 | 1    | 31-2-106                                                                     |     | 5    | Extension of authority                             |
|     | 2    | Effective date —<br>applicability                                            | 220 | 1    | 15-70-301                                          |
| 209 | 1    | 23-2-321                                                                     |     | 2    | 15-70-315                                          |
|     | 2    | 27-1-701                                                                     |     | 3    | 15-70-316                                          |
|     | 3    | 70-16-302                                                                    |     | 4    | 15-70-201                                          |
| 210 | 1    | 87-2-105                                                                     |     | 5    | Extension of authority                             |
|     | 2    | 87-2-708                                                                     |     | 6    | Codification instruction                           |
|     | 3    | Extension of authority                                                       |     | 7    | Effective date                                     |
|     | 4    | Effective date                                                               | 221 | 1    | 23-4-301                                           |
| 211 | 1    | 23-5-605                                                                     |     | 2    | Extension of authority                             |
|     | 2    | 23-5-606                                                                     |     | 3    | Effective date                                     |
|     | 3    | 23-5-608                                                                     | 222 | 1    | 20-9-133                                           |
|     | 4    | 23-5-611                                                                     |     | 2    | Effective date                                     |
|     | 5    | 23-5-613                                                                     | 223 | 1    | 53-5-801                                           |
|     | 6    | 23-5-616                                                                     |     | 2    | 53-5-802                                           |
|     | 7    | 23-5-617                                                                     |     | 3    | 53-5-803                                           |
|     | 8    | 23-5-618                                                                     |     | 4    | 53-5-804                                           |
|     | 9    | Codification instruction                                                     |     | 5    | 53-5-805                                           |
|     | 10   | Extension of authority                                                       |     | 6    | Codification instruction                           |
|     | 11   | Effective date                                                               |     | 7    | Extension of authority                             |
| 212 | 1    | 40-4-208                                                                     |     | 8    | Effective date                                     |
|     | 2    | 40-5-227                                                                     | 224 | 1    | 7-4-2104                                           |
|     | 3    | Extension of authority                                                       | 225 | 1    | 40-6-135                                           |
|     | 4    | Effective date                                                               |     | 2    | Applicability                                      |
| 213 | 1    | 39-71-907                                                                    |     | 3    | Effective date                                     |
|     | 2    | 39-71-909                                                                    | 226 | 1    | 20-6-325                                           |
|     | 3    | Extension of authority                                                       |     | 2    | Effective date                                     |
| 214 | 1    | 27-1-1101                                                                    | 227 | 1    | 20-4-110                                           |
|     | 2    | 27-1-1102                                                                    |     | 2    | 20-4-101                                           |
|     | 3    | 27-1-1103                                                                    |     | 3    | Extension of authority                             |
|     | 4    | Codification instruction                                                     |     | 4    | Two-thirds vote required<br>— severability         |
| 215 | 1    | 61-12-102                                                                    | 228 | 1    | Sec. 9, Ch. 22, Sp. L.<br>June 1986                |
|     | 2    | Effective date                                                               |     | 2    | Two-thirds vote                                    |
| 216 | 1    | Erroneous statutory<br>basis — historical use<br>of nonpartisan<br>elections |     | 3    | Effective date                                     |
|     | 2    | 13-1-104                                                                     | 229 | 1    | 5-2-303                                            |
|     | 3    | 13-1-107                                                                     |     | 2    | Extension of authority                             |
|     | 4    | Applicability                                                                |     | 3    | Effective date                                     |
|     | 5    | Termination date                                                             | 230 | 1    | 7-6-2323                                           |
|     | 6    | Effective date                                                               |     | 2    | Applicability                                      |
|     |      |                                                                              |     | 3    | Effective date                                     |

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| 231 | 1    | 30-10-305                      | 243 | 1    | 20-7-431                 |
|     | 2    | 30-10-307                      |     | 2    | Extension of authority   |
|     | 3    | Extension of authority         |     | 3    | Effective date           |
|     | 4    | Applicability                  | 244 | 1    | 61-5-206                 |
|     | 5    | Effective date                 | 245 | 1    | 37-68-103                |
| 232 | 1    | 39-71-2302                     |     | 2    | 37-68-304                |
|     | 2    | 39-71-2304                     |     | 3    | 37-68-314                |
|     | 3    | 33-16-1005                     |     | 4    | 37-68-201                |
|     | 4    | Extension of authority         |     | 5    | Extension of authority   |
| 233 | 1    | 27-31-201                      | 246 | 1    | 75-20-205                |
| 234 | 1    | 39-51-201                      |     | 2    | Extension of authority   |
|     | 2    | 39-51-203                      |     | 3    | Effective date           |
|     | 3    | 39-51-204                      | 247 | 1    | 50-76-101                |
|     | 4    | 39-51-407                      |     | 2    | Effective date           |
|     | 5    | 39-51-1101                     | 248 | 1    | 61-10-124(1)             |
|     | 6    | 39-51-1109                     |     | 2    | 61-10-124(2) - (5)       |
|     | 7    | 39-51-1121                     |     | 3    | Extension of authority   |
|     | 8    | 39-51-1125                     | 249 | 1    | 33-11-101                |
|     | 9    | 39-51-1213                     |     | 2    | 33-11-102                |
|     | 10   | 39-51-1219                     |     | 3    | 33-11-103                |
|     | 11   | 39-51-1301                     |     | 4    | 33-11-104                |
|     | 12   | 39-51-1303                     |     | 5    | 33-11-105                |
|     | 13   | 39-51-1304                     |     | 6    | 33-11-106                |
|     | 14   | 39-51-2101                     |     | 7    | 33-11-107                |
|     | 15   | 39-51-2105                     |     | 8    | 33-11-108                |
|     | 16   | 39-51-2303                     |     | 9    | 33-11-109                |
|     | 17   | 39-51-2304                     |     | 10   | 33-11-121                |
|     | 18   | 39-51-2402                     |     | 11   | 33-11-122                |
|     | 19   | 39-51-2403                     |     | 12   | 33-11-123                |
|     | 20   | 39-51-2410                     |     | 13   | 33-11-124                |
|     | 21   | 39-51-2501                     |     | 14   | 33-11-125                |
|     | 22   | 39-51-3105                     |     | 15   | 33-2-708                 |
|     | 23   | 39-51-3202                     |     | 16   | Codification instruction |
|     | 24   | 39-51-3206                     |     | 17   | Severability             |
|     | 25   | 39-51-3207                     |     | 18   | Effective date           |
|     | 26   | 18-4-241                       | 250 | 1    | 18-2-201                 |
|     | 27   | Extension of authority         |     | 2    | 18-2-202                 |
|     | 28   | Repealer                       |     | 3    | 18-2-302                 |
|     | 29   | Codification instruction       |     | 4    | Extension of authority   |
|     | 30   | Effective date                 |     | 5    | Effective date           |
| 235 | 1    | 37-7-1101                      | 251 | 1    | 45-2-203                 |
|     | 2    | Codification instruction       | 252 | 1    | 85-7-2135                |
|     | 3    | Effective date                 |     | 2    | Effective date           |
| 236 | 1    | 20-3-211                       | 253 | 1    | 25-15-202                |
|     | 2    | Extension of authority         |     | 2    | 28-1-301                 |
|     | 3    | Effective date                 |     | 3    | 28-1-302                 |
| 237 | 1    | 87-2-104                       |     | 4    | 28-1-303                 |
|     | 2    | Extension of authority         |     | 5    | 28-11-311                |
|     | 3    | Effective date                 |     | 6    | Coordination instruction |
| 238 | 1    | 82-11-141                      | 254 | 1    | 69-3-901                 |
|     | 2    | Extension of authority         |     | 2    | 69-3-902                 |
| 239 | 1    | 39-71-2304                     |     | 3    | 69-3-903                 |
|     | 2    | Extension of authority         |     | 4    | 69-3-904                 |
|     | 3    | Effective date — applicability |     | 5    | 69-3-905                 |
| 240 | 1    | 87-5-107                       |     | 6    | 69-3-906                 |
| 241 | 1    | 87-2-702                       |     | 7    | 69-3-907                 |
|     | 2    | Extension of authority         |     | 8    | 69-3-302                 |
|     | 3    | Effective date                 |     | 9    | Codification instruction |
| 242 | 1    | 39-71-2206                     |     | 10   | Extension of authority   |
|     | 2    | Extension of authority         |     | 11   | Effective date           |
|     |      |                                | 255 | 1    | 23-1-109                 |

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|     | 2    | Extension of authority     |     | 6    | 30-10-206                      |
|     | 3    | Codification instruction   |     | 7    | 30-10-207                      |
| 256 | 1    | 76-3-605                   |     | 8    | 30-10-209                      |
|     | 2    | 76-3-609                   |     | 9    | 30-10-301                      |
|     | 3    | Effective date             |     | 10   | 30-10-304                      |
| 257 | 1    | 80-3-603                   |     | 11   | 30-10-307                      |
|     | 2    | 80-3-705                   |     | 12   | 90-8-304                       |
|     | 3    | Effective date             |     | 13   | Codification instruction       |
| 258 | 1    | 20-7-411                   |     | 14   | Extension of authority         |
|     | 2    | Extension of authority     |     | 15   | Effective date                 |
|     | 3    | Implementation contingency | 273 | 1    | 17-5-1526                      |
| 259 | 1    | 53-4-117                   |     | 2    | 17-5-1527                      |
|     | 2    | Codification instruction   |     | 3    | Extension of authority         |
| 260 | 1    | 41-2-1115                  |     | 4    | Effective date                 |
| 261 | 1    | 2-4-303                    | 274 | 1    | 81-23-302                      |
|     | 2    | 2-4-306                    |     | 2    | Extension of authority         |
|     | 3    | Effective date             |     | 3    | Effective date                 |
| 262 | 1    | 15-70-304                  | 275 | 1    | 7-3-601                        |
|     | 2    | Extension of authority     | 276 | 1    | 7-12-1151                      |
| 263 | 1    | 20-9-220                   |     | 2    | 85-7-2011                      |
|     | 2    | Extension of authority     |     | 3    | Codification instruction       |
|     | 3    | Codification instruction   |     | 4    | Extension of authority         |
| 264 | 1    | 17-6-322                   |     | 5    | Effective date — applicability |
|     | 2    | Effective date             | 277 | 1    | 40-8-109                       |
| 265 | 1    | 17-7-502                   |     | 2    | 40-8-121                       |
|     | 2    | 82-11-132                  |     | 3    | 40-8-122                       |
|     | 3    | 82-11-135                  |     | 4    | 40-8-123                       |
|     | 4    | 82-11-136                  |     | 5    | 40-8-124                       |
|     | 5    | Extension of authority     |     | 6    | Extension of authority         |
|     | 6    | Codification instruction   | 278 | 1    | 33-1-317                       |
|     | 7    | Effective date             |     | 2    | Repealer                       |
| 266 | 1    | 2-8-201                    |     | 3    | 33-18-242                      |
|     | 2    | 2-8-202                    |     | 4    | Codification instruction       |
|     | 3    | 2-8-203                    |     | 5    | Severability                   |
|     | 4    | 2-8-204                    |     | 6    | Applicability                  |
|     | 5    | 2-8-205                    |     | 7    | Effective date                 |
|     | 6    | 2-8-206                    | 279 | 1    | 20-5-305                       |
|     | 7    | 2-8-207                    |     | 2    | 20-5-312                       |
|     | 8    | 2-8-208                    | 280 | 1    | 82-4-402                       |
|     | 9    | 5-4-207                    |     | 2    | 82-4-403                       |
|     | 10   | Codification instruction   |     | 3    | 82-4-423                       |
|     | 11   | Applicability              |     | 4    | 82-4-431                       |
| 267 | 1    | 46-14-312                  |     | 5    | 82-4-433                       |
| 268 | 1    | 76-3-302                   |     | 6    | 82-4-434                       |
|     | 2    | Effective date             |     | 7    | 82-4-441                       |
| 269 | 1    | 30-10-103                  |     | 8    | Extension of authority         |
|     | 2    | 30-10-110                  | 281 | 1    | 33-18-501                      |
|     | 3    | 30-10-201                  |     | 2    | Extension of authority         |
|     | 4    | 30-10-209                  | 282 | 1    | 2-15-1844                      |
|     | 5    | Extension of authority     |     | 2    | 37-8-202                       |
| 270 | 1    | 30-10-103                  |     | 3    | 37-8-441                       |
|     | 2    | 30-10-105                  |     | 4    | 37-8-442                       |
|     | 3    | Extension of authority     |     | 5    | Extension of authority         |
| 271 | 1    | 25-1-201                   | 283 | 1    | 37-3-203                       |
|     | 2    | Effective date             |     | 2    | Extension of authority         |
| 272 | 1    | 30-10-103                  |     | 3    | Effective date                 |
|     | 2    | 30-10-104                  | 284 | 1    | 18-1-103                       |
|     | 3    | 30-10-105                  |     | 2    | 18-1-111                       |
|     | 4    | 30-10-201                  |     | 3    | Extension of authority         |
|     | 5    | 30-10-204                  |     | 4    | Effective date                 |

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| 285 | 1    | 61-9-229                 |     | 3    | Applicability             |
|     | 2    | Extension of authority   | 298 | 1    | 13-2-102                  |
| 286 | 1    | 7-4-4112                 |     | 2    | 13-2-202                  |
|     | 2    | Effective date           |     | 3    | 13-2-207                  |
| 287 | 1    | 41-3-205                 |     | 4    | 13-15-111                 |
|     | 2    | 41-3-208                 |     | 5    | 13-10-209                 |
|     | 3    | Effective date           |     | 6    | 13-13-116                 |
| 288 | 1    | 37-6-101                 |     | 7    | 13-13-117                 |
|     | 2    | 37-6-102                 |     | 8    | 13-13-119                 |
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|     | 8    | 37-6-305                 |     | 14   | 13-15-104                 |
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|     | 10   | Extension of authority   |     | 16   | 13-27-105                 |
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|     | 12   | Applicability            |     | 18   | 13-27-402                 |
| 289 | 1    | 35-18-317                |     | 19   | 13-27-403                 |
|     | 2    | 35-18-405                |     | 20   | Repealer                  |
| 290 | 1    | 39-71-401                |     | 21   | Extension of authority    |
|     | 2    | Extension of authority   |     | 22   | Codification instructions |
| 291 | 1    | 7-6-2521                 |     | 23   | Effective date            |
|     | 2    | 7-6-2522                 | 299 | 1    | 20-6-320                  |
|     | 3    | 7-6-2523                 | 300 | 1    | 46-23-104                 |
|     | 4    | 7-6-2524                 | 301 | 1    | 85-7-1971                 |
|     | 5    | 7-6-2525                 |     | 2    | 85-7-1972                 |
|     | 6    | 7-6-2526                 |     | 3    | 85-7-1973                 |
|     | 7    | Severability             |     | 4    | 85-7-1974                 |
|     | 8    | Effective date           |     | 5    | 85-7-1975                 |
| 292 | 1    | 15-70-101                |     | 6    | Codification instruction  |
|     | 2    | Extension of authority   | 302 | 1    | 25-13-606                 |
|     | 3    | Effective date           |     | 2    | 25-13-607                 |
| 293 | 1    | 16-3-107                 |     | 3    | 25-13-608                 |
|     | 2    | Extension of authority   |     | 4    | 25-13-609                 |
|     | 3    | Codification instruction |     | 5    | 25-13-610                 |
| 294 | 1    | 76-4-107                 |     | 6    | 70-32-216                 |
|     | 2    | Extension of authority   |     | 7    | 25-13-614                 |
|     | 3    | Effective date           |     | 8    | 70-32-104                 |
| 295 | 1    | 71-3-125                 |     | 9    | 70-32-213                 |
|     | 2    | 71-3-402                 |     | 10   | 70-32-214                 |
|     | 3    | 71-3-404                 |     | 11   | Repealer                  |
|     | 4    | 71-3-408                 |     | 12   | Codification instruction  |
|     | 5    | 71-3-703                 |     | 13   | Saving clause             |
|     | 6    | 71-3-704                 |     | 14   | Severability              |
|     | 7    | 71-3-712                 | 303 | 1    | 18-4-301                  |
|     | 8    | 71-3-713                 |     | 2    | 18-4-302                  |
|     | 9    | 71-3-802                 |     | 3    | Extension of authority    |
|     | 10   | 71-3-808                 |     | 4    | Applicability             |
|     | 11   | 71-3-902                 |     | 5    | Effective date            |
|     | 12   | 71-3-908                 |     | 6    | Termination date          |
|     | 13   | Extension of authority   | 304 | 1    | 69-3-701                  |
|     | 14   | Codification instruction |     | 2    | 69-3-702                  |
|     | 15   | Applicability            |     | 3    | Effective date            |
| 296 | 1    | 19-4-302                 | 305 | 1    | 85-1-210                  |
|     | 2    | Extension of authority   |     | 2    | 85-1-211                  |
|     | 3    | Effective date           |     | 3    | Extension of authority    |
|     | 4    | Applicability            |     | 4    | Severability              |
| 297 | 1    | 31-1-202                 |     | 5    | Effective date            |
|     | 2    | 31-1-241                 | 306 | 1    | 37-51-310                 |

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|     | 2    | Extension of authority                                                         |     | 5    | Reversion of granted funds                                  |
| 307 | 1    | 37-13-302                                                                      |     | 6    | Effective date                                              |
|     | 2    | Repealer                                                                       | 316 | 1    | 61-12-701                                                   |
|     | 3    | Applicability                                                                  |     | 2    | 61-10-148                                                   |
| 308 | 1    | 20-3-361                                                                       |     | 3    | Extension of authority                                      |
|     | 2    | 20-3-362                                                                       |     | 4    | Effective date                                              |
|     | 3    | 20-4-201                                                                       | 317 | 1    | 23-5-602                                                    |
|     | 4    | 20-4-401                                                                       |     | 2    | 23-5-625                                                    |
| 309 | 1    | 90-7-201                                                                       |     | 3    | 23-5-626                                                    |
|     | 2    | Effective date                                                                 |     | 4    | 23-5-627                                                    |
| 310 | 1    | 80-6-1101                                                                      |     | 5    | 23-5-635                                                    |
|     | 2    | 80-6-1102                                                                      |     | 6    | 23-5-631                                                    |
|     | 3    | 80-6-1103                                                                      |     | 7    | 23-5-636                                                    |
|     | 4    | 80-6-1104                                                                      |     | 8    | Extension of authority                                      |
|     | 5    | 80-6-1111                                                                      |     | 9    | Authority to proceed with rulemaking                        |
|     | 6    | 80-6-1105                                                                      |     | 10   | Codification instructions                                   |
|     | 7    | 80-6-1106                                                                      |     | 11   | Effective dates                                             |
|     | 8    | 80-6-1107                                                                      | 318 | 1    | 25-1-201                                                    |
|     | 9    | 80-6-1108                                                                      |     | 2    | 19-5-404                                                    |
|     | 10   | 80-6-1109                                                                      |     | 3    | 25-10-405                                                   |
|     | 11   | 80-6-1112                                                                      | 319 | 1    | 60-1-203                                                    |
|     | 12   | Codification instruction                                                       | 320 | 1    | 20-10-123                                                   |
|     | 13   | Effective date                                                                 | 321 | 1    | 37-12-201                                                   |
| 311 | 1    | 82-4-335                                                                       |     | 2    | 37-12-307                                                   |
|     | 2    | 90-6-301                                                                       |     | 3    | 37-12-309                                                   |
|     | 3    | 90-6-307                                                                       |     | 4    | Extension of authority                                      |
|     | 4    | 90-6-308                                                                       |     | 5    | Effective date                                              |
|     | 5    | 90-6-403                                                                       | 322 | 1    | 45-5-102                                                    |
|     | 6    | ARM 8.104.203A                                                                 | 323 | 1    | 22-3-421                                                    |
|     | 7    | Extension of authority                                                         |     | 2    | 22-3-423                                                    |
|     | 8    | Applicability                                                                  |     | 3    | 22-3-431                                                    |
|     | 9    | Effective date                                                                 |     | 4    | Extension of authority                                      |
| 312 | 1    | 75-20-105                                                                      |     | 5    | Effective date                                              |
|     | 2    | 75-20-211                                                                      | 324 | 1    | 33-17-505                                                   |
|     | 3    | 75-20-216                                                                      | 325 | 1    | 60-2-217                                                    |
|     | 4    | 75-20-219                                                                      |     | 2    | Extension of authority                                      |
|     | 5    | 75-20-301                                                                      |     | 3    | Codification instruction                                    |
|     | 6    | 75-20-304                                                                      |     | 1    | 87-2-706                                                    |
|     | 7    | 75-20-1205                                                                     | 326 | 2    | Extension of authority                                      |
|     | 8    | Extension of authority                                                         |     | 3    | Effective date                                              |
| 313 | 1    | 37-4-515                                                                       | 327 | 1    | 33-4-409                                                    |
|     | 2    | Extension of authority                                                         |     | 2    | 33-4-505                                                    |
|     | 3    | Codification instruction                                                       |     | 3    | 33-6-401                                                    |
| 314 | 1    | 39-51-201                                                                      |     | 4    | 33-7-501                                                    |
|     | 2    | 39-51-203                                                                      |     | 5    | Extension of authority                                      |
|     | 3    | 39-51-310                                                                      | 328 | 1    | 2-18-611                                                    |
|     | 4    | 39-51-1109                                                                     |     | 2    | 2-18-618                                                    |
|     | 5    | 39-71-120                                                                      |     | 3    | 19-3-308, 19-6-204, 19-7-203, 19-8-204, 19-9-204, 19-13-205 |
|     | 6    | 39-71-401                                                                      |     | 4    | Extension of authority                                      |
|     | 7    | 39-71-415                                                                      |     | 5    | Codification instruction                                    |
|     | 8    | Extension of authority                                                         |     | 6    | Applicability                                               |
|     | 9    | Codification instruction                                                       |     | 7    | Effective date — termination                                |
|     | 10   | Effective date                                                                 | 329 | 1    | 53-6-101                                                    |
| 315 | 1    | 22-2-305                                                                       |     | 2    | 33-30-1013                                                  |
|     | 2    | 22-2-306                                                                       |     | 3    | Codification instruction                                    |
|     | 3    | 22-2-309                                                                       |     | 4    | Extension of authority                                      |
|     | 4    | Appropriation of cultural and aesthetic grant funds — priority of disbursement |     |      |                                                             |

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| 330 | 1    | 20-4-202                    | 349 | 1    | Disputed mines net proceeds or metal mines gross proceeds taxes — characterization of proceeds of settlement |
| 331 | 1    | 15-32-107                   |     | 2    | Effective date — applicability                                                                               |
|     | 2    | Extension of authority      | 350 | 1    | 45-2-104                                                                                                     |
| 332 | 1    | 85-1-102                    |     | 2    | 61-8-401                                                                                                     |
|     | 2    | 85-1-206                    |     | 3    | 61-8-406                                                                                                     |
|     | 3    | 85-1-207                    | 351 | 1    | 7-33-2401                                                                                                    |
|     | 4    | Extension of authority      |     | 2    | 7-33-2402                                                                                                    |
| 333 | 1    | 53-21-165                   |     | 3    | 7-33-2403                                                                                                    |
|     | 2    | Extension of authority      |     | 4    | 7-33-2404                                                                                                    |
| 334 | 1    | 87-1-102                    | 352 | 1    | 39-71-603                                                                                                    |
| 335 | 1    | 17-6-201                    |     | 2    | Extension of authority                                                                                       |
|     | 2    | Extension of authority      |     | 3    | Applicability                                                                                                |
| 336 | 1    | 75-10-405                   | 353 | 1    | 39-3-406                                                                                                     |
|     | 2    | 75-10-406                   |     | 2    | Extension of authority                                                                                       |
|     | 3    | Extension of authority      | 354 | 1    | 39-31-103                                                                                                    |
| 337 | 1    | 33-4-313                    |     | 2    | Extension of authority                                                                                       |
|     | 2    | 33-6-304                    | 355 | 1    | 87-4-1014                                                                                                    |
| 338 | 1    | 20-9-353                    |     | 2    | Repealer                                                                                                     |
| 339 | 1    | 85-2-404                    |     | 3    | Extension of authority                                                                                       |
|     | 2    | Extension of authority      |     | 4    | Codification instruction                                                                                     |
|     | 3    | Effective date              | 356 | 1-3  | Voided by sec. 27, Ch. 655 and sec. 6, Ch. 656 (coordination sections)                                       |
| 340 | 1    | 75-10-441                   | 357 | 1    | 45-6-204                                                                                                     |
|     | 2    | 75-10-405                   | 358 | 1    | 85-2-217                                                                                                     |
|     | 3    | Codification instruction    |     | 2    | 85-2-702                                                                                                     |
|     | 4    | Effective date              |     | 3    | Effective date                                                                                               |
| 341 | 1    | 20-25-451                   | 359 | 1    | 27-1-720                                                                                                     |
|     | 2    | 17-2-107                    | 360 | 1    | 15-24-202                                                                                                    |
|     | 3    | Codification instruction    | 361 | 1    | 61-3-103                                                                                                     |
|     | 4    | Effective date              |     | 2    | 61-3-203                                                                                                     |
| 342 | 1    | 20-25-423                   |     | 3    | 72-16-215                                                                                                    |
|     | 2    | Submission to electorate    | 362 | 1    | Sec. 5, Ch. 683, L. 1979                                                                                     |
|     | 3    | Effective dates             | 363 | 1    | 2-18-626                                                                                                     |
| 343 | 1    | Art. XII, § 3, Mont. Const. |     | 2    | Repealer                                                                                                     |
|     | 2    | Effective date              | 364 | 1    | 26-1-811                                                                                                     |
|     | 3    | Submission to electorate    | 365 | 1    | 2-18-901, 33-22-1601                                                                                         |
| 344 | 1    | 3-1-1010                    |     | 2    | 33-30-1101                                                                                                   |
|     | 2    | 3-1-1011                    |     | 3    | 2-18-902, 33-22-1602                                                                                         |
|     | 3    | 3-1-1012                    |     | 4    | 33-30-1102                                                                                                   |
|     | 4    | 3-1-1013                    |     | 5    | Codification instructions                                                                                    |
|     | 5    | Effective date              |     | 6    | Applicability                                                                                                |
| 345 | 1    | 33-2-122                    | 366 | 1    | 3-10-202                                                                                                     |
|     | 2    | Extension of authority      |     | 2    | 3-10-203                                                                                                     |
|     | 3    | Codification instruction    | 367 | 1    | 7-4-2904                                                                                                     |
| 346 | 1    | 87-3-121                    |     | 2    | 7-4-2902                                                                                                     |
| 347 | 1    | 37-17-102                   |     | 3    | 7-4-2901                                                                                                     |
|     | 2    | 37-17-104                   |     | 4    | 7-4-2905                                                                                                     |
|     | 3    | 37-17-302                   | 368 | 1    | 13-35-225                                                                                                    |
|     | 4    | 37-17-303                   | 369 | 1    | 7-6-2141                                                                                                     |
|     | 5    | 37-17-311                   | 370 | 1    | 2-15-1857                                                                                                    |
|     | 6    | 50-16-302                   |     | 2    | 2-18-703                                                                                                     |
|     | 7    | 37-17-314                   |     | 3    | 5-11-206                                                                                                     |
|     | 8    | Extension of authority      |     | 4    | 5-11-208                                                                                                     |
|     | 9    | Codification instruction    |     | 5    | 7-2-2730                                                                                                     |
|     | 10   | Applicability date          |     |      |                                                                                                              |
| 348 | 1    | 23-2-521                    |     |      |                                                                                                              |
|     | 2    | Extension of authority      |     |      |                                                                                                              |

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|     | 8    | 7-3-4264   |     | 69   | 20-9-165      |
|     | 9    | 7-3-4265   |     | 70   | 20-9-343      |
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|     | 11   | 7-6-308    |     | 72   | 20-15-403     |
|     | 12   | 7-6-4423   |     | 73   | 20-15-404     |
|     | 13   | 7-6-4439   |     | 74   | 20-25-302     |
|     | 14   | 7-6-4463   |     | 75   | 30-4-302      |
|     | 15   | 7-7-2302   |     | 76   | 30-10-103     |
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|     | 21   | 7-13-2510  |     | 82   | 33-17-211     |
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|     | 29   | 7-34-2415  |     | 90   | 37-16-404     |
|     | 30   | 10-4-101   |     | 91   | 37-30-425     |
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|     | 32   | 13-1-203   |     | 93   | 37-51-301     |
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|     | 36   | 15-6-135   |     | 97   | 39-71-403     |
|     | 37   | 15-8-111   |     | 98   | 40-4-209      |
|     | 38   | 15-8-201   |     | 99   | 41-3-611      |
|     | 39   | 15-10-203  |     | 100  | 41-5-206      |
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|     | 151  | 87-1-209                 | 377 | 1    | 20-2-121                 |
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|     | 154  | 90-8-104                 |     |      | note process             |
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|     | 2    | 20-6-217                 | 379 | 1    | 40-4-212                 |
|     | 3    | 20-6-325                 |     | 2    | 40-4-224                 |
|     | 4    | Effective date           | 380 | 1    | 16-4-303                 |
| 372 | 1    | 20-3-305                 |     | 2    | 16-4-501                 |
|     | 2    | 20-20-106                |     | 3    | Codification instruction |
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| 373 | 1    | 80-5-120                 | 383 | 1    | 77-6-205                 |
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| 392 | 1    | 46-30-229                 |     | 19   | Repealer                                                        |
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|     | 3    | 46-23-215                 | 410 | 1    | 20-3-105                                                        |
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| 393 | 1    | 69-12-302                 | 411 | 1    | 53-5-525                                                        |
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| 394 | 1    | 20-5-311                  | 412 | 1    | 5-2-201                                                         |
|     | 2    | Extension of authority    |     | 2    | 5-2-202                                                         |
| 395 | 1    | 20-2-115                  |     | 3    | 5-2-203                                                         |
| 396 | 1    | 20-8-121                  |     | 4    | 5-11-209                                                        |
|     | 2    | Codification instruction  | 413 | 1    | 45-7-307                                                        |
|     | 3    | Effective date            | 414 | 1    | Authorization to issue<br>permit to appropriate<br>ground water |
| 397 | 1    | 27-1-731                  |     | 2    | Coordination instruction                                        |
|     | 2    | 27-1-701                  |     | 3    | Effective date                                                  |
|     | 3    | Saving clause             | 415 | 1    | 49-2-501                                                        |
| 398 | 1    | 53-4-113                  |     | 2    | 49-3-304                                                        |
| 399 | 1    | 2-18-501                  |     | 3    | Extension of authority                                          |
|     | 2    | Extension of authority    |     | 4    | Effective date —<br>applicability                               |
|     | 3    | Effective date            | 416 | 1    | 3-5-901                                                         |
| 400 | 1    | 26-1-805                  |     | 2    | 7-6-2352                                                        |
|     | 2    | Applicability             |     | 3    | 61-3-509                                                        |
| 401 | 1    | 50-33-102                 |     | 4    | Extension of authority                                          |
|     | 2    | 50-33-104                 |     | 5    | Effective date                                                  |
| 402 | 1    | 53-24-108                 |     | 1    | 53-20-132                                                       |
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| 403 | 1    | 53-4-231                  |     | 3    | 53-20-125                                                       |
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|     | 2    | Effective date            |     | 6    | Effective date                                                  |
| 405 | 1    | 45-5-622                  | 418 | 1    | 90-2-1101                                                       |
| 406 | 1    | 40-8-122                  |     | 2    | 90-2-1102                                                       |
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|     | 3    | Extension of authority    |     | 4    | 90-2-1104                                                       |
| 407 | 1    | 44-2-511                  |     | 5    | 90-2-1111                                                       |
|     | 2    | Codification instruction  |     | 6    | 90-2-1112                                                       |
|     | 3    | Effective date            |     | 7    | 90-2-1113                                                       |
| 408 | 1    | 15-38-202                 |     | 8    | 90-2-1114                                                       |
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|     | 11   | 15-38-102                               |     | 10   | 35-9-207                                                     |
|     | 12   | 15-38-202                               |     | 11   | 35-9-208                                                     |
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| 420 | 1    | 61-3-535                                |     | 26   | Codification instruction                                     |
|     | 2    | Extension of authority                  |     | 27   | Saving clause                                                |
| 421 | 1    | 15-16-202                               |     | 28   | Severability                                                 |
|     | 2    | 23-2-515                                | 433 | 29   | Applicability                                                |
|     | 3    | 23-2-616                                |     | 1    | 23-2-508                                                     |
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|     | 6    | Applicability                           |     | 4    | 23-2-502                                                     |
| 422 | 1    | 87-5-205                                |     | 5    | Extension of authority                                       |
|     | 2    | Extension of authority                  |     | 6    | Codification instruction                                     |
| 423 | 1    | 3-11-205                                |     | 7    | Coordination instruction                                     |
|     | 2    | Effective date                          |     | 8    | Effective date                                               |
| 424 | 1    | 45-8-118                                | 434 | 1    | 53-21-128                                                    |
| 425 | 1    | 45-5-511                                |     | 2    | Extension of authority                                       |
| 426 | 1    | 53-20-203                               | 435 | 1    | 75-10-625                                                    |
| 427 | 1    | 15-6-134                                |     | 2    | 75-10-626                                                    |
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| 428 | 1    | 20-9-213                                |     | 6    | Coordination                                                 |
| 429 | 1    | 53-21-145                               |     | 7    | Effective date                                               |
|     | 2    | Extension of authority                  | 436 | 1    | 20-3-103                                                     |
| 430 | 1    | 50-43-101                               | 437 | 1    | 27-1-732                                                     |
|     | 2    | 50-43-102                               |     | 2    | 27-1-701                                                     |
|     | 3    | 50-43-103                               |     | 3    | Effective date —<br>applicability                            |
|     | 4    | 50-43-104                               | 438 | 1    | 85-2-234                                                     |
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|     | 6    | 50-43-106                               |     | 3    | Effective date                                               |
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|     | 8    | 50-43-108                               |     | 2    | 61-13-102                                                    |
|     | 9    | Effective date                          |     | 3    | 61-13-103                                                    |
| 431 | 1    | 1-1-216                                 |     | 4    | 61-13-104                                                    |
|     | 2    | 1-1-214                                 |     | 5    | 61-13-105                                                    |
|     | 3    | Effective date                          |     | 6    | 61-13-106                                                    |
| 432 | 1    | 35-9-101                                |     | 7    | Codification instruction                                     |
|     | 2    | 35-9-102                                |     | 8    | Severability                                                 |
|     | 3    | 35-9-103                                |     | 9    | Effective date                                               |
|     | 4    | 35-9-201                                | 440 | 1    | 23-2-651                                                     |
|     | 5    | 35-9-202                                |     | 2    | 23-2-652                                                     |
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| 441 | 1    | 27-2-102                 |     | 9    | 37-53-212                          |
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| 442 | 1    | 61-5-214                 |     | 15   | 37-53-304                          |
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|     | 3    | 61-5-216                 |     | 17   | 37-53-306                          |
|     | 4    | Extension of authority   |     | 18   | 37-53-307                          |
|     | 5    | Codification instruction |     | 19   | 37-53-308                          |
| 443 | 1    | 61-1-134                 |     | 20   | 37-53-401                          |
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|     | 3    | 61-1-136                 |     | 22   | 37-53-403                          |
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|     | 5    | 61-5-102                 |     | 24   | 37-53-502                          |
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|     | 7    | 61-5-105                 |     | 26   | 37-53-504                          |
|     | 8    | 61-5-106                 |     | 27   | 37-53-505                          |
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|     | 14   | 61-5-113                 | 445 | 1    | 87-1-611                           |
|     | 15   | 61-5-114                 |     | 2    | 87-1-612                           |
|     | 16   | 61-5-115                 |     | 3    | 87-1-613                           |
|     | 17   | 61-5-116                 |     | 4    | 87-1-614                           |
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|     | 22   | 61-5-205                 |     | 9    | Codification instruction           |
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|     | 24   | 61-5-207                 | 446 | 1    | 39-3-402                           |
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|     | 26   | 61-5-209                 |     | 3    | Extension of authority             |
|     | 27   | 61-5-210                 |     | 4    | Effective date                     |
|     | 28   | 61-5-211                 | 447 | 1    | 53-4-118                           |
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|     | 30   | 61-5-301                 |     | 3    | Codification instruction           |
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|     | 32   | 61-5-305                 |     | 2    | Extension of authority             |
|     | 33   | 61-5-306                 |     | 3    | Codification instruction           |
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|     | 35   | 61-7-107                 | 449 | 1    | 27-1-323                           |
|     | 36   | 61-11-101                |     | 2    | 27-1-501                           |
|     | 37   | 20-10-103                |     | 3    | 27-1-512                           |
|     | 38   | 72-17-204                |     | 4    | 27-1-513                           |
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|     | 2    | Extension of authority                              | 25  | 33-31-112                      |                             |
|     | 3    | Effective date — applicability                      | 26  | 33-31-113                      |                             |
| 452 | 1    | 90-1-104                                            | 27  | 33-31-104                      |                             |
|     | 2    | Effective date                                      | 28  | 33-31-204                      |                             |
| 453 | 1    | 67-3-203                                            | 29  | 33-31-304                      |                             |
|     | 2    | 67-3-204                                            | 30  | 17-7-602                       |                             |
|     | 3    | 67-3-205                                            | 31  | 33-1-102                       |                             |
|     | 4    | 67-3-206                                            | 32  | 33-1-704                       |                             |
|     | 5    | 15-6-138                                            | 33  | Codification instruction       |                             |
|     | 6    | 15-8-111                                            | 34  | Severability                   |                             |
|     | 7    | 15-24-304                                           | 35  | Effective date — applicability |                             |
|     | 8    | 17-7-502                                            | 458 | 1                              | 87-2-510                    |
|     | 9    | 67-3-201                                            | 2   | 87-2-511                       |                             |
|     | 10   | 67-3-202                                            | 3   | 87-2-504                       |                             |
|     | 11   | Codification instruction                            | 4   | Extension of authority         |                             |
|     | 12   | Repealer                                            | 5   | Codification instruction       |                             |
|     | 13   | Applicability                                       | 6   | Effective date                 |                             |
| 454 | 14   | Extension of authority                              | 459 | 1                              | Art. VII, § 9, Mont. Const. |
|     | 1    | State veterans' cemetery account administration     | 2   | Effective date                 |                             |
|     | 2    | Voluntary checkoff for the state veterans' cemetery | 3   | Submission to electorate       |                             |
|     | 3    | 17-7-502                                            | 460 | 1                              | 76-12-102                   |
|     | 4    | Codification instruction                            | 2   | 76-12-104                      |                             |
|     | 5    | Applicability                                       | 3   | 76-12-121                      |                             |
|     | 6    | Termination date                                    | 4   | 76-12-107                      |                             |
| 455 | 1    | 15-6-201                                            | 5   | 76-12-112                      |                             |
|     | 2    | Extension of authority                              | 6   | 2-15-3203                      |                             |
|     | 3    | Effective date                                      | 7   | 76-12-122                      |                             |
|     | 4    | Applicability                                       | 8   | 76-12-115                      |                             |
| 456 | 1    | 53-3-207                                            | 9   | 76-12-123                      |                             |
|     | 2    | 53-3-210                                            | 10  | 17-7-502                       |                             |
|     | 3    | Extension of authority                              | 11  | Repealer                       |                             |
|     | 4    | Codification instruction                            | 12  | Extension of authority         |                             |
|     | 5    | Effective date                                      | 13  | Codification instructions      |                             |
| 457 | 1    | 33-31-101                                           | 14  | Effective date                 |                             |
|     | 2    | 33-31-102                                           | 15  | Termination                    |                             |
|     | 3    | 33-31-201                                           | 461 | 1                              | 90-3-401                    |
|     | 4    | 33-31-202                                           | 2   | 90-3-402                       |                             |
|     | 5    | 33-31-221                                           | 3   | 90-3-403                       |                             |
|     | 6    | 33-31-222                                           | 4   | 90-3-404                       |                             |
|     | 7    | 33-31-223                                           | 5   | 90-3-405                       |                             |
|     | 8    | 33-31-301                                           | 6   | 90-3-406                       |                             |
|     | 9    | 33-31-211                                           | 7   | 90-3-407                       |                             |
|     | 10   | 33-31-302                                           | 8   | 90-3-408                       |                             |
|     | 11   | 33-31-303                                           | 9   | 90-3-409                       |                             |
|     | 12   | 33-31-215                                           | 10  | 90-3-410                       |                             |
|     | 13   | 33-31-216                                           | 11  | 90-3-411                       |                             |
|     | 14   | 33-31-312                                           | 12  | 90-3-412                       |                             |
|     | 15   | 33-31-311                                           | 13  | 90-3-413                       |                             |
|     | 16   | 33-31-203                                           | 14  | 90-3-414                       |                             |
|     | 17   | 33-31-401                                           | 15  | 90-3-415                       |                             |
|     | 18   | 33-31-402                                           | 16  | 90-3-416                       |                             |
|     | 19   | 33-31-403                                           | 17  | 90-3-417                       |                             |
|     | 20   | 33-31-103                                           | 18  | 90-3-418                       |                             |
|     | 21   | 33-31-404                                           | 19  | 90-3-419                       |                             |
|     |      |                                                     | 20  | 90-3-420                       |                             |
|     |      |                                                     | 21  | 17-7-502                       |                             |

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|     | 22   | 90-3-203                    |     | 47   | 39-71-1026                      |
|     | 23   | 90-3-302                    |     | 48   | 39-71-1031                      |
|     | 24   | 90-3-304                    |     | 49   | 39-71-1032                      |
|     | 25   | Extension of authority      |     | 50   | 39-71-1033                      |
|     | 26   | Codification instruction    |     | 51   | 39-71-2106                      |
|     | 27   | Severability                |     | 52   | 39-71-2406                      |
|     | 28   | Three-fourths vote required |     | 53   | 39-71-2407                      |
|     | 29   | Effective date              |     | 54   | 39-71-2408                      |
| 462 | 1    | 41-5-601                    |     | 55   | 39-71-2409                      |
| 463 | 1    | 41-3-102                    |     | 56   | 39-71-2410                      |
|     | 2    | 41-3-401                    |     | 57   | 39-71-2411                      |
|     | 3    | 41-3-409                    |     | 58   | 39-71-2901                      |
|     | 4    | Codification instruction    |     | 59   | 39-71-2903                      |
|     | 5    | Effective date              |     | 60   | 39-71-2905                      |
| 464 | 1    | 39-71-105                   |     | 61   | 39-71-2907                      |
|     | 2    | 39-71-116                   |     | 62   | 39-71-2909                      |
|     | 3    | 39-71-119                   |     | 63   | 39-71-2914                      |
|     | 4    | 39-71-123                   |     | 64   | 39-72-102                       |
|     | 5    | 39-71-203                   |     | 65   | 45-6-301                        |
|     | 6    | 39-71-204                   |     | 66   | 19-12-401                       |
|     | 7    | 39-71-316                   |     | 67   | 39-71-118                       |
|     | 8    | 39-71-2401                  |     | 68   | Repealer                        |
|     | 9    | 39-71-421                   |     | 69   | Extension of authority          |
|     | 10   | 39-71-401                   |     | 70   | Codification instructions       |
|     | 11   | 39-71-407                   |     | 71   | Severability                    |
|     | 12   | 39-71-414                   |     | 72   | Applicability                   |
|     | 13   | 39-71-502                   |     | 73   | Effective dates                 |
|     | 14   | 39-71-503                   | 465 | 1    | 20-4-131                        |
|     | 15   | 39-71-605                   |     | 2    | 2-15-1522(1) - (4)              |
|     | 16   | 39-71-611                   |     | 3    | 2-15-1522(5) - (7),<br>20-4-132 |
|     | 17   | 39-71-612                   |     | 4    | 20-4-133                        |
|     | 18   | 39-71-613                   |     | 5    | 20-4-109                        |
|     | 19   | 39-71-614                   |     | 6    | 17-7-502                        |
|     | 20   | 39-71-317                   |     | 7    | Codification instruction        |
|     | 21   | 39-71-701                   |     | 8    | Effective date                  |
|     | 22   | 39-71-702                   | 466 | 1    | 27-1-719                        |
|     | 23   | 39-71-703                   | 467 | 1    | 77-1-701                        |
|     | 24   | 39-71-711                   |     | 2    | 77-1-702                        |
|     | 25   | 39-71-704                   |     | 3    | 77-1-703                        |
|     | 26   | 39-71-708                   |     | 4    | 77-1-704                        |
|     | 27   | 39-71-710                   |     | 5    | 77-1-705                        |
|     | 28   | 39-71-744                   |     | 6    | 77-1-706                        |
|     | 29   | 39-71-721                   |     | 7    | 77-1-707                        |
|     | 30   | 39-71-736                   |     | 8    | 2-6-111                         |
|     | 31   | 39-71-737                   |     | 9    | 2-15-401                        |
|     | 32   | 39-71-741                   |     | 10   | 77-1-101                        |
|     | 33   | 39-71-803                   |     | 11   | Repealer                        |
|     | 34   | 39-71-1011                  |     | 12   | Severability                    |
|     | 35   | 39-71-1003                  |     | 13   | Codification instruction        |
|     | 36   | 39-71-1012                  | 468 | 1    | 61-10-128                       |
|     | 37   | 39-71-1014                  |     | 2    | Extension of authority          |
|     | 38   | 39-71-1015                  |     | 3    | Effective date                  |
|     | 39   | 39-71-1016                  |     | 4    | Termination                     |
|     | 40   | 39-71-1017                  | 469 | 1    | 33-2-708                        |
|     | 41   | 39-71-1018                  |     | 2    | Effective date                  |
|     | 42   | 39-71-1019                  | 470 | 1    | 20-3-108                        |
|     | 43   | 39-71-1013                  |     | 2    | 20-7-201                        |
|     | 44   | 39-71-1023                  | 471 | 1    | 15-2-301(1), (2), (4), (5)      |
|     | 45   | 39-71-1024                  |     | 2    | 15-2-301(3)                     |
|     | 46   | 39-71-1025                  |     | 3    | 15-15-103                       |

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|     | 4    | Extension of authority             |     | 1    | 80-13-102                                                                 |
|     | 5    | Effective date — termination       | 481 | 2    | 80-13-214                                                                 |
| 472 | 1    | 25-13-901                          |     | 3    | Codification instruction                                                  |
|     | 2    | 25-13-902                          |     | 4    | Sec. 15, Ch. 9, Sp. L. March 1986                                         |
|     | 3    | 25-13-903                          |     | 5    | Effective date — termination                                              |
|     | 4    | 25-13-904                          | 482 | 1    | 39-2-304                                                                  |
|     | 5    | Applicability                      | 483 | 1    | 39-5-102                                                                  |
|     | 6    | Effective date — termination date  |     | 2    | 39-5-308                                                                  |
| 473 | 1    | 75-1-201                           |     | 3    | 39-5-401                                                                  |
|     | 2    | Effective date                     |     | 4    | Functions of commissioner of labor and industry transferred — name change |
| 474 | 1    | 61-8-312                           |     |      | 39-5-103                                                                  |
|     | 2    | 61-10-124                          |     |      | 39-5-202                                                                  |
|     | 3    | 61-10-107                          |     |      | 39-5-203                                                                  |
|     | 4    | 61-10-146(2)                       |     |      | 39-5-204                                                                  |
|     | 5    | 61-10-129                          |     |      | 39-5-206                                                                  |
|     | 6    | Codification instruction           |     |      | 39-5-209                                                                  |
|     | 7    | Effective date                     |     |      | 39-5-301                                                                  |
|     | 8    | Termination date                   |     |      | 39-5-303                                                                  |
| 475 | 1    | 41-5-303(2) - (6)                  |     |      | 39-5-311                                                                  |
|     | 2    | 41-5-308                           |     |      | 39-5-403                                                                  |
|     | 3    | 41-5-309                           |     | 5    | Functions of department of labor and industry transferred — name change   |
|     | 4    | 41-5-808                           |     |      | 39-5-205                                                                  |
|     | 5    | 41-5-809                           |     |      | 39-5-402                                                                  |
|     | 6    | 41-5-103                           |     | 6    | Effective date                                                            |
|     | 7    | 41-5-303(1)                        |     | 1    | 61-8-723                                                                  |
|     | 8    | 41-5-305                           | 484 | 2    | 61-5-217                                                                  |
|     | 9    | 41-5-306                           |     | 3    | 61-8-401                                                                  |
|     | 10   | 41-5-502                           |     | 4    | 61-8-406                                                                  |
|     | 11   | 41-5-802                           |     | 5    | Repealer                                                                  |
|     | 12   | 7-32-2221                          |     | 6    | Codification instructions                                                 |
|     | 13   | 53-30-229                          |     | 7    | Effective date                                                            |
|     | 14   | Codification instructions          | 485 | 1    | 39-71-743                                                                 |
|     | 15   | Coordination instruction           |     | 2    | Extension of authority                                                    |
|     | 16   | Effective dates — termination date | 486 | 1    | 87-1-603                                                                  |
| 476 | 1    | 44-12-102                          |     | 2    | Extension of authority                                                    |
|     | 2    | 44-12-205                          |     | 3    | Applicability                                                             |
|     | 3    | 44-12-206                          |     | 4    | Effective date                                                            |
|     | 4    | Extension of authority             | 487 | 1    | 39-51-1304                                                                |
| 477 | 1    | 50-5-101                           |     | 2    | Extension of authority                                                    |
|     | 2    | 50-5-301                           |     | 3    | Effective date — applicability                                            |
|     | 3    | 50-5-302                           | 488 | 1    | 27-1-310                                                                  |
|     | 4    | 50-5-304                           |     | 2    | Applicability                                                             |
|     | 5    | 50-5-305                           | 489 | 1    | 15-30-208                                                                 |
|     | 6    | 50-5-306                           |     | 2    | Extension of authority                                                    |
|     | 7    | 50-5-309                           |     | 3    | Effective date — applicability                                            |
|     | 8    | 50-5-310                           | 490 | 1    | 19-4-203                                                                  |
|     | 9    | Sec. 13, Ch. 329, L. 1983          |     | 2    | Extension of authority                                                    |
|     | 10   | Codification instruction           |     | 3    | Effective date                                                            |
|     | 11   | Extension of authority             | 491 | 1    | 32-1-375                                                                  |
|     | 12   | Saving clause                      |     | 2    | Extension of authority                                                    |
|     | 13   | Severability                       |     |      |                                                                           |
|     | 14   | Effective date                     |     |      |                                                                           |
| 478 | 1    | 45-9-101                           |     |      |                                                                           |
| 479 | 1    | 46-8-111                           |     |      |                                                                           |
| 480 | 1    | 33-17-212                          |     |      |                                                                           |
|     | 2    | 33-17-201                          |     |      |                                                                           |
|     | 3    | Extension of authority             |     |      |                                                                           |
|     | 4    | Effective date                     |     |      |                                                                           |

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|     | 3    | Codification instruction |     | 9    | 82-11-151                                 |
| 492 | 1    | 87-3-141                 |     | 10   | 82-11-147                                 |
|     | 2    | 87-3-142                 |     | 11   | 82-11-149                                 |
|     | 3    | 87-3-143                 |     | 12   | 82-11-148                                 |
|     | 4    | 87-3-144                 |     | 13   | 82-11-137                                 |
| 493 | 1    | 45-5-631                 |     | 14   | Appropriation                             |
|     | 2    | 45-5-632                 |     | 15   | Extension of authority                    |
|     | 3    | 45-5-633                 |     | 16   | Codification instruction                  |
|     | 4    | Severability             |     | 17   | Effective date                            |
|     | 5    | Codification instruction | 504 | 1    | ARM 16.8.820                              |
| 494 | 1    | 19-21-101                |     | 2    | 75-2-206                                  |
|     | 2    | 19-21-102                |     | 3    | Codification instruction                  |
|     | 3    | 19-21-201                |     | 4    | Extension of authority                    |
|     | 4    | 19-21-202                |     | 5    | Effective date                            |
|     | 5    | 19-21-103                | 505 | 1    | 27-1-702                                  |
|     | 6    | 19-21-203                |     | 2    | 27-1-703                                  |
|     | 7    | 19-21-211                |     | 3    | Severability                              |
|     | 8    | 19-21-212                |     | 4    | Effective date — applicability            |
|     | 9    | 19-21-111                | 506 | 1    | 15-2-304                                  |
|     | 10   | 15-30-111                |     | 2    | Effective date                            |
|     | 11   | 19-4-208                 |     | 3    | Applicability to pending actions — notice |
|     | 12   | 19-4-302                 | 507 | 1    | 2-9-301                                   |
|     | 13   | Extension of authority   |     | 2    | Extension of authority                    |
|     | 14   | Coordination instruction |     | 3    | Applicability                             |
|     | 15   | Effective date           | 508 | 1    | 27-1-733                                  |
| 495 | 1    | 69-14-202                |     | 2    | 27-1-701                                  |
|     | 2    | Extension of authority   |     | 3    | Codification instruction                  |
| 496 | 1    | 53-9-103                 |     | 4    | Severability                              |
|     | 2    | 53-9-106                 |     | 5    | Effective and applicability dates         |
|     | 3    | 53-9-107                 | 509 | 1    | 40-4-217                                  |
|     | 4    | 53-9-128                 |     | 2    | 40-4-219                                  |
|     | 5    | 53-9-131                 | 510 | 1    | 20-4-204                                  |
|     | 6    | 53-9-132                 |     | 2    | 20-4-206                                  |
|     | 7    | Extension of authority   | 511 | 1    | 49-2-509                                  |
|     | 8    | Effective date           |     | 2    | 49-3-312                                  |
| 497 | 1    | 23-2-523                 |     | 3    | Extension of authority                    |
|     | 2    | 23-2-535                 |     | 4    | Effective date — applicability            |
|     | 3    | Codification instruction | 512 | 1    | 18-1-101                                  |
|     | 4    | Coordination instruction |     | 2    | 18-1-102                                  |
|     | 5    | Effective date           |     | 3    | 18-1-103                                  |
| 498 | 1    | 20-9-311                 |     | 4    | 18-1-112                                  |
|     | 2    | Extension of authority   |     | 5    | 20-15-403                                 |
|     | 3    | Applicability            |     | 6    | 18-1-113                                  |
| 499 | 1    | 27-2-205                 |     | 7    | 18-1-114                                  |
|     | 2    | Applicability            |     | 8    | Codification instruction                  |
| 500 | 1    | 15-1-205                 | 513 | 1    | 33-1-318                                  |
|     | 2    | Extension of authority   |     | 2    | Extension of authority                    |
| 501 | 1    | 15-30-121                |     | 3    | Codification instruction                  |
|     | 2    | Extension of authority   | 514 | 1    | 53-19-106                                 |
|     | 3    | Applicability            |     | 2    | 53-19-110                                 |
|     | 4    | Coordination instruction |     | 3    | 53-19-101                                 |
| 502 | 1    | 33-1-102                 |     | 4    | 53-19-102                                 |
|     | 2    | Extension of authority   |     | 5    | 53-19-103                                 |
| 503 | 1    | 82-11-101                |     | 6    | 53-19-104                                 |
|     | 2    | 82-11-111                |     | 7    | 53-19-111                                 |
|     | 3    | 82-11-117                |     | 8    | 53-19-112                                 |
|     | 4    | 82-11-123                |     | 9    | 76-2-411                                  |
|     | 5    | 82-11-141                |     |      |                                           |
|     | 6    | 82-11-142                |     |      |                                           |
|     | 7    | 82-11-127                |     |      |                                           |
|     | 8    | 82-11-150                |     |      |                                           |



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|     | 10   | Codification instruction                                  |     | 2    | 37-4-202                                              |
|     | 11   | Extension of authority                                    |     | 3    | 37-29-102                                             |
|     | 12   | Effective date                                            |     | 4    | 37-29-404                                             |
| 515 | 1    | 41-5-103                                                  |     | 5    | Repealer                                              |
|     | 2    | 41-5-202                                                  |     | 6    | Transfer of assets and payment of claims              |
|     | 3    | 41-5-206                                                  |     | 7    | Extension of authority                                |
|     | 4    | 41-5-301                                                  |     | 8    | Effective date                                        |
|     | 5    | 41-5-303                                                  | 525 | 1    | 39-71-203                                             |
|     | 6    | 41-5-304                                                  |     | 2    | 39-71-604                                             |
|     | 7    | 41-5-305                                                  |     | 3    | Extension of authority                                |
|     | 8    | 41-5-402                                                  |     | 4    | Effective date                                        |
|     | 9    | 41-5-502                                                  | 526 | 1    | 39-51-204                                             |
|     | 10   | 41-5-522                                                  |     | 2    | 39-71-401                                             |
|     | 11   | 41-5-523                                                  |     | 3    | Extension of authority                                |
|     | 12   | 41-5-601                                                  | 527 | 1    | Repealer                                              |
|     | 13   | 41-5-603                                                  |     |      | ARM 24.9.1107                                         |
|     | 14   | 41-5-604                                                  |     | 2    | Effective date                                        |
|     | 15   | 41-5-110                                                  | 528 | 1    | 2-15-3403 (renum. 2-15-1883)                          |
|     | 16   | Repealer                                                  |     | 2    | 87-4-101 (renum. 37-47-101)                           |
|     | 17   | Codification instruction                                  |     | 3    | 87-4-102 (renum. 37-47-102)                           |
| 516 | 1    | 7-22-2111                                                 |     | 4    | 87-4-104 (renum. 37-47-201)                           |
|     | 2    | 7-22-2112                                                 |     | 5    | 87-4-127 (renum. 37-47-306)                           |
|     | 3    | 27-1-701                                                  |     | 6    | 87-4-128 (renum. 37-47-307)                           |
|     | 4    | Codification instruction                                  |     | 7    | 87-4-142 (renum. 37-47-342)                           |
|     | 5    | Two-thirds vote                                           |     | 8    | 37-47-344                                             |
|     | 6    | Effective date — applicability                            |     | 9    | 37-47-345                                             |
|     | 7    | Termination                                               | 10  |      | Transfer of agency — name change — duties transferred |
| 517 | 1    | 87-1-304                                                  |     |      | 87-4-122 (renum. 37-47-302)                           |
|     | 2    | 87-3-301                                                  |     |      | 87-4-124 (renum. 37-47-304)                           |
|     | 3    | Extension of authority                                    |     |      | 87-4-125 (renum. 37-47-305)                           |
| 518 | 1    | 45-5-304                                                  |     |      | 87-4-129 (renum. 37-47-308)                           |
| 519 | 1    | 15-6-135                                                  |     |      | 87-4-131 (renum. 37-47-310)                           |
|     | 2    | Extension of authority                                    |     |      | 87-4-143 (renum. 37-47-343)                           |
|     | 3    | Effective date — applicability                            |     | 11   | Codification instruction                              |
| 520 | 1    | 15-23-403                                                 |     |      | 87-4-103 (renum. 37-47-404)                           |
|     | 2    | Extension of authority                                    |     |      | 87-4-121 (renum. 37-47-301)                           |
|     | 3    | Applicability                                             |     |      | 87-4-122 (renum. 37-47-302)                           |
|     | 4    | Effective date                                            |     |      | 87-4-123 (renum. 37-47-303)                           |
| 521 | 1    | 61-8-304                                                  |     |      | 87-4-124 (renum. 37-47-304)                           |
|     | 2    | Effective date                                            |     |      |                                                       |
| 522 | 1    | Definition                                                |     |      |                                                       |
|     | 2    | Committee on Indian affairs — appointment and composition |     |      |                                                       |
|     | 3    | Term of office                                            |     |      |                                                       |
|     | 4    | Vacancies                                                 |     |      |                                                       |
|     | 5    | Officers                                                  |     |      |                                                       |
|     | 6    | Meetings and compensation                                 |     |      |                                                       |
|     | 7    | Staff assistance                                          |     |      |                                                       |
|     | 8    | Duties of the committee                                   |     |      |                                                       |
|     | 9    | Termination date                                          |     |      |                                                       |
|     | 10   | Appropriation                                             |     |      |                                                       |
|     | 11   | Effective date                                            |     |      |                                                       |
| 523 | 1    | 87-1-111                                                  |     |      |                                                       |
|     | 2    | 87-1-112                                                  |     |      |                                                       |
|     | 3    | 87-1-113                                                  |     |      |                                                       |
|     | 4    | 87-1-114                                                  |     |      |                                                       |
| 524 | 1    | 2-15-1842                                                 |     |      |                                                       |

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|     |      | 87-4-129 (renum.<br>37-47-308) |     | 8    | 85-2-402                                                 |
|     |      | 87-4-130 (renum.<br>37-47-309) |     | 9    | 85-2-403                                                 |
|     |      | 87-4-131 (renum.<br>37-47-310) | 536 | 10   | Extension of authority                                   |
|     |      | 87-4-132 (renum.<br>37-47-311) |     | 11   | Effective date                                           |
|     |      | 87-4-133 (renum.<br>37-47-312) |     | 1    | 50-78-103                                                |
|     |      | 87-4-141 (renum.<br>37-47-341) |     | 2    | 50-78-104                                                |
|     |      | 87-4-143 (renum.<br>37-47-343) |     | 3    | 50-78-301                                                |
|     |      | 87-4-161 (renum.<br>37-47-401) |     | 4    | Effective date                                           |
|     |      | 87-4-162 (renum.<br>37-47-402) | 537 | 1    | 33-2-301(1), (2)                                         |
|     |      | 87-4-163 (renum.<br>37-47-403) |     | 2    | 33-2-301(3)                                              |
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|     | 13   | Transition — effective<br>date |     | 4    | 33-2-303                                                 |
|     | 14   | Termination date               |     | 5    | 33-2-304                                                 |
| 529 | 1    | 37-25-101                      |     | 6    | 33-2-305                                                 |
|     | 2    | 37-25-102                      |     | 7    | 33-2-306                                                 |
|     | 3    | 37-25-301                      |     | 8    | 33-2-307(1) - (3), (5)                                   |
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|     | 5    | 37-25-303                      |     | 10   | 33-2-321                                                 |
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|     | 7    | 37-25-305                      |     | 12   | 33-2-309                                                 |
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|     | 9    | 37-25-307                      |     | 14   | 33-2-311                                                 |
|     | 10   | 37-25-201                      |     | 15   | 33-2-312                                                 |
|     | 11   | 37-25-308                      |     | 16   | 33-2-313                                                 |
|     | 12   | 2-15-1841                      |     | 17   | 33-2-314                                                 |
| 530 | 1    | 25-34-102                      |     | 18   | 33-2-315                                                 |
|     | 2    | 25-34-201                      |     | 19   | 33-2-326                                                 |
|     | 3    | 25-34-106                      |     | 20   | 33-2-316                                                 |
|     | 4    | Codification instruction       |     | 21   | 33-2-317                                                 |
| 531 | 1    | 70-16-301                      |     | 22   | 33-1-402                                                 |
| 532 | 1    | 87-5-206                       |     | 23   | 33-1-614                                                 |
|     | 2    | 87-5-210                       |     | 24   | 33-1-711                                                 |
|     | 3    | Report                         |     | 25   | 33-2-119                                                 |
|     | 4    | Extension of authority         |     | 26   | 33-2-706                                                 |
| 533 | 1    | 53-9-104                       |     | 27   | 33-2-708                                                 |
|     | 2    | Extension of authority         |     | 28   | 33-17-1001                                               |
| 534 | 1    | 33-2-121                       |     | 29   | 33-18-212                                                |
|     | 2    | 33-2-534                       |     | 30   | Extension of authority                                   |
|     | 3    | 33-2-701                       |     | 31   | Codification instruction                                 |
|     | 4    | 33-2-806                       |     | 32   | Saving clause                                            |
|     | 5    | 33-2-1114                      |     | 33   | Severability                                             |
|     | 6    | Extension of authority         |     | 34   | Effective date                                           |
| 535 | 1    | 85-2-236                       | 538 | 1    | 37-43-101                                                |
|     | 2    | 85-2-306                       |     | 2    | 37-43-102                                                |
|     | 3    | 85-2-307                       |     | 3    | 37-43-201                                                |
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|     | 6    | 85-2-318                       |     | 6    | 37-43-301                                                |
|     |      |                                |     | 7    | 37-43-302                                                |
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|     |      |                                |     | 12   | 37-43-308                                                |
|     |      |                                |     | 13   | 37-43-312                                                |
|     |      |                                |     | 14   | 37-43-401                                                |
|     |      |                                |     | 15   | 37-43-402                                                |
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|     | 20   | Codification instruction |     | 20   | 25-13-303                |
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| 539 | 1    | 20-3-336                 |     | 22   | 25-13-305                |
|     | 2    | 20-3-337                 |     | 23   | 25-13-306                |
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| 540 | 1    | 3-2-202                  | 549 | 1    | 53-21-506                |
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| 541 | 1    | 60-2-221                 |     |      | termination              |
|     | 2    | Extension of authority   | 550 | 1    | 23-5-1101                |
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| 542 | 1    | 67-1-204                 |     | 3    | 23-5-1103                |
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|     | 4    | Extension of authority   |     | 6    | 23-5-1106                |
|     | 5    | Codification instruction |     | 7    | Codification instruction |
|     | 6    | Effective date           |     | 8    | Severability             |
| 543 | 1    | 3-11-101                 |     | 9    | Effective date           |
|     | 2    | 3-11-102                 | 551 | 1    | 75-7-103                 |
|     | 3    | 3-11-201                 |     | 2    | 75-7-117                 |
|     | 4    | 3-11-202                 |     | 3    | Extension of authority   |
|     | 5    | 3-11-203                 |     | 4    | Effective date           |
|     | 6    | 3-11-302                 | 552 | 1    | 44-4-901                 |
|     | 7    | 7-4-4102                 |     | 2    | 44-4-902                 |
|     | 8    | 7-4-4103                 |     | 3    | 44-4-903                 |
|     | 9    | 25-32-101                |     | 4    | 44-4-904                 |
|     | 10   | 25-32-102                |     | 5    | Effective date           |
|     | 11   | 25-32-103                | 553 | 1    | 46-18-235                |
|     | 12   | 25-32-104                |     | 2    | 40-2-405                 |
|     | 13   | Coordination instruction |     | 3    | Coordination instruction |
|     | 14   | Effective date           |     | 4    | Effective date           |
| 544 | 1    | 41-5-702                 | 554 | 1    | 33-2-712                 |
|     | 2    | 46-23-1003               |     | 2    | 33-2-713                 |
|     | 3    | Extension of authority   |     | 3    | Appropriation            |
| 545 | 1    | 15-6-201                 |     | 4    | Codification instruction |
|     | 2    | Extension of authority   |     | 5    | Extension of authority   |
|     | 3    | Applicability            |     | 6    | Effective date           |
| 546 | 1    | 7-13-2351                |     | 7    | Termination              |
| 547 | 1    | 70-24-422                | 555 | 1    | 15-38-202                |
| 548 | 1    | 25-1-1101                |     | 2    | 75-10-704                |
|     | 2    | 25-1-1102                |     | 3    | 75-10-715                |
|     | 3    | 25-1-1103                |     | 4    | Extension of authority   |
|     | 4    | 25-1-1104                |     | 5    | Coordination instruction |
|     | 5    | 25-1-1105                |     | 6    | Effective date           |
|     | 6    | 25-1-1111                | 556 | 1    | 15-6-201                 |
|     | 7    | 25-1-1112                |     | 2    | Extension of authority   |
|     | 8    | 25-1-1106                |     | 3    | Effective date —         |
|     | 9    | 25-1-1107                |     |      | applicability            |
|     | 10   | 25-3-201                 | 557 | 1    | 3-10-601                 |
|     | 11   | 25-3-202                 |     | 2    | 7-14-2138                |
|     | 12   | 25-3-203                 |     | 3    | 7-14-2826                |
|     | 13   | 25-3-204                 |     | 4    | 7-22-2117                |
|     | 14   | 25-3-205                 |     | 5    | 7-22-2434                |
|     | 15   | 25-3-301                 |     | 6    | 7-23-105                 |
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|     | 10   | 15-8-309                 |     | 4    | 33-30-105                                          |
|     | 11   | 15-70-101                |     | 5    | 33-30-204                                          |
|     | 12   | 19-8-504                 |     | 6    | 33-30-301                                          |
|     | 13   | 20-7-504                 |     | 7    | 33-30-307                                          |
|     | 14   | 20-7-505                 |     | 8    | 33-30-312                                          |
|     | 15   | 20-9-331                 |     | 9    | 33-30-1007                                         |
|     | 16   | 20-9-332                 |     | 10   | 33-30-108                                          |
|     | 17   | 23-2-507                 |     | 11   | Extension of authority                             |
|     | 18   | 23-2-644                 |     | 12   | Codification instruction                           |
|     | 19   | 32-2-106                 |     | 13   | Applicability                                      |
|     | 20   | 33-2-312                 |     | 14   | Effective date                                     |
|     | 21   | 37-2-301                 | 559 | 1    | 35-1-202                                           |
|     | 22   | 37-4-327                 |     | 2    | 35-2-202                                           |
|     | 23   | 37-7-324                 |     | 3    | 35-15-201                                          |
|     | 24   | 37-8-432                 |     | 4    | 35-16-202                                          |
|     | 25   | 37-10-313                |     | 5    | 35-17-202                                          |
|     | 26   | 37-16-408                |     | 6    | 35-18-203                                          |
|     | 27   | 37-41-212                |     | 7    | 35-20-103                                          |
|     | 28   | 39-71-201                |     | 8    | Effective date                                     |
|     | 29   | 46-17-303                | 560 | 1    | 15-6-214                                           |
|     | 30   | 46-18-235                |     | 2    | Codification instruction                           |
|     | 31   | 46-18-236                |     | 3    | Effective date —<br>applicability —<br>termination |
|     | 32   | 46-18-603                | 561 | 1    | 18-2-411                                           |
|     | 33   | 50-1-204                 |     | 2    | 18-2-401                                           |
|     | 34   | 50-2-124                 |     | 3    | 18-2-402                                           |
|     | 35   | 50-52-105                |     | 4    | 18-2-403                                           |
|     | 36   | 50-70-118                |     | 5    | 17-5-1526                                          |
|     | 37   | 53-9-109                 |     | 6    | 17-5-1527                                          |
|     | 38   | 61-8-718                 |     | 7    | 17-6-325                                           |
|     | 39   | 61-10-148                |     | 8    | 90-5-114                                           |
|     | 40   | 61-11-104                |     | 9    | Codification instruction                           |
|     | 41   | 61-12-701                |     | 10   | Coordination instruction                           |
|     | 42   | 75-2-412                 |     | 11   | Extension of authority                             |
|     | 43   | 75-5-634                 | 562 | 1    | 75-10-403                                          |
|     | 44   | 75-7-216                 |     | 2    | 75-10-405                                          |
|     | 45   | 75-10-418                |     | 3    | Extension of authority                             |
|     | 46   | 75-20-112                |     | 4    | Effective date                                     |
|     | 47   | 76-13-111                | 563 | 1    | 15-25-101                                          |
|     | 48   | 76-13-114                |     | 2    | 15-25-102                                          |
|     | 49   | 77-1-117                 |     | 3    | 15-25-111                                          |
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|     | 53   | 81-3-231                 |     | 7    | 15-25-115                                          |
|     | 54   | 81-4-202                 |     | 8    | 15-25-121                                          |
|     | 55   | 81-4-621                 |     | 9    | 15-25-122                                          |
|     | 56   | 81-8-216                 |     | 10   | 15-25-123                                          |
|     | 57   | 81-8-279                 |     | 11   | 17-7-502                                           |
|     | 58   | 81-23-403                |     | 12   | Codification instruction                           |
|     | 59   | 85-2-123                 | 564 | 1    | 33-27-101                                          |
|     | 60   | 85-3-213                 |     | 2    | 33-27-102                                          |
|     | 61   | 85-15-502                |     | 3    | 33-27-103                                          |
|     | 62   | 87-1-601                 |     | 4    | 33-27-111                                          |
|     | 63   | 87-4-808                 |     | 5    | 33-27-112                                          |
|     | 64   | Repealer                 |     | 6    | 33-27-113                                          |
|     | 65   | Extension of authority   |     | 7    | 33-27-114                                          |
|     | 66   | Coordination instruction |     | 8    | 33-27-115                                          |
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| 558 | 1    | 33-1-102                 |     |      |                                                    |

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|     | 10   | 15-31-117(1)              |     |      | recommendations —        |
|     | 11   | 15-30-127(3),             |     |      | report                   |
|     |      | 15-31-117(3)              |     | 6    | Appropriation            |
|     | 12   | 33-27-116                 |     | 7    | Effective date and       |
|     | 13   | 33-27-117                 |     |      | termination date         |
|     | 14   | 15-30-127(2)              | 574 | 1    | 15-24-1401               |
|     | 15   | 15-31-117(2)              |     | 2    | 15-24-1402               |
|     | 16   | 33-27-118                 |     | 3    | Extension of authority   |
|     | 17   | 33-27-119                 |     | 4    | Effective date —         |
|     | 18   | 15-30-107, 15-31-118      |     |      | applicability            |
|     | 19   | 33-27-104                 | 575 | 1    | 15-6-134                 |
|     | 20   | Extension of authority    |     | 2    | 15-6-142                 |
|     | 21   | Severability              |     | 3    | Extension of authority   |
|     | 22   | Codification instructions | 576 | 1    | 33-10-201                |
|     | 23   | Effective date            |     | 2    | 33-10-202                |
| 565 | 1    | 15-70-205                 |     | 3    | 33-10-204                |
|     | 2    | Extension of authority    |     | 4    | 33-10-219                |
| 566 | 1    | 16-3-411                  |     | 5    | 33-10-220                |
|     | 2    | Codification instruction  |     | 6    | 33-10-224                |
|     | 3    | Extension of authority    |     | 7    | 33-10-227                |
|     | 4    | Effective date            |     | 8    | 33-10-230                |
| 567 | 1    | 32-1-204                  |     | 9    | Extension of authority   |
|     | 2    | Effective date            |     | 10   | Applicability            |
| 568 | 1    | 15-6-135 (Temporary —     |     | 11   | Effective date           |
|     |      | not codified)             | 577 | 1    | 81-9-216                 |
|     | 2    | 15-6-146 (Temporary —     |     | 2    | 81-9-217                 |
|     |      | not codified)             |     | 3    | 81-9-226                 |
|     | 3    | Extension of authority    |     | 4    | 81-9-220                 |
|     | 4    | Coordination              |     | 5    | 81-9-227                 |
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| 569 | 1    | 87-1-225                  |     | 8    | 81-9-230                 |
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| 570 | 1    | 85-7-2211                 |     | 10   | 81-9-232                 |
|     | 2    | 85-7-2212                 |     | 11   | 81-9-218                 |
|     | 3    | Requirement for           |     | 12   | 81-9-233                 |
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|     |      | and property damage       |     | 16   | 81-9-219                 |
|     | 4    | Applicability             |     | 17   | 7-21-4202                |
| 571 | 1    | 28-1-211                  |     | 18   | 81-2-102                 |
|     | 2    | Applicability             |     | 19   | 81-9-112                 |
|     | 3    | Effective date            |     | 20   | 81-9-114                 |
| 572 | 1    | Study of carrying of      |     | 21   | 81-9-115                 |
|     |      | firearms by probation     |     | 22   | 81-9-116                 |
|     |      | and parole officers and   |     | 23   | 81-9-201                 |
|     |      | training in their use —   |     | 24   | Repealer                 |
|     |      | recommendations to        |     | 25   | Codification instruction |
|     |      | legislature               |     | 26   | Appropriation            |
|     | 2    | Termination date          | 578 | 1    | 23-2-801                 |
| 573 | 1    | Legislative               |     | 2    | 23-2-802                 |
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|     | 2    | Appropriation                                                                 |     | 2    | 45-7-501                 |
|     | 3    | 39-7-602                                                                      |     | 3    | Extension of authority   |
|     | 4    | 39-7-604                                                                      |     | 4    | Codification instruction |
|     | 5    | 39-7-605                                                                      |     | 5    | Effective date           |
|     | 6    | 39-7-606                                                                      | 587 | 1    | 15-17-121                |
|     | 7    | 39-7-603                                                                      |     | 2    | 15-17-122                |
|     | 8    | Codification instruction                                                      |     | 3    | 15-17-123                |
|     | 9    | Effective date                                                                |     | 4    | 15-17-124                |
| 580 | 1    | 2-4-312                                                                       |     | 5    | 15-17-211                |
|     | 2    | 2-4-313                                                                       |     | 6    | 15-17-212                |
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| 581 | 1    | 2-15-1808                                                                     |     | 8    | 15-17-214                |
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|     | 3    | Board of investments<br>abolished — functions<br>transferred                  |     | 10   | 15-17-322                |
|     | 4    | 7-6-1103                                                                      |     | 11   | 15-17-323                |
|     | 5    | 7-7-2259                                                                      |     | 12   | 15-17-324                |
|     | 6    | 7-7-4259                                                                      |     | 13   | 15-17-325                |
|     | 7    | 17-5-1502                                                                     |     | 14   | 15-17-326                |
|     | 8    | 17-5-1503                                                                     |     | 15   | 15-17-911                |
|     | 9    | 17-5-1604                                                                     |     | 16   | 15-18-111                |
|     | 10   | 17-5-1605                                                                     |     | 17   | 15-18-112                |
|     | 11   | 17-5-1630                                                                     |     | 18   | 15-18-113                |
|     | 12   | 17-6-201                                                                      |     | 19   | 15-18-114                |
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|     | 14   | 80-14-102                                                                     |     | 21   | 15-18-212                |
|     | 15   | 90-6-104                                                                      |     | 22   | 15-18-213                |
|     | 16   | 90-8-104                                                                      |     | 23   | 15-18-214                |
|     | 17   | 2-18-103                                                                      |     | 24   | 15-18-411                |
|     | 18   | Repealer                                                                      |     | 25   | 15-18-412                |
|     | 19   | Codification instruction                                                      |     | 26   | 15-18-413                |
|     | 20   | Effective date                                                                |     | 27   | 7-6-4414                 |
| 582 | 1    | 50-5-1101                                                                     |     | 28   | 7-21-2104                |
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|     | 4    | 50-5-1104                                                                     |     | 31   | 15-16-111                |
|     | 5    | 50-5-1105                                                                     |     | 32   | 15-16-112                |
|     | 6    | 50-5-1106                                                                     |     | 33   | 15-16-113                |
|     | 7    | 50-5-1107                                                                     |     | 34   | 15-16-114                |
|     | 8    | Severability                                                                  |     | 35   | 15-16-115                |
|     | 9    | Codification instruction                                                      |     | 36   | 15-16-117                |
|     | 10   | Extension of authority                                                        |     | 37   | 15-16-301                |
| 583 | 1    | 90-8-104                                                                      |     | 38   | 15-16-302                |
|     | 2    | 90-8-201                                                                      |     | 39   | 15-16-303                |
|     | 3    | 90-8-202                                                                      |     | 40   | 15-16-305                |
|     | 4    | 90-8-301                                                                      |     | 41   | 15-16-401                |
|     | 5    | Extension of authority                                                        |     | 42   | 15-16-402                |
|     | 6    | Saving clause                                                                 |     | 43   | 15-16-404                |
|     | 7    | Effective date                                                                |     | 44   | 15-16-504                |
| 584 | 1    | 15-6-138                                                                      |     | 45   | 15-16-601                |
|     | 2    | 15-6-140                                                                      |     | 46   | 15-16-701                |
|     | 3    | Extension of authority                                                        |     | 47   | 15-16-702                |
|     | 4    | Effective date                                                                |     | 48   | 15-16-703                |
| 585 | 1    | 61-3-502                                                                      |     | 49   | 15-16-704                |
|     |      |                                                                               |     | 50   | 15-23-704                |
|     |      |                                                                               |     | 51   | 15-24-302                |
|     |      |                                                                               |     | 52   | 76-13-211                |
|     |      |                                                                               |     | 53   | 85-7-2152                |
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|     | 56   | 85-7-2156                      |     | 8    | 87-2-711                                                                                    |
|     | 57   | 85-7-2163                      |     | 9    | Extension of authority                                                                      |
|     | 58   | 20-15-403                      |     | 10   | Codification instruction                                                                    |
|     | 59   | Repealer                       |     | 11   | Coordination instruction                                                                    |
|     | 60   | Extension of authority         |     | 12   | Effective date —                                                                            |
|     | 61   | Transition                     |     |      | termination date                                                                            |
|     | 62   | Saving clause                  | 599 | 1    | 7-6-2116                                                                                    |
|     | 63   | Effective date                 |     | 2    | 15-16-104                                                                                   |
| 588 | 1    | 37-2-101                       |     | 3    | Effective date                                                                              |
|     | 2    | 37-10-101                      | 600 | 1    | 61-10-205                                                                                   |
|     | 3    | 37-10-103                      |     | 2    | Extension of authority                                                                      |
|     | 4    | 37-10-304                      |     | 3    | Effective date                                                                              |
|     | 5    | 37-10-311                      | 601 | 1    | 15-16-613                                                                                   |
|     | 6    | 37-10-204                      |     | 2    | 15-16-601                                                                                   |
|     | 7    | Extension of authority         |     | 3    | Extension of authority                                                                      |
| 589 | 1    | 87-5-121                       |     | 4    | Codification instruction                                                                    |
|     | 2    | 87-5-123                       | 602 | 1    | Appropriation                                                                               |
|     | 3    | Sec. 7, Ch. 627, L. 1983       |     | 2    | Sec. 7, Ch. 664, L. 1985                                                                    |
|     | 4    | Extension of authority         |     | 3    | 2-89-207                                                                                    |
|     | 5    | Contingency authorization      |     | 4    | Effective date                                                                              |
| 590 | 1    | 70-32-221                      | 603 | 1    | 23-5-602                                                                                    |
|     | 2    | Applicability                  |     | 2    | 23-5-603                                                                                    |
| 591 | 1    | 60-11-110                      |     | 3    | 23-5-605                                                                                    |
|     | 2    | 15-24-1203                     |     | 4    | 23-5-607                                                                                    |
|     | 3    | Applicability                  |     | 5    | 23-5-608                                                                                    |
|     | 4    | Codification instruction       |     | 6    | 23-5-612                                                                                    |
|     | 5    | Severability                   |     | 7    | 23-5-615                                                                                    |
|     | 6    | Extension of authority         |     | 8    | 23-5-609                                                                                    |
|     | 7    | Effective date                 |     | 9    | 23-5-610                                                                                    |
| 592 | 1    | 2-15-102                       |     | 10   | 17-7-502                                                                                    |
|     | 2    | 2-15-114                       |     | 11   | Extension of authority                                                                      |
|     | 3    | 2-17-503                       |     | 12   | Codification instruction                                                                    |
|     | 4    | 20-25-301(16)                  |     | 13   | Effective date                                                                              |
|     | 5    | 3-2-605                        | 604 | 1    | Salary schedule for faculty                                                                 |
|     | 6    | Codification instructions      |     | 2    | Appropriation                                                                               |
| 593 | 1    | 15-8-111                       |     | 3    | Extension of authority                                                                      |
|     | 2    | Extension of authority         |     | 4    | Codification instruction                                                                    |
|     | 3    | Applicability date             |     | 5    | Effective date                                                                              |
| 594 | 1    | 15-6-211                       | 605 | 1    | 80-13-101                                                                                   |
|     | 2    | Extension of authority         |     | 2    | 80-13-102                                                                                   |
| 595 | 1    | 15-71-101                      |     | 3    | 80-13-103                                                                                   |
|     | 2    | Extension of authority         |     | 4    | 80-13-104(1) - (3)                                                                          |
|     | 3    | Effective date — applicability |     | 5    | 80-13-111                                                                                   |
| 596 | 1    | 15-7-111                       |     | 6    | 80-13-104(4)                                                                                |
|     | 2    | Extension of authority         |     | 7    | Sec. 15, Ch. 9, Sp. L. March 1986                                                           |
| 597 | 1    | 75-20-104                      |     | 8    | Extension of authority                                                                      |
|     | 2    | 75-20-207                      |     | 9    | Appropriation for counseling — expenditure of fees and grants authorized                    |
|     | 3    | 75-20-208                      |     | 10   | Appropriation for mediation — expenditure authority — coordination with Senate Bill No. 321 |
|     | 4    | Extension of authority         |     | 11   | Effective date — termination                                                                |
|     | 5    | Codification instruction       |     |      |                                                                                             |
|     | 6    | Applicability                  |     |      |                                                                                             |
|     | 7    | Effective date                 |     |      |                                                                                             |
| 598 | 1    | 87-1-241                       | 606 | 1    | 33-22-111                                                                                   |
|     | 2    | 87-1-242                       |     |      |                                                                                             |
|     | 3    | 87-2-403                       |     |      |                                                                                             |
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|     | 3    | 33-30-101                                                                           |     |      | 40-2-403                                                                              |
|     | 4    | Repealer                                                                            |     |      | 40-2-404                                                                              |
|     | 5    | 33-1-104                                                                            |     |      | 40-8-111                                                                              |
|     | 6    | 33-1-313                                                                            |     |      | 40-8-121                                                                              |
|     | 7    | 33-1-317                                                                            |     |      | 40-8-124                                                                              |
|     | 8    | 33-30-111                                                                           |     |      | 41-3-201                                                                              |
|     | 9    | 33-30-112                                                                           |     |      | 41-3-202                                                                              |
|     | 10   | 33-30-113                                                                           |     |      | 41-3-208                                                                              |
|     | 11   | Extension of authority                                                              |     |      | 41-3-403                                                                              |
|     | 12   | Coordination instruction                                                            |     |      | 41-3-406                                                                              |
| 607 | 1    | 15-65-101                                                                           |     |      | 41-3-702                                                                              |
|     | 2    | 15-65-111                                                                           |     |      | 41-3-704                                                                              |
|     | 3    | 15-65-112                                                                           |     |      | 41-3-1101                                                                             |
|     | 4    | 15-65-113                                                                           |     |      | 41-4-103                                                                              |
|     | 5    | 15-65-114                                                                           |     |      | 41-4-104                                                                              |
|     | 6    | 15-65-115                                                                           |     |      | 41-5-301                                                                              |
|     | 7    | 15-65-121                                                                           |     |      | 53-4-303                                                                              |
|     | 8    | 15-65-122                                                                           |     |      | 53-5-101                                                                              |
|     | 9    | 2-15-1816(1) - (5)                                                                  |     |      | 53-5-102                                                                              |
|     | 10   | 17-7-502                                                                            |     |      | 53-5-103                                                                              |
|     | 11   | 15-65-102                                                                           |     |      | 53-5-111                                                                              |
|     | 12   | 2-15-1816(6)                                                                        |     |      | 53-5-202                                                                              |
|     | 13   | Codification instructions                                                           |     |      | 53-5-302                                                                              |
|     | 14   | Appropriation                                                                       |     |      | 53-5-504                                                                              |
|     | 15   | Effective date —<br>applicability —<br>termination of<br>statutory<br>appropriation |     |      | 53-5-511                                                                              |
|     |      |                                                                                     |     |      | 53-5-601                                                                              |
|     |      |                                                                                     |     |      | 53-20-302                                                                             |
| 608 | 1    | 15-35-101                                                                           | 12  |      | County welfare functions<br>transferred to<br>department of family<br>services        |
|     | 2    | 15-35-102                                                                           |     |      | 40-4-218                                                                              |
|     | 3    | 15-35-103                                                                           |     |      | 41-3-107                                                                              |
|     | 4    | 15-35-104                                                                           |     |      | 53-5-505                                                                              |
|     | 5    | 15-35-202                                                                           | 13  |      | Institutions functions<br>transferred to<br>department of family<br>services          |
|     | 6    | 15-35-203                                                                           |     |      | 53-30-209                                                                             |
|     | 7    | Extension of authority                                                              |     |      | 53-30-210                                                                             |
|     | 8    | Applicability                                                                       |     |      | 53-30-213                                                                             |
|     | 9    | Effective date                                                                      |     |      | 53-30-227                                                                             |
| 609 | 1    | 2-15-104                                                                            |     |      | 53-30-228                                                                             |
|     | 2    | 2-15-2401                                                                           | 14  |      | County contribution for<br>salaries and travel of<br>protective services<br>employees |
|     | 3    | 52-1-101                                                                            |     |      | 41-5-525                                                                              |
|     | 4    | 52-1-102                                                                            |     |      | 41-5-526                                                                              |
|     | 5    | 52-1-103                                                                            |     |      | 41-5-527                                                                              |
|     | 6    | 52-1-201                                                                            |     |      | 41-5-528                                                                              |
|     | 7    | 52-1-202                                                                            |     |      | 41-5-529                                                                              |
|     | 8    | 52-1-203                                                                            |     |      | Status of transferred<br>employees                                                    |
|     | 9    | 52-1-105                                                                            | 15  |      | 41-5-525                                                                              |
|     | 10   | 41-3-1126                                                                           | 16  |      | 41-5-526                                                                              |
|     | 11   | Transfer of functions to<br>department of family<br>services                        | 17  |      | 41-5-527                                                                              |
|     |      | 2-15-2211 (renum.<br>2-15-2402)                                                     | 18  |      | 41-5-528                                                                              |
|     |      | 41-3-702                                                                            | 19  |      | 41-5-529                                                                              |
|     |      | 53-20-414 (renum.<br>53-20-107)                                                     | 20  |      | Status of transferred<br>employees                                                    |
|     |      | 15-6-209                                                                            | 21  |      | 2-18-303                                                                              |
|     |      | 20-5-301                                                                            | 22  |      | 20-5-301                                                                              |
|     |      | 27-1-718                                                                            | 23  |      | 20-7-404                                                                              |
|     |      | 40-2-401                                                                            | 24  |      | 20-7-422                                                                              |
|     |      |                                                                                     | 25  |      | 20-9-304                                                                              |
|     |      |                                                                                     | 26  |      | 40-4-209                                                                              |



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|     | 29   | 40-5-139  |     | 90   | 53-4-115                    |
|     | 30   | 40-5-202  |     | 91   | 53-4-401                    |
|     | 31   | 40-5-303  |     | 92   | 53-4-501                    |
|     | 32   | 40-6-107  |     | 93   | 53-20-203                   |
|     | 33   | 40-6-110  |     | 94   | 53-20-213                   |
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|     | 35   | 40-8-128  |     | 96   | 53-20-307                   |
|     | 36   | 41-3-102  |     | 97   | 53-20-401                   |
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|     | 40   | 41-3-208  |     | 101  | 53-20-410                   |
|     | 41   | 41-3-301  |     | 102  | 53-30-202                   |
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|     | 48   | 41-3-1104 |     | 109  | 53-30-215                   |
|     | 49   | 41-3-1112 |     | 110  | 53-30-228                   |
|     | 50   | 41-3-1114 |     | 111  | 53-30-229                   |
|     | 51   | 41-3-1115 |     | 112  | Repealer                    |
|     | 52   | 41-3-1122 |     | 113  | Extension of authority      |
|     | 53   | 41-3-1123 |     | 114  | Codification instructions   |
|     | 54   | 41-5-103  |     | 115  | Severability                |
|     | 55   | 41-5-106  |     | 116  | Reorganization<br>procedure |
|     | 56   | 41-5-205  |     | 117  | Implementation              |
|     | 57   | 41-5-206  |     | 118  | Effective dates             |
|     | 58   | 41-5-301  | 610 | 1    | 41-5-305                    |
|     | 59   | 41-5-403  |     | 2    | 45-2-103                    |
|     | 60   | 41-5-511  |     | 3    | 45-2-202                    |
|     | 61   | 41-5-522  |     | 4    | 45-5-102                    |
|     | 62   | 41-5-523  |     | 5    | 45-5-103                    |
|     | 63   | 41-5-602  |     | 6    | 45-5-104                    |
|     | 64   | 41-5-603  |     | 7    | 46-18-201                   |
|     | 65   | 45-5-824  |     | 8    | 46-18-231                   |
|     | 66   | 50-8-101  |     | 9    | 50-20-108                   |
|     | 67   | 50-15-206 |     | 10   | 50-20-112                   |
|     | 68   | 53-1-104  |     | 11   | Repealer                    |
|     | 69   | 53-1-201  | 611 | 1    | 7-1-2111                    |
|     | 70   | 53-1-202  |     | 2    | 15-1-501                    |
|     | 71   | 53-2-101  |     | 3    | 15-6-138                    |
|     | 72   | 53-2-201  |     | 4    | 15-6-140                    |
|     | 73   | 53-2-301  |     | 5    | 15-6-201                    |
|     | 74   | 53-2-302  |     | 6    | 15-8-201                    |
|     | 75   | 53-2-304  |     | 7    | 15-8-202                    |
|     | 76   | 53-2-306  |     | 8    | 15-24-101                   |
|     | 77   | 53-2-322  |     | 9    | 15-24-105                   |
|     | 78   | 53-2-323  |     | 10   | 15-24-301                   |
|     | 79   | 53-2-801  |     | 11   | 15-30-121                   |
|     | 80   | 53-2-802  |     | 12   | 15-31-114                   |
|     | 81   | 53-2-803  |     | 13   | 15-36-112                   |
|     | 82   | 53-2-811  |     | 14   | 15-50-207                   |
|     | 83   | 53-2-812  |     | 15   | 20-9-141                    |
|     | 84   | 53-2-813  |     | 16   | 20-9-331                    |
|     | 85   | 53-2-821  |     | 17   | 20-9-333                    |
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|     | 19   | 20-9-501                                            |     | 6    | Voided by sec. 14<br>(coordination section) |
|     | 20   | 20-10-144                                           |     | 7    | Voided by sec. 14<br>(coordination section) |
|     | 21   | 61-3-303                                            |     | 8    | 15-17-316                                   |
|     | 22   | 61-3-332                                            |     | 9    | 15-17-317                                   |
|     | 23   | 61-3-431                                            |     | 10   | 15-17-318                                   |
|     | 24   | 61-3-501                                            |     | 11   | 15-17-319                                   |
|     | 25   | 61-3-502                                            |     | 12   | 15-17-320                                   |
|     | 26   | 61-3-503                                            |     | 13   | Codification instruction                    |
|     | 27   | 61-3-504                                            |     | 14   | Coordination instruction                    |
|     | 28   | 61-3-506                                            |     | 15   | Severability                                |
|     | 29   | 61-3-509                                            |     | 16   | Applicability                               |
|     | 30   | 61-3-522                                            |     | 17   | Effective date                              |
|     | 31   | 61-3-523                                            | 618 | 1    | 15-6-150                                    |
|     | 32   | 61-3-524                                            |     | 2    | 15-6-155                                    |
|     | 33   | 61-3-535                                            |     | 3    | 15-8-111                                    |
|     | 34   | 61-3-701                                            |     | 4    | Extension of authority                      |
|     | 35   | 61-6-302                                            |     | 5    | Codification instruction                    |
|     | 36   | 61-3-537                                            |     | 6    | Effective date —<br>applicability           |
|     | 37   | Anniversary<br>reregistration                       | 619 | 1    | 30-9-402                                    |
|     | 38   | Repealer                                            |     | 2    | 30-9-403                                    |
|     | 39   | Extension of authority                              |     | 3    | 30-9-407                                    |
|     | 40   | Effective dates —<br>applicability —<br>termination |     | 4    | 30-9-421                                    |
| 612 | 1    | 61-8-401                                            |     | 5    | Repealer                                    |
|     | 2    | 61-5-205                                            |     | 6    | Extension of authority                      |
|     | 3    | 61-5-208                                            |     | 7    | Effective dates                             |
|     | 4    | Extension of authority                              | 620 | 1    | 80-3-603                                    |
| 613 | 1    | 15-1-101                                            |     | 2    | 80-3-701                                    |
|     | 2    | 15-7-102                                            |     | 3    | 80-3-704                                    |
|     | 3    | 15-7-103                                            |     | 4    | 80-4-503                                    |
|     | 4    | 15-7-111                                            |     | 5    | 80-4-602                                    |
|     | 5    | Extension of authority                              |     | 6    | 80-7-102                                    |
|     | 6    | Effective date —<br>applicability                   |     | 7    | Effective date                              |
| 614 | 1    | 53-3-205                                            | 621 | 1    | 2-18-303                                    |
|     | 2    | 53-3-304                                            |     | 2    | 2-18-313                                    |
|     | 3    | Extension of authority                              |     | 3    | Appropriation                               |
|     | 4    | Effective date                                      |     | 4    | Coordination instruction                    |
| 615 | 1    | 7-15-4290                                           |     | 5    | Effective date                              |
|     | 2    | 7-15-4301                                           | 622 | 1    | 15-31-101                                   |
|     | 3    | Applicability                                       |     | 2    | 33-2-311                                    |
|     | 4    | Effective date                                      |     | 3    | 33-2-705                                    |
| 616 | 1    | 15-31-321                                           |     | 4    | Appropriation                               |
|     | 2    | 15-31-322                                           |     | 5    | Severability                                |
|     | 3    | 15-31-323                                           |     | 6    | Applicability                               |
|     | 4    | 15-31-324                                           |     | 7    | Effective dates                             |
|     | 5    | 15-31-325                                           | 623 | 1    | 87-2-705                                    |
|     | 6    | 15-31-326                                           |     | 2    | 87-2-501                                    |
|     | 7    | 15-31-121                                           |     | 3    | Extension of authority                      |
|     | 8    | Codification instruction                            | 624 | 1    | 40-4-215                                    |
|     | 9    | Extension of authority                              |     | 2    | Extension of authority                      |
|     | 10   | Severability                                        |     | 3    | Effective date                              |
|     | 11   | Applicability                                       | 625 | 1    | 40-5-309                                    |
| 617 | 1    | 7-8-2301                                            | 626 | 1    | 46-18-201                                   |
|     | 2    | 7-12-2163                                           | 627 | 1    | 27-1-220                                    |
|     | 3    | 7-12-4182                                           |     | 2    | 27-1-221                                    |
|     | 4    | 7-12-4183                                           |     | 3    | 33-15-317                                   |
|     | 5    | 15-18-101                                           |     | 4    | Severability                                |
|     |      |                                                     |     | 5    | Applicability                               |
|     |      |                                                     | 628 | 1    | 27-1-307                                    |

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|     | 2    | 27-1-308                  |     | 3    | 20-3-106                                    |
|     | 3    | Applicability             |     | 4    | 20-9-501                                    |
| 629 | 1    | 16-2-301                  |     | 5    | 23-5-1027                                   |
|     | 2    | 16-2-302                  |     | 6    | Codification instruction                    |
|     | 3    | 16-3-403                  |     | 7    | Coordination instruction                    |
|     | 4    | Extension of authority    |     | 8    | Effective date                              |
|     | 5    | Effective date            | 636 | 1    | 87-1-246                                    |
| 630 | 1    | 53-30-225                 |     | 2    | 87-1-247                                    |
|     | 2    | Extension of authority    |     | 3    | 87-1-248                                    |
| 631 | 1    | 7-12-2167                 |     | 4    | 87-1-249                                    |
|     | 2    | 7-12-2193                 |     | 5    | 87-2-401                                    |
|     | 3    | 7-12-4190                 |     | 6    | 87-2-402                                    |
|     | 4    | 7-12-4194                 |     | 7    | 87-2-505                                    |
|     | 5    | 7-12-4162(2)              |     | 8    | 87-2-711                                    |
|     | 6    | Codification instructions |     | 9    | 87-1-250                                    |
|     | 7    | Severability              |     | 10   | Codification instruction                    |
|     | 8    | Saving clause             |     | 11   | Coordination instruction                    |
|     | 9    | Effective date            |     | 12   | Effective date                              |
| 632 | 1    | 50-16-501                 | 637 | 1    | 18-2-206                                    |
|     | 2    | 50-16-502                 |     | 2    | Applicability                               |
|     | 3    | 50-16-503                 | 638 | 1    | 33-22-1701                                  |
|     | 4    | 50-16-504                 |     | 2    | 33-22-1702                                  |
|     | 5    | 50-16-525                 |     | 3    | 33-22-1703                                  |
|     | 6    | 50-16-526                 |     | 4    | 33-22-1704                                  |
|     | 7    | 50-16-527                 |     | 5    | 33-22-1705                                  |
|     | 8    | 50-16-528                 |     | 6    | 33-22-1706                                  |
|     | 9    | 50-16-529                 |     | 7    | 33-22-1707                                  |
|     | 10   | 50-16-530                 |     | 8    | Codification instruction                    |
|     | 11   | 50-16-535                 |     | 9    | Coordination instruction                    |
|     | 12   | 50-16-536                 |     | 10   | Severability                                |
|     | 13   | 50-16-541                 |     | 11   | Applicability — filing<br>with commissioner |
|     | 14   | 50-16-542                 |     | 12   | Effective date                              |
|     | 15   | 50-16-543                 | 639 | 1    | 61-3-510                                    |
|     | 16   | 50-16-544                 |     | 2    | 80-7-810                                    |
|     | 17   | 50-16-545                 |     | 3    | 80-7-814                                    |
|     | 18   | 50-16-512                 |     | 4    | Extension of authority                      |
|     | 19   | 50-16-521                 |     | 5    | Effective date                              |
|     | 20   | 50-16-522                 | 640 | 1    | 23-5-606                                    |
|     | 21   | 50-16-511                 |     | 2    | Extension of authority                      |
|     | 22   | 50-16-513                 | 641 | 1    | 39-2-901                                    |
|     | 23   | 50-16-551                 |     | 2    | 39-2-902                                    |
|     | 24   | 50-16-552                 |     | 3    | 39-2-903                                    |
|     | 25   | 50-16-553                 |     | 4    | 39-2-904                                    |
|     | 26   | 50-5-106                  |     | 5    | 39-2-905                                    |
|     | 27   | 50-15-704                 |     | 6    | 39-2-911                                    |
|     | 28   | 53-21-166                 |     | 7    | 39-2-912                                    |
|     | 29   | 53-24-306                 |     | 8    | 39-2-913                                    |
|     | 30   | Severability              |     | 9    | 39-2-914                                    |
|     | 31   | Repealer                  |     | 10   | Repealer                                    |
| 633 | 1    | Art. V, § 6, Mont. Const. |     | 11   | Severability                                |
|     | 2    | Effective date            |     | 12   | Applicability                               |
|     | 3    | Submission to electorate  |     | 13   | Effective date                              |
| 634 | 1    | 25-9-401                  | 642 | 1    | 25-1-201                                    |
|     | 2    | 25-9-402                  |     | 2    | 19-5-404                                    |
|     | 3    | 25-9-403                  |     | 3    | Effective date                              |
|     | 4    | 25-9-404                  | 643 | 1    | 61-2-106                                    |
|     | 5    | 25-9-406                  |     | 2    | 61-2-107                                    |
|     | 6    | 25-9-405                  |     | 3    | 61-2-108                                    |
|     | 7    | Severability              |     | 4    | Appropriation                               |
| 635 | 1    | 20-9-531                  |     | 5    | Codification instruction                    |
|     | 2    | 20-9-532                  |     |      |                                             |

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|     | 6    | Effective date                   |     | 10   | 85-2-218                                |
| 644 | 1    | 13-1-104                         |     | 11   | Appropriation                           |
|     | 2    | 13-1-302                         |     | 12   | Repealer                                |
|     | 3    | 13-10-201                        |     | 13   | Extension of authority                  |
|     | 4    | 13-10-401                        |     | 14   | Codification instruction                |
|     | 5    | 13-10-402                        |     | 15   | Effective date                          |
|     | 6    | 13-10-403                        | 652 | 1    | 23-5-402                                |
|     | 7    | 13-10-405                        |     | 2    | 23-5-414 (Temporary)                    |
|     | 8    | 20-20-105                        |     | 3    | 23-5-414 (Effective July 1, 1988)       |
|     | 9    | 13-10-408                        |     | 4    | 23-5-603                                |
|     | 10   | 13-10-409                        |     | 5    | Extension of authority                  |
|     | 11   | Repealer                         |     | 6    | Effective dates — termination date      |
|     | 12   | Extension of authority           | 653 | 1    | 69-14-1101                              |
|     | 13   | Codification instruction         |     | 2    | 69-14-1102                              |
|     | 14   | Effective date                   |     | 3    | 69-14-1103                              |
| 645 | 1    | 25-1-201                         |     | 4    | Appropriation                           |
|     | 2    | Repealer                         |     | 5    | Severability                            |
|     |      | Sec. 13, Ch. 610, L. 1985        |     | 6    | Codification instruction                |
|     | 3    | Effective date                   |     | 7    | Effective date                          |
| 646 | 1    | 16-3-302                         | 654 | 1    | 15-10-411                               |
|     | 2    | Extension of authority           |     | 2    | 15-10-412                               |
|     | 3    | Effective date                   |     | 3    | Codification instruction                |
| 647 | 1    | Sec. 7, Ch. 32, Sp. L. June 1986 |     | 4    | Extension of authority                  |
|     | 2    | 69-1-223                         |     | 5    | Effective date — applicability          |
|     | 3    | 69-1-224                         |     | 6    | Termination                             |
|     | 4    | 69-1-402                         | 655 | 1    | 7-1-2111                                |
|     | 5    | 69-1-403                         |     | 2    | 7-7-2101                                |
|     | 6    | Effective date                   |     | 3    | 7-7-2203                                |
| 648 | 1    | 16-2-101                         |     | 4    | 7-14-2524                               |
|     | 2    | Extension of authority           |     | 5    | 7-14-2525                               |
|     | 3    | Effective date                   |     | 6    | 7-16-2327                               |
| 649 | 1    | 15-6-146                         |     | 7    | 15-6-208                                |
|     | 2    | 15-6-201                         |     | 8    | 15-16-102                               |
|     | 3    | 15-8-201                         |     | 9    | 15-16-121                               |
|     | 4    | 15-8-301                         |     | 10   | 15-23-601                               |
|     | 5    | 15-8-404                         |     | 11   | 15-23-602                               |
|     | 6    | 23-2-512                         |     | 12   | 15-23-603                               |
|     | 7    | 23-2-515                         |     | 13   | 15-23-604                               |
|     | 8    | 23-2-516                         |     | 14   | 15-23-605                               |
|     | 9    | 23-2-517                         |     | 15   | 15-23-607                               |
|     | 10   | 23-2-518                         |     | 16   | 15-23-612                               |
|     | 11   | 23-2-519                         |     | 17   | 15-23-613                               |
|     | 12   | Codification instruction         |     | 18   | 15-23-621                               |
|     | 13   | Code commissioner instruction    |     | 19   | 20-9-141                                |
|     | 14   | Extension of authority           |     | 20   | 20-9-331                                |
|     | 15   | Effective date — applicability   |     | 21   | 20-9-333                                |
| 650 | 1    | 39-3-406                         |     | 22   | 20-9-352                                |
|     | 2    | Extension of authority           |     | 23   | 20-9-501                                |
| 651 | 1    | 3-1-1001                         |     | 24   | 20-10-144                               |
|     | 2    | 3-1-1006                         |     | 25   | Extension of authority                  |
|     | 3    | 3-1-1008                         |     | 26   | Codification instruction                |
|     | 4    | 3-1-1010                         |     | 27   | Coordination instructions               |
|     | 5    | 3-1-1011                         |     | 28   | Effective date — applicability          |
|     | 6    | 3-7-213                          |     |      |                                         |
|     | 7    | 3-7-221                          | 656 | 1    | Voided by sec. 6 (coordination section) |
|     | 8    | 85-2-243                         |     |      |                                         |
|     | 9    | 85-2-701                         |     |      |                                         |

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|     | 2    | Voided by sec. 6<br>(coordination section)              |     |      | 17-2-102<br>17-2-107<br>20-7-701<br>20-9-201<br>20-9-212<br>37-31-304<br>39-30-103<br>60-2-216 |
|     | 3    | 15-36-101                                               |     |      | Effective date                                                                                 |
|     | 4    | 15-36-121                                               | 659 | 35   | 15-31-103                                                                                      |
|     | 5    | Extension of authority                                  |     | 1    | 15-1-101                                                                                       |
|     | 6    | Coordination instructions                               |     | 2    | 15-6-135                                                                                       |
|     | 7    | Effective date — applicability — contingent termination |     | 3    | 15-31-101                                                                                      |
| 657 | 1    | 15-30-111                                               |     | 4    | 15-31-401                                                                                      |
|     | 2    | 15-30-136                                               |     | 5    | 15-31-403                                                                                      |
|     | 3    | Extension of authority                                  |     | 6    | Extension of authority                                                                         |
|     | 4    | Applicability                                           |     | 7    | Codification instruction                                                                       |
|     | 5    | Effective date                                          |     | 8    | Effective date                                                                                 |
| 658 | 1    | 20-16-101                                               | 660 | 1    | 15-6-136                                                                                       |
|     | 2    | 20-16-102                                               |     | 2    | 15-6-207                                                                                       |
|     | 3    | 20-16-105                                               |     | 3    | 15-24-921                                                                                      |
|     | 4    | 20-16-103                                               |     | 4    | 15-24-922                                                                                      |
|     | 5    | 20-16-107                                               |     | 5    | 15-24-925                                                                                      |
|     | 6    | 19-4-302                                                |     | 6    | 81-6-101                                                                                       |
|     | 7    | 20-1-101                                                |     | 7    | 81-6-104                                                                                       |
|     | 8    | 20-3-103                                                |     | 8    | 81-6-204                                                                                       |
|     | 9    | 20-3-106                                                |     | 9    | 81-6-209                                                                                       |
|     | 10   | 20-6-501                                                |     | 10   | 81-7-103                                                                                       |
|     | 11   | 20-7-301                                                |     | 11   | 81-7-104                                                                                       |
|     | 12   | 20-7-302.1                                              |     | 12   | Repealer                                                                                       |
|     | 13   | 20-7-303                                                |     | 13   | Extension of authority                                                                         |
|     | 14   | 20-7-311 (renum.<br>20-16-106)                          |     | 14   | Effective date                                                                                 |
|     | 15   | 20-7-312 (renum.<br>20-16-104)                          | 661 | 1    | 2-18-104                                                                                       |
|     | 16   | 20-7-314 (renum.<br>20-16-108)                          |     | 2    | 2-18-301                                                                                       |
|     | 17   | 20-7-322 (renum.<br>20-16-201)                          |     | 3    | 2-18-303                                                                                       |
|     | 18   | 20-7-324 (renum.<br>20-16-202)                          |     | 4    | 2-18-304                                                                                       |
|     | 19   | 20-7-325 (renum.<br>20-16-204)                          |     | 5    | 2-18-305                                                                                       |
|     | 20   | 20-7-327 (renum.<br>20-16-203)                          |     | 6    | 2-18-312                                                                                       |
|     | 21   | 20-7-332 (renum.<br>20-16-205)                          |     | 7    | Voided by sec. 4, Ch. 621<br>(coordination section)                                            |
|     | 22   | 20-7-333 (renum.<br>20-16-206)                          |     | 8    | 2-18-314                                                                                       |
|     | 23   | 20-9-403                                                |     | 9    | 2-18-315                                                                                       |
|     | 24   | 20-9-513                                                |     | 10   | 2-18-703                                                                                       |
|     | 25   | 39-71-118                                               |     | 11   | Repealer                                                                                       |
|     | 26   | 90-6-211                                                |     | 12   | Effective date                                                                                 |
|     | 27   | 20-16-207                                               | 662 | 1    | 15-35-108                                                                                      |
|     | 28   | 20-16-109                                               |     | 2    | 17-5-704                                                                                       |
|     | 29   | Report by board of regents                              |     | 3    | 20-9-343                                                                                       |
|     | 30   | Appropriation                                           |     | 4    | 90-2-124                                                                                       |
|     | 31   | Repealer                                                |     | 5    | 90-6-202                                                                                       |
|     | 32   | Extension of authority                                  |     | 6    | 90-6-205                                                                                       |
|     | 33   | Codification instructions                               |     | 7    | 90-6-207                                                                                       |
|     | 34   | Code commissioner name change                           |     | 8    | 90-6-211                                                                                       |
|     |      | 2-15-1520                                               |     | 9    | 90-6-212                                                                                       |
|     |      |                                                         |     | 10   | Extension of authority                                                                         |
|     |      |                                                         |     | 11   | Codification instruction                                                                       |
|     |      |                                                         |     | 12   | Coordination instruction                                                                       |
|     |      |                                                         |     | 13   | Severability                                                                                   |
|     |      |                                                         |     | 14   | Applicability                                                                                  |
|     |      |                                                         |     | 15   | Effective date                                                                                 |
|     |      |                                                         | 663 | 1    | 3-5-113                                                                                        |

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|     | 2    | 3-5-114                  |        | 12   | 90-9-401                   |
|     | 3    | 3-5-115                  |        | 13   | 90-9-402                   |
|     | 4    | 3-5-116                  |        | 14   | 17-7-502                   |
|     | 5    | 3-5-117                  | 666    | 1    | 15-1-501                   |
|     | 6    | 3-5-118                  |        | 2    | 17-5-408                   |
|     | 7    | 3-1-601                  |        | 3    | 20-9-318                   |
|     | 8    | 3-1-603                  |        | 4    | 20-9-319                   |
|     | 9    | 3-5-201                  |        | 5    | 20-9-343                   |
|     | 10   | 19-5-501                 |        | 6    | 15-30-108                  |
|     | 11   | Codification instruction |        | 7    | 15-30-110                  |
| 664 | 1    | 39-71-2501               |        | 8    | Appropriation              |
|     | 2    | 39-71-2502               |        | 9    | Codification instruction   |
|     | 3    | 39-71-2503               |        | 10   | Extension of authority     |
|     | 4    | 39-71-2504               |        | 11   | Effective date —           |
|     | 5    | 17-7-502                 |        |      | applicability              |
|     | 6    | Repealer                 |        | 12   | Termination                |
|     | 7    | Extension of authority   | HB 621 | 1    | 90-4-210                   |
|     | 8    | Prior law superseded     |        | 2    | Definitions (not codified) |
|     | 9    | Severability             |        | 3    | 90-4-215                   |
|     | 10   | Effective date —         |        | 4    | Transfer of funds          |
|     |      | termination              |        |      | (1) - (5) (not codified)   |
| 665 | 1    | 2-15-1817                |        |      | (6) 90-4-211               |
|     | 2    | 90-9-101                 |        | 5    | 7-14-120                   |
|     | 3    | 90-9-102                 |        | 6    | 90-2-140                   |
|     | 4    | 90-9-103                 |        | 7    | 90-2-141                   |
|     | 5    | 90-9-201                 |        | 8    | 80-7-720                   |
|     | 6    | 90-9-202                 |        | 9    | Appropriations             |
|     | 7    | 90-9-301                 |        | 10   | Appropriation              |
|     | 8    | 90-9-302                 |        | 11   | Proration                  |
|     | 9    | 90-9-303                 |        | 12   | 17-7-502                   |
|     | 10   | 90-9-306                 |        | 13   | Effective dates            |
|     | 11   | 90-9-307                 |        |      |                            |

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**1987 Ballot Issues**


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| <b>Const.<br/>Amend.</b>          | <b>Sec.</b> | <b>MCA</b>                                                                  |
|-----------------------------------|-------------|-----------------------------------------------------------------------------|
| No. 15                            | 1           | Art. II, § 14, Mont. Const.                                                 |
|                                   | 2           | Effective date                                                              |
|                                   | 3           | Submission to electorate                                                    |
| No. 16                            | 1           | Repealer (Art. XIII, § 3, Mont. Const.)                                     |
|                                   | 2           | Submission to electorate                                                    |
| <b>Const.<br/>Initiative</b>      | <b>Sec.</b> | <b>MCA</b>                                                                  |
| CI 30                             | 1           | Art. II, § 16, Mont. Const.                                                 |
|                                   | 2           | Effective date                                                              |
| <b>Initiative</b>                 | <b>Sec.</b> | <b>MCA</b>                                                                  |
| No. 105                           | 1           | Declaration of policy                                                       |
|                                   | 2           | Property tax limited to 1986 levels                                         |
|                                   | 3           | Contingent effective date                                                   |
| <b>Legislative<br/>Referendum</b> | <b>Sec.</b> | <b>MCA</b>                                                                  |
| LR 100                            | 1           | Short title                                                                 |
|                                   | 2           | Purpose                                                                     |
|                                   | 3           | Definitions                                                                 |
|                                   | 4           | State lottery commission — allocation — composition — compensation — quorum |
|                                   | 5           | Powers and duties of commission                                             |
|                                   | 6           | Director — appointment — compensation — qualifications                      |

| <b>Legislative<br/>Referendum</b> | <b>Sec.</b> | <b>MCA</b>                                                                    |
|-----------------------------------|-------------|-------------------------------------------------------------------------------|
|                                   | 7           | Powers and duties of director                                                 |
|                                   | 8           | Assistant director for security — qualifications — duties                     |
|                                   | 9           | Ticket or chance sales agents — licenses                                      |
|                                   | 10          | Sales restrictions                                                            |
|                                   | 11          | Disclosure of odds                                                            |
|                                   | 12          | State lottery fund                                                            |
|                                   | 13          | Disposition of revenue                                                        |
|                                   | 14          | Felony and gambling-related convictions — ineligibility for lottery positions |
|                                   | 15          | Conflict of interest                                                          |
|                                   | 16          | Drawings for and payment of prizes — unclaimed prizes                         |
|                                   | 17          | Disclosures by gaming suppliers                                               |
|                                   | 18          | Annual audit                                                                  |
|                                   | 19          | Audit of lottery security                                                     |
|                                   | 20          | Penalties                                                                     |
|                                   | 21          | 23-5-202                                                                      |
|                                   | 22          | Initial appointment and terms of commissioners                                |
|                                   | 23          | Initial duties of commission — lottery study — first game                     |
|                                   | 24          | Temporary state treasury line of credit for expense of starting state lottery |
|                                   | 25          | Severability                                                                  |
|                                   | 26          | Effective date                                                                |
|                                   | 27          | Submission to electorate                                                      |
|                                   | 28          | Coordination instruction                                                      |